



TOWN OF BLACK MOUNTAIN

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

Date: November 4, 2019 Time: 6:00 p.m.

Regular Session Agenda

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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 Mike McDonald, Black Mountain Methodist Church*
- Announcements – *Mayor Don Collins*

2. PROCLAMATIONS, AWARDS & RECOGNITION - NONE

A. Proclamation- Carolyn Brown Day – *Vice-Mayor Maggie Tuttle*

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. Geese Control Update – *Kathy Punshon & Calvin*
- B. Golf Annual Report – *Brent Miller, Golf Operations Manager*
- C. Public Services Annual Streets Report – *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

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA
November 4, 2019

Motion: *To adopt the minutes of October 10, 2019 (Agenda Session), and October 14, 2019 (Regular Session).*

- B. Resolution to Adopt Code of Ethics **#R-19-20**

Motion: *To adopt **Resolution No. R-19-20** presented [or as amended].*

- C. Ordinance to Amend Sections of Chapter 2, Chapter 4, and Chapter 20 of Boards and Commissions **#O-19-25**

Motion: *To adopt Ordinance #O-19-25 as presented [or amended].*

- D. Advisory Boards, Commissions, Committees Policy Revision –Handbook

Motion: *To adopt the Handbook for Advisory Board, Commission & Committee Members as presented [or amended].*

- E. Budget Amendment for Commerce Park Infrastructure Capital **#FY20-8**

Motion: *To approve Budget Amendment #FY20-8 as submitted. In the project fund this amendment increases the expense account, 6700-4200-730 (Capital Outlay) by \$96,926 and the revenue accounts, 6700-3745-720 (Contribution from MSD) by \$55,348 and 6700-3915-960 (transfer from Water Fund) by \$41,578, and in the Water Fund, increases expense account 3091-8100-543 (Transfer to Capital Project Fund) by \$41,578 and increases the revenue account 3091-3905-900 (Fund Balance Appropriated) by \$41,578.*

- F. Capital Project Ordinance Amendment – Commerce Park Infrastructure Fund **#O-19-26**

Motion: *To approve Ordinance O-19-26, Capital Project Amendment for Commerce Park Infrastructure Fund as presented.*

- G. Capital Project Change Order Approval #3 - Commerce Park Infrastructure Fund

Motion: *To allow the Town Manager to execute approval of Change Order #3, in the amount of \$57,000 for the Commerce Park Infrastructure Fund as presented.*

Consent Motion: *To approve consent items A-G 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.

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA
November 4, 2019

7. UNFINISHED BUSINESS

- A. Offer received to purchase Town owned property located at 2992 U.S. Hwy 70, Black Mountain NC (Former Public Works Building)
- B. River Walk Greenway Update
- C. Public Hearing to Adopt Phase II Stormwater Ordinance #**O-19-21** (**Cont. from 10-14-19**)

Motion:

- 1. To reconvene the public hearing for **Ordinance #O-19-21** for amendments to Stormwater Phase II.
- 2. To adopt **Ordinance #O-19-21** as presented [or as amended].

8. NEW BUSINESS

- A. Ordinance Amendment to Authorize the Town Manager to Employ Attorneys #**O-19-27**

Motion: *To adopt Ordinance No. O-19-27, authorizing the Town Manager to employ attorneys as presented [or as amended].*

- B. RFQ Proposal Recommendation - Comprehensive Plan and Future Land Use Map Update

Motion: *To approve Clarion as the consulting team for the Comprehensive Plan and Future Land Use Map update and direct Town Manager to execute the contract after it has been approved by the Town Attorney.*

- C. Snow Removal Ordinance

Motion: *To adopt Ordinance No. O-19-28, Snow Removal as presented [or as amended].*

9. PUBLIC HEARING - NONE

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.

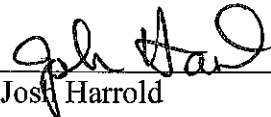
10. COMMUNICATION FROM STAFF

- A. Town Attorney – Ron Sneed
- B. Town Manager – Josh Harrold

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA
November 4, 2019

11. COMMUNICATION FROM MAYOR AND BOARD OF ALDERMEN

12. ADJOURNMENT



Josh Harrold
Town Manager



Proclamation

“Carolyn Brown Day”

November 2019

WHEREAS, the Black Mountain United Methodist Church will be commemorating Carolyn Brown’s 50 years of continuous service to the church; and

WHEREAS, since 1968, Carolyn Brown has served the Black Mountain United Methodist Church as the organist; and

WHEREAS, this dynamic and humble woman has demonstrated excellence in her calling as a “Woman of God,” the members of the Black Mountain United Methodist Church body extend to her and her beautiful family, their sincerest love and appreciation. They are proud to call her their “Church Organist” and friend, and thank her for all she has done over the past 50 years, looking forward to her continued service for many years to come; and

NOW, THEREFORE, I, Don Collins, Mayor of the Town of Black Mountain, and the Board of Aldermen express sincere appreciation for her tireless volunteerism, and dedicated service, and recognize the significant impact of her dedication and commitment to her church.

SIGNED this 4th day of November 2019.

Attest:

Maggie Tuttle, Vice Mayor

Angela Reece, Assistant to Manager/ Town Clerk

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: November 4, 2019

SUBJECT: Code of Ethics Resolution #**R-19-20** and Boards & Commissions Handbook

AGENDA INFORMATION

Agenda Location: NEW BUSINESS
Item Number: 5B
Department: ADMINISTRATION
Contact: Angela Reece, Assistant to Manger/ Town Clerk
Presenter: Josh Harrold, Town Manager

BRIEF SUMMARY: The purpose of this Code of Ethics is to establish guidelines for ethical standards of conduct for Board and Commission Members and to help determine what conduct is appropriate in particular cases. It should not be considered a substitute for the law or for a member's best judgment. At their meeting on December 20, 2010 the Board of Aldermen adopted a Code of Ethics and Rules of Procedure for the Black Mountain Board of Aldermen (R-10-17). Subsequently at their meeting on July 13, 2015 the Board adopted a code of ethics as a policy for all town appointed advisory boards, commissions, and committees. After consulting with Attorney Sneed, staff has determined the best practice is to adopt the Code of Ethics by resolution.

MOTION FOR CONSIDERATION: To adopt *Resolution No. R-19-20* as presented [or as amended].

FUNDING SOURCE: N/A

ATTACHMENTS: Resolution R-19-20

COMMENTS AND RECOMMENDATIONS: To adopt **Resolution #R-19-20** as presented [or amended].

R-19-20
Code of Ethics and Attendance Policy for Members of Advisory Boards and Commissions of the Town of Black Mountain, North Carolina

WHEREAS, Section 160A-86 of the North Carolina General Statutes requires local governing boards to adopt a code of ethics and, pursuant to Section 160A-86, the Black Mountain Board of Aldermen has previously adopted a Code of Ethics Resolution #R-10-17 on December 20, 2010 for the Mayor and Board of Aldermen; and

WHEREAS, it is appropriate that members of Town boards, committees, and commissions, as well as Mayoral and Board of Aldermen appointees to non-Town bodies (hereinafter "Board Members"), also adhere to a Code of Ethics; and

NOW THEREFORE BE IT RESOLVED, by the Board of Aldermen of the Town of Black Mountain in recognition of our blessings and obligations as citizens of the State of North Carolina and as public officials representing the citizens of the Town of Black Mountain, and acting pursuant to the requirements of Section 160A-86 of the North Carolina General Statutes, we do hereby adopt the following General Principles and Code of Ethics & Attendance Policy to guide Advisory Board Members in their lawful decision-making.

GENERAL PRINCIPLES AND CODE OF ETHICS

The purpose of this Code of Ethics is to establish guidelines for ethical standards of conduct for Board Members and to help determine what conduct is appropriate in particular cases. It should not be considered a substitute for the law or for a member's best judgment.

The stability and proper operation of democratic representative government depend 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 must always remain aware that they may, at various times, play different roles:

- ¾ As advisors, who balance the public interest and private rights in considering and recommending, among other things, ordinances, policies, and decisions
- ¾ As decision-makers, who arrive at fair and impartial determinations.

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 the Mayor and Board of Aldermen and the citizens of

Black Mountain. Each Board Member must find within his or her own conscience the touchstone by which to determine what conduct is appropriate.

Section 1.

Board Members should obey all laws applicable to their official actions. Board Members should 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. However in doing so, Board Members:

- (a) shall be mindful that they were appointed by the Mayor or Board of Aldermen, or by another appointing authority to a Town Board, Committee, or Commission and, therefore, if they are advising or advocating a position that is contrary to a Council policy, that they notify the Mayor and Board of Aldermen of such as soon as practicable;
- (b) who serve in an advisory capacity shall be mindful that their chief responsibility is to advise the Mayor and Board of Aldermen or other decision-making body rather than to advocate to the public at large, particularly when the position of advocacy is contrary to a Council policy;
- (c) shall understand that they hold a position of trust on behalf of the Town and its citizens; and
- (d) shall assert policy positions and opinions on matters within or related to the jurisdiction and subject matter of the body on which they serve only through the transparency of official proceedings of the body or in a capacity and manner appropriate for a member of such body. Board Members shall not represent their individual views as being representative of the full body unless they have been formally authorized by the body to do so.
- (e) shall faithfully attend regular and special meetings of the body.

These guidelines are especially important to Chairpersons who must recognize that they are often viewed as speaking for the body.

To declare that a Board Member is behaving unethically because one disagrees with that official on a question of policy (and not because of the council member's behavior) is unfair, dishonest, irresponsible, and itself unethical.

Section 2.

Board Members should act with integrity and independence from improper influence as they exercise the duties of their offices. Characteristics and behaviors consistent with this standard include the following:

- Adhering firmly to a code of sound values
- Exhibiting trustworthiness

- Using their best independent judgment to pursue the common good as they see it, presenting their opinions to all in a reasonable, forthright, consistent manner
- Remaining incorruptible, self-governing, and unaffected by improper influence while at the same time being able to consider the opinions and ideas of others
- For Board Members who act in a quasi-judicial capacity, disclosing contacts and information about issues that they receive 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, Staff and the public with respect and honoring the opinions of others even when the board members disagree with those opinions
- Showing respect for their offices and not behaving in ways that reflect badly on those offices
- Recognizing that individual Board Members are not generally allowed to act on behalf of the body but may only do so if the body specifically authorizes it, and that the body must take official action as a body

Section 3.a

Board Members should avoid impropriety in the exercise of their official duties. Their official actions should be above reproach and they should not use their official position for personal gain. Although opinions may vary about what behavior is inappropriate, the Board of Aldermen will consider impropriety in terms of whether a reasonable person who is aware of all of the relevant facts and circumstances surrounding the Board Member's action would conclude that the action was inappropriate.

Section 3.b.

If a Board Member believes that his or her actions, while legal and ethical, may be misunderstood, the official should seek the advice of the Town Attorney and should consider publicly disclosing the facts of the situation and the steps taken to resolve it (such as consulting with the attorney).

Section 4.

Board Members should faithfully perform the duties of their offices. They should act as the especially responsible citizens whom others can trust and respect. They should set a good example for others in the community, keeping in mind that trust and respect must continually be earned.

Board Members should be willing to bear their fair share of the body's workload. To the extent appropriate, they should be willing to put the Town's interests ahead of their own.

Section 5.

Board Members should conduct the affairs of the board in an open and public manner. They should comply with all applicable laws governing open meetings and public records, recognizing that doing so is an important way to be worthy of the public's trust. They should remember when they meet that they are conducting the public's business. They should also remember that local government records belong to the public and not to them or Town employees.

In order to ensure strict compliance with the laws concerning openness, the Mayor and Board of Aldermen members have made it clear that an environment of transparency and candor is to be maintained at all times in the governmental unit. They should take deliberate steps to make certain that any meetings held by the body are lawfully conducted and that such meetings do not stray from the purposes for which they are called.

Section 6.

ATTENDANCE POLICY

Board Members should faithfully attend and prepare for meetings and adhere to the following attendance policy.

In order for a board or commission to be effective and efficient, and to accomplish its purpose, its membership must be actively involved and attentive to the business of the body therefore the Board of Aldermen may dismiss any member who misses three consecutive meetings or one-half of the meetings held in a single six-month period without good cause (such as temporary severe illness of a member or of a member of such member's family, or overriding but temporary business concerns). Such dismissal may be considered upon or complaint by the chairperson, a member of the board or commission, staff, or on the Board of Aldermen's own motion. A member must attend fifty percent (50%) of a meeting in order to be considered in attendance for the purposes of this policy. On January 1st of each year, a member of any board or commission appointed by the Mayor or Board of Aldermen may be automatically removed from said body for failure to attend at least one half of all regular and special meetings of the body held during the immediately preceding calendar year.

Sanctions

In the event that a member of an advisory board fails to comply with the code of ethics or attendance policy the chairperson or staff support shall notify the Mayor and Board of Aldermen, in writing, of the policy violation and to request that said member to be replaced. Following the review of an allegation against a member of a Town board or commission conducted pursuant to Section 2, the Town Board of Aldermen may sanction the member who was the subject of the

review. Potential sanctions include removal of the member, adoption of a Resolution of Censure, and any other lawful sanction within the Board of Aldermen's power.

I move the adoption of the foregoing Resolution:

Alderman

READ, APPROVED AND ADOPTED this 4th day of November, 2019.

Don Collins, Mayor

ATTEST:

Angela Reece, Assistant to Manger/Town Clerk

Josh Harrold, Town Manager

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: November 4, 2019

SUBJECT: Ordinance to Amend Sections of Chapter 2, Chapter 4, and Chapter 20 of Boards and Commissions #O-19-25

AGENDA INFORMATION

Agenda Location: NEW BUSINESS
Item Number: 5C
Department: ADMINISTRATION
Contact: Angela Reece, Assistant to Manger/ Town Clerk
Presenter: Josh Harrold, Town Manager

BRIEF SUMMARY: Staff has updated sections of each existing Advisory Board and Commission ordinance for consistency across all advisory boards and commissions. Amendments also include sections pertaining to clarification of roles and responsibilities of advisory board members and staff. In addition, sections including statutory language pertaining to powers and duties have been added for the Zoning Board of Adjustment and ABC Board. Staff has also added a section to clarify the powers of the Mayor and Council when authorizing creation of advisory boards, commissions, and committees which includes language referencing adoption of policies and procedures and other resolutions or ordinances as applicable.

MOTION FOR CONSIDERATION:

1. To adopt ***Ordinance No. O-19-25*** as presented [or as amended].

FUNDING SOURCE: N/A

ATTACHMENTS: Ordinance No. O-19-25

COMMENTS AND RECOMMENDATIONS: To adopt **Ordinance #O-19-25** as presented [or amended].

ORDINANCE # O-19-25

**AN ORDINANCE TO AMEND MULTIPLE SECTIONS OF THE CODE OF ORDINANCES
OF THE TOWN OF BLACK MOUNTAIN, NORTH CAROLINA, TO IMPROVE
CONSISTENCY AND PROVIDE CLARITY OF ADVISORY BOARDS, COMMISSIONS,
COMMITTEES ESTABLISHMENT, POWERS DUTIES AND FUNCTIONS**

**BE IT ORDAINED BY THE TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
THAT:**

Chapter 2, Administration, Article III, Division 1. Generally, Section 2-42; Chapter 2, Administration, Division 4. – Planning Board, Section 2-118, Section 2-120, 2-121; Chapter 2, Administration, Division 5. – Recreation Commission, Section 2-150, Section 2-151, Section 2-152, Section 2-153, Section 2-154; Chapter 2, Administration, Division 6. – Zoning Board of Adjustment, Section 2-179, Section 2-180; Chapter 2, Administration, Division 7. – Historic Preservation Commission, Section 2-210; Chapter 2, Administration, Division 8. – Greenways Commission, Section 2-233, Section 2-234, Section 2-235, Section 2-236; Chapter 4, Alcoholic Beverages, Section 4-4; Chapter 20, Article VI, Division 3. Urban Forestry Commission, Section 20-285, of the Code of Ordinances, Town of Black Mountain, North Carolina, is hereby amended to read as follows:

Chapter 2, Administration

ARTICLE III. – Departments, Boards and Commissions

Division 1. – Generally

Sec. 2-42. - Powers of Mayor and Council.

(a) In addition to any authorities, boards or commissions now, or hereafter created and established by or pursuant to general, local, or special law, or this Charter, the Council may create and establish, by ordinance or resolution, such other authorities, boards, and commissions as it may deem necessary or appropriate to the administration, regulation, and operation of services, activities, and functions which the Town is authorized by law to perform, regulate, and carry on. It is desirable that in appointing persons to boards, commissions, and authorities, the appointing authority should attempt to secure reasonable representation on each such body of all sexes, races, geographic sections of the Town, and political parties. Provided, however, that such representation shall not be required, and the validity of any appointment may not be challenged on grounds that such representation has not been achieved.

(b) Any authority, board, commission, or other agency to which the Mayor or Council appoints members or appropriates money is hereby required to furnish to the Mayor and Council, upon request, such information as the Mayor and Council may deem relevant to the affairs of any such authority, board, commission, or other agency. The duty to provide such information is mandatory and may be enforced by an action for mandamus in the Superior Court of Buncombe County.

(c) The Mayor and Council may develop a plan and adopt such ordinances or resolutions as may be necessary to provide that the Mayor and Council shall appoint membership to or remove membership from, with or without cause of any town appointed advisory boards, commissions, committees and authorities. Town Advisory Boards, Commissions, and Committees serve at the pleasure of the Mayor and Board of Aldermen not inconsistent with any applicable general statutes.

Chapter 2, Administration

DIVISION 4. - PLANNING BOARD

Sec. 2-118. – Membership; vacancies

(f) Such dismissal may be considered upon report or complaint by the planning board chairperson, a member of the planning board, or on the board of aldermen's own motion. **A member must attend fifty percent (50%) of a meeting in order to be considered in attendance for the purposes of this policy. On January 1st of each year, a member of any board or commission appointed by the Mayor or Board of Aldermen may be automatically removed from said body for failure to attend at least eighty five percent of all regular and special meetings of the body and assigned committees and subcommittees held during the immediately preceding calendar year.**

Sec. 2-120. - Secretary of board.

The secretary of the planning board **may be a staff member**, an appointed member elected by the planning board, or may be a nonvoting member contracted by the planning board for services rendered, using funds as appropriated by the board of aldermen. The secretary shall keep the minutes of the planning board, shall endeavor to send out ~~mail~~ notice of all meetings of the planning board to planning board members **not inconsistent with NC General Statutes.** ~~and shall endeavor to give eight hour phone notice of any special meetings to said members.~~ Other duties shall include carrying on routine correspondence and maintaining the files of the board.

Sec. 2-121. - Meetings.

~~Redundant text (b) Faithful attendance at the meetings of the board is considered a prerequisite for the maintenance of membership on the board. Failure to attend three consecutive meetings of the board may result in dismissal from the planning board.~~

Chapter 2, Administration

DIVISION 5. - RECREATION COMMISSION

Sec. 2-150. - Membership, terms of office; vacancies; compensation.

(d) The ~~B~~board of ~~A~~aldermen may dismiss any member who misses three consecutive meetings or one-half of the meetings held in a single six-month period without good cause (such as temporary severe illness of a member or of a member of such member's family, or overriding but temporary business concerns). Such dismissal may be considered upon or complaint by the recreation commission chairperson, a member of the recreation commission, or on the Board of Aldermen's own motion. *A member must attend fifty percent (50%) of a meeting in order to be considered in attendance for the purposes of this policy. On January 1st of each year, a member of any board or commission appointed by the Mayor or Board of Aldermen may be automatically removed from said body for failure to attend at least one half of all regular and special meetings of the body held during the immediately preceding calendar year.*

Sec. 2-151. - Officers; bylaws and regulations; meetings.

The recreation commission shall appoint from its membership such other officers as it may deem necessary for the orderly procedure of its business and may adopt bylaws, rules and regulations governing its procedure not inconsistent with the provisions of the state and local laws. The recreation commission shall, from time to time, collaborate with the staff of recreation and parks to develop recommendations ~~rules, regulations and procedures~~ governing the operation and conduct of the recreation facilities, which shall be submitted to the board of aldermen for approval. The recreation commission shall hold regular meetings at such times and places it may designate.

Sec. 2-152. - ~~Authority over and supervision of recreational facilities and activities.~~

~~The r~~Responsibilities of the recreation commission ~~will be as follows:~~

(1) Serve as the recreation advisory body for the town; (2) Act as the recreation liaison between the citizens and the board of aldermen for the town; (3) Recommend policies to the recreation director and board of aldermen with the scope of responsibilities as outlined in town ordinances; (4) Consult with and advise the recreation director and aldermen in matters affecting

park and recreation policies, programs, ~~personnel, finances,~~ facilities, and acquisitions and disposal of lands utilized for recreational purposes, ~~and program,~~ and to its long range projected program for parks and recreation;(5)At times may be asked to R~~review~~ and monitor park planning documents from other governmental jurisdictions in regards to proposals for sites and/or activities within or near the town;(6)Maintain, through staff, liaison with the county, the City of Asheville, and state recreation resources park officials on changes, proposals, etc., for park facilities which impact on the Black Mountain area, and provide such information to the board of aldermen;(7)Review existing park sites within the town and provide recommendations to staff for approval by the board of aldermen on the development of these sites, and ensure coordination of existing and proposed parks and recreation activities with those of other jurisdictions and organizations to eliminate unnecessary duplication of services and facilities;(8)Develop and maintain an overall park and recreation master plan for the town, to include the following: a. Proposed locations for park sites; b. Types of recreation activities and/or facilities to be provided.; ~~and c. A five-year capital improvement program for both acquisition and development (as well as operational and maintenance costs);~~(9)~~Ensure that staff monitors park activity/usage and report such to the recreation commission, and that the commission reports the same to the board of aldermen;~~(10)~~Ensure that staff monitors conditions of park facilities and report condition problems to the recreation commission, and that the commission reports the same to the board of aldermen with recommendations on alternatives for changes, modifications, improvements, etc.; and~~(11)(9)Participate in the preparation of any special plans or studies authorized by the board of aldermen having a bearing on parks and recreation issues pertinent to or affecting the town.

~~Sec. 2-153.— Acceptance of grants, gifts and property.~~

~~The recreation commission may, subject to review and approval by the board of aldermen, which shall rule on the propriety and legality of acquisitions, accept on behalf of the town any grant, gift, bequest or donation of any personal property offered or made for recreation purposes and, with the approval of the board of aldermen, may accept any grant, gift, or devise of real estate. Title to any such gift, grant or devise of personal property or real estate shall vest in the town as owner. Any gift or bequest of money or other personal property or grant or devise of real estate shall be held, used and finally disposed of in accordance with the terms or conditions under which such grant, gift, or devise is made or accepted. The recreation commission shall have no authority to enter into any contract or incur any obligations binding the town other than current obligations or contracts to be fully executed within the current fiscal year and all within the budget appropriations made by the board of aldermen of the town.~~

~~Sec. 2-154.— Funds.~~

~~Funds appropriated by the board of aldermen and budgeted to the recreation department shall be disbursed by the town manager, who is the fiscal disbursing officer of the town, as budget funds are disbursed, except that funds received by the gift, bequest, or grant shall be budgeted and~~

~~disbursed by the board of aldermen through the recreation department in accordance with the terms of such gift, bequest or grant.~~

Chapter 2, Administration

Division 6 – Zoning Board of Adjustment

Sec. 2-179 creation and establishment.

There is hereby established a Town Zoning Board of Adjustment under the authority of North Carolina G.S. 160A-388.

Sec. 2-180 Powers; Membership; appointment; composition; terms; reimbursement.

(a) The Zoning Board of Adjustment shall operate according to powers granted under the authority of North Carolina G.S. 160A-388. The Zoning Board of Adjustment

(b) Members shall serve terms of three years. Terms shall be staggered. A member may be appointed for a second term. After two consecutive terms, a member shall be ineligible for reappointment until one calendar year has elapsed from the date of the termination of his appointment.

(c) The Board of Aldermen appoints three alternate members whose terms are un-expiring. Any vacancy in the regular membership shall be filled by the first alternate member, who shall serve the remainder of the unexpired term. The Board of Aldermen would only, and always, be appointing new members to the third alternate position. Alternate membership are subject to the same policies and statutes as regular membership.

(d) The Board of Aldermen may dismiss any member who misses three consecutive meetings or one-half of the meetings held in a single six-month period without good cause (such as temporary severe illness of a member or of a member of such member's family, or overriding but temporary business concerns). Such dismissal may be considered upon or complaint by the Zoning Board of Adjustment chairperson, a member of the Zoning Board of Adjustment, staff, or on the Board of Aldermen's own motion. A member must attend fifty percent (50%) of a meeting in order to be considered in attendance for the purposes of this policy. On January 1st of each year, a member of any board or commission appointed by the Mayor or Board of Aldermen may be automatically removed from said body for failure to attend at least one half of all regular and special meetings of the body held during the immediately preceding calendar year.

(e) The Zoning Board of Adjustment shall serve without compensation, except that it be reimbursed for actual expenses incident to the performance of its duties within the limits of any funds available to the board.

(f) The secretary of the Zoning Board of Adjustment may be a staff member, an appointed member elected by the Zoning Board, or may be a nonvoting member contracted by the zoning board for services rendered, using funds as appropriated by the Board of Aldermen. The secretary shall keep the minutes of the Zoning Board, shall endeavor to send out notice of all meetings of the zoning board not inconsistent with NC General Statutes. Other duties shall include carrying on routine correspondence and maintaining the files of the board.

Chapter 2, Administration

Division 7. – Historic Preservation Commission

Sec. 2-210. - Membership; appointment; composition; terms; reimbursement.

(e)The Board of Aldermen may dismiss any member who misses three consecutive meetings or one-half of the meetings held in a single six-month period without good cause (such as temporary severe illness of a member or of a member of such member's family, or overriding but temporary business concerns). Such dismissal may be considered upon or complaint by the Historic Preservation Commission chairperson, a member of the Historic Preservation Commission, staff, or on the Board of Aldermen's own motion. A member must attend fifty percent (50%) of a meeting in order to be considered in attendance for the purposes of this policy. On January 1st of each year, a member of any board or commission appointed by the Mayor or Board of Aldermen may be automatically removed from said body for failure to attend at least one half of all regular and special meetings of the body held during the immediately preceding calendar year.

(f) The secretary of the Historic Preservation Commission may be a staff member, an appointed member elected by the Historic Preservation Commission, or may be a nonvoting member contracted by the Historic Preservation Commission for services rendered, using funds as appropriated by the Board of Aldermen. The secretary shall keep the minutes of the Historic Preservation Commission, shall endeavor to send out notice of all meetings of the Historic Preservation Commission not inconsistent with NC General Statutes. Other duties shall include carrying on routine correspondence and maintaining the files of the board.

Chapter 2, Administration

Division 8 – Greenways Commission

Sec. 2-233 Membership; appointment; composition; terms; reimbursement.

~~*(b) The greenways commission may appoint advisory bodies and committees as appropriate.*~~

~~(e)~~ (b) Members of the greenways commission shall serve terms of three years. Terms shall be staggered. ~~A member may be appointed for a second term. After two consecutive terms, a member shall be ineligible for reappointment until one calendar year has elapsed from the date of the termination of his appointment. In establishing the commission and appointing charter members to serve, the board of aldermen shall appoint two members to one year terms, two members to two-year terms, and three members to three-year terms. Upon the expiration of these initial terms, the normal schedule of three-year staggered terms will take effect for all seats on the commission.~~ Appointments shall be limited to two consecutive three-year terms, and any member who has served two consecutive three-year terms may not be reappointed until he has been off the commission for at least one full year. If a member of the greenways commission has served more than two-thirds of a full term after being appointed to complete the term of a previous board member, his or her service during the completion of that term shall be considered a full term for purposes of determining his eligibility to serve successive subsequent terms. The Board of Aldermen may dismiss any member who misses three consecutive meetings or one-half of the meetings held in a single six-month period without good cause (such as temporary severe illness of a member or of a member of such member's family, or overriding but temporary business concerns). Such dismissal may be considered upon or complaint by the Greenways Commission chairperson, a member of the Greenways Commission, or on the Board of Aldermen's own motion. A member must attend fifty percent (50%) of a meeting in order to be considered in attendance for the purposes of this policy. On January 1st of each year, a member of any board or commission appointed by the Mayor or Board of Aldermen may be automatically removed from said body for failure to attend at least one half of all regular and special meetings of the body held during the immediately preceding calendar year.

(d) ~~(c) Members of The greenways commission shall serve without compensation, except that it may be reimbursed for actual expenses incident to the performance of its duties within the limits of any funds available to it.~~

Sec. 2-234. - Officers; meetings.

~~The greenways commission shall elect a chairperson and a vice-chairperson. Other offices may be created as may be determined as necessary. The term of the chairperson and other officers shall be one year, with eligibility for reelection. The greenways commission shall meet on the third Tuesday of every month at 7:00 p.m., or at such a time and place it may deem appropriate, provided the meeting is properly advertised.~~ (a) The commission shall select a chairperson from among its members. It shall also select from among its members a vice chairperson and secretary, elected annually by the commission. The finance officer of the town shall serve as treasurer of the funds of the commission. The Board of Aldermen or the town manager shall approve all expenditures for the commission in accordance with the requirements of law controlling the expenditure of town funds. The commission shall meet regularly at least once per month. Special meetings may be called by the chairperson or, in his absence, by the vice-chairperson; and special meetings

shall be called upon the request of a majority of the members of the commission or upon the request of the Board of Aldermen.

(b)The commission shall adopt rules for transaction of its business and shall keep a record of its members' attendance and of its resolutions, discussions, findings, and recommendations, and such record shall be a public record. The commission shall set a regular schedule for meeting.

(c)A majority of the members of the commission shall constitute a quorum, and a majority vote of those present shall be required to constitute action of the commission. The presiding members of the commission may vote on any matter considered by the commission.

(d)The commission shall act as a body in the transaction of all business, unless a committee or member is duly authorized by the commission for a specific purpose, the committee to be discharged upon the completion of the duties assigned to it, unless it is a permanent committee.

(e)The commission is authorized to appoint committees from its membership whose function shall be fixed by the commission at the time of appointment. The committees may be standing committees and shall perform the duties as may be assigned by the commission.

Sec. 2-235. - Staff support; liaison members.

Staff support to the greenways commission shall be provided by the Planning Director or his or her designee ~~assistant town manager, the director of recreation and parks, and/or the health initiative administrator~~, as appropriate. The board of aldermen may appoint one of its members to serve as a liaison member to the greenways commission. ~~One member of the greenways commission shall attend all meetings of the recreation commission. This responsibility may rotate among greenways commission members as needed.~~

Sec. 2-236. - Powers, duties, and functions.

(a)(1)Advise the board of aldermen ~~and the recreation commission~~ on ~~issues concerning greenways, including~~ the safe and accessible walkability of the town, interconnectedness of town facilities, and pertinent decisions regarding the accessibility of natural areas and open space.

(b)(5)Assist staff with Mmaintainance and reviseion of the greenways master plan as needed, in coordination with ~~the recreation commission and~~ the Board of Aldermen.

Chapter 4 – Alcoholic Beverages

Sec. 4-4. – Powers of Local ABC Board

(a) The Local ABC Board shall operate according to powers granted under the authority of Article 7, Local ABC Boards - North Carolina G.S.18B-700. ~~The local board shall have authority as provided under state law.~~

(b) In addition to removal provisions set forth in North Carolina G.S. 18B-202, the Board of Aldermen may dismiss any member who misses three consecutive meetings or one-half of the meetings held in a single six-month period without good cause (such as temporary severe illness of a member or of a member of such member's family, or overriding but temporary business concerns). Such dismissal may be considered upon or complaint by the ABC Board chairperson, a member of the ABC Board, staff, or on the Board of Aldermen's own motion. A member must attend fifty percent (50%) of a meeting in order to be considered in attendance for the purposes of this policy. On January 1st of each year, a member of any board or commission appointed by the Mayor or Board of Aldermen may be automatically removed from said body for failure to attend at least one half of all regular and special meetings of the body held during the immediately preceding calendar year.

(c) The ABC Board shall serve without compensation.

Chapter 20, Environment

Article VI- Tree Conservation

Division 3. – Urban Forestry Commission

Sec. 20-285. - Term of office and operation.

(a) Members of the urban forestry commission shall serve three-year terms. All members shall serve until their successors are duly appointed and qualified. Any vacancies occurring shall be filled by the mayor for the unexpired term. Appointments shall be limited to two consecutive three-year terms, and any member who has served two consecutive three-year terms may not be reappointed until he has been off the commission for at least one full year. If a member of the urban forestry commission has served more than two-thirds of a full term after being appointed to complete the term of a previous board member, his service during the completion of that term shall be considered a full term for purposes of determining his eligibility to serve successive subsequent terms. The board of aldermen may dismiss any member who misses three consecutive meetings or one-half of the meetings held in a single six-month period without good cause (such as temporary severe illness of member or family member of such member, or overriding but temporary business concerns). Such dismissal may be considered upon report or complaint by the urban forestry commission chairperson, a

member of the urban forestry commission, staff, or on the board of aldermen's own motion. A member must attend fifty percent (50%) of a meeting in order to be considered in attendance for the purposes of this policy. On January 1st of each year, a member of any board or commission appointed by the Mayor or Board of Aldermen may be automatically removed from said body for failure to attend at least one half of all regular and special meetings of the body held during the immediately preceding calendar year.

This ordinance shall be in full force and effect upon its adoption.

I move the adoption of the foregoing ordinance.

Alderman

READ, APPROVED AND ADOPTED, this the 4th day of November, 2019, by a vote of _____ to _____.

Don Collins, Mayor

ATTEST:

Angela L. Reece, Assistant to Manager/Town Clerk

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: November 4, 2019

SUBJECT: Advisory Boards, Commissions and Committees Policy Revision -Handbook

AGENDA INFORMATION

Agenda Location:	NEW BUSINESS
Item Number:	5D
Department:	ADMINISTRATION
Contact:	Angela Reece, Assistant to Manger/ Town Clerk
Presenter:	Josh Harrold, Town Manager

BRIEF SUMMARY: The Advisory Boards and Commissions Policy has been rewritten in a more user friendly, clear and concise manner. The new Handbook includes the material as written in previous issues of the policy with additional clarity added in sections such as public records and open meetings. The Handbook also clarifies roles and responsibilities for board chairs, members and staff. Each Board and Commission member will be required to sign a receipt of the Boards and Commissions Handbook which acknowledges receipt of the Handbook and Board of Aldermen's policies governing Advisory Boards, Commissions and Committees and Code of Ethics. The Handbook specifically contains a statement that members must abide by the Code of Ethics and details sanctions that can be imposed for violating the Code. Noteworthy additions include a prohibition of advisory boards and commissions membership creating and or administrating social media pages on behalf of the Town of Black Mountain. Staff recommends all official social media pages be administered by staff who are approved by the Town Manager in order to ensure compliance with social media policies, to protect town interests, and to comply with the NC public records act.

MOTION FOR CONSIDERATION: To adopt the Handbook for Advisory Board, Commission & Committee Members as presented [or as amended].

FUNDING SOURCE: N/A

ATTACHMENTS: Handbook for Advisory Board, Commission & Committee Members

COMMENTS AND RECOMMENDATIONS: To adopt the Handbook for Advisory Board, Commission & Committee Members as presented [or amended].



Handbook for Advisory Board, Commission & Committee Members

A Comprehensive Guide to the Town of Black Mountain's Boards, Commissions and Committees

Questions may be directed to:

Town Clerk
160 Midland Ave.
Black Mountain, NC 28711
Phone: 828-419-9310 • Fax: 828-669-4204
Email: townclerk@townofblackmountain.org
Website: www.townofblackmountain.org

Regular business hours:
Monday-Friday
8:00 a.m. to 5:00 p.m.

November 2019
(Web Version)

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Introduction

OVERVIEW

Thank you for your interest in serving your community through participation on a Town of Black Mountain board, commission or committee. The Town of Black Mountain currently has 7 active boards and commissions that are comprised of volunteers appointed by the Town Board of Aldermen (herein after referred to as Council) or Mayor. The Town of Black Mountain encourages participation by its residents in Town government through service on Town boards and commissions. Serving on a board is an opportunity to collaborate with local government and to help shape decisions and policies that impact our community.

Members of boards and commissions provide an invaluable service to our Town. Members advise Town Council on a wide variety of subjects by making recommendations on important policy matters. The mission, responsibilities and time commitments for each board vary. A complete description of each board, including meeting times and locations, can be found at the end of this handbook. The Town of Black Mountain Town Council is committed to appointing diverse, qualified and dedicated people to these boards to achieve board membership with people of all ages, interests and backgrounds.

This handbook is for persons interested in volunteering on a Town Council board or commission or recently appointed to a board or commission. In this handbook, you will find information on how the board process functions, qualifications for members, information for new appointees, board roles and responsibilities, all of Town Council policies governing boards and board members, and a description of all Town boards or other boards to which Town Council appoints members.

If you have questions or require assistance, contact the Office of the Town Clerk at 828-419-9310 or email townclerk@townofblackmountain.org.

Appointment Process

APPOINTMENTS TO BOARDS, COMMITTEES, & COMMISSIONS

The Black Mountain Mayor and Town Council have a long history of providing many opportunities for resident participation on local government boards, committees, and commissions. There are 7 standing boards and commissions to which the Mayor and Town Council make appointments.

The Mayor and the Town Council may, at times appoint residents to both ad hoc committees and standing committees. Ad hoc committees are temporary committees that have been given a very limited charge and are usually expected to provide recommendations to the Mayor and Town Council within one year. Standing committees have ongoing responsibilities and are usually either regulatory or advisory in nature. Regulatory committees are involved in setting policy or operating procedures for the related activity, e.g., the Zoning Board of Adjustment. Advisory committees are charged with reviewing and commenting on local plans and policies, e.g., the Planning Board. The Mayor and Town Council also appoint from its membership or residents to non-Town bodies such as the Metropolitan Sewerage District Board (MSD).

Appointments to boards, committees and commissions are made annually, or as needed. At least four weeks prior to the date for nominations, the Town Clerk's Office provides the Mayor and Town Council with the list of upcoming vacancies eligible for appointment. The vacancies are publicized by providing and posting a list of vacancies through the Town's website, social media and other opportunities.

Applicants seeking appointments to a specific board are strongly urged to attend several meetings of the board prior to completing and submitting an application.

An application is required for consideration of an appointment to a board or commission. All information provided in completing the application becomes public information and is therefore subject to public records requests. Once an application for an appointment has been filed with the Town Clerk, it is placed on file and remains active for one year.

All discussion and consideration of appointments are made in open sessions of the Town Council. After the announcement is made, each member of Town Council has the opportunity, at a specified meeting, to nominate one person for appointment to each of the positions to be filled. After nominations are closed, no further nominations may be made and then Town Council makes the appointments to fill the vacant positions by majority vote of the Council. Once an appointment takes place, the Town Clerk's Office will notify that candidate of their appointment.

Please visit the [Town of Black Mountain's Website](#) and select Boards & Commissions to view vacancies, upcoming openings and to apply online. Subscribe to receive notifications of new vacancies by clicking the



icon at the bottom of the page.

Notify Me®

Qualifications

QUALIFICATIONS FOR ADVISORY BOARD MEMBERS

1. Appointees to boards, committees, and commissions shall be domiciled in the Town of Black Mountain, unless otherwise specified or provided for by law, ordinance, or Town Council action establishing said board or commission, or in the rules or by-laws of said board or commission, if approved by Town Council.
2. No resident shall be eligible to hold concurrently more than one Mayoral or Town Council appointment to a standing board, committee, or commission. This limitation shall not apply to ad hoc committees or appointments to regional boards, committees, or commissions appointed by the Town Council.
3. Current Town employees shall not be eligible to serve on Town Boards or Commissions.
4. An oath of office (or affirmation) is required for some boards, committees, and commissions. Where applicable, newly appointed board members will take and sign an oath of office or affirmation following their appointment. A new member may not vote on any matter until the oath of office has been administered. Reappointed members shall also be administered the oath of office, if applicable.

The following boards require an oath of office:

- ABC Board
 - Historic Preservation Commission
 - Planning Board
 - Zoning Board of Adjustment
5. All appointees are subject to the Town Council's Code of Ethics and Attendance Policy for Members of Boards, Committees and Commissions. A Statement of Economic Interest Form may be required for members of some boards, committees, and commissions if the member holds a financial interest in a matter in which the member would otherwise cast a vote. Where applicable, appointed board members will complete the form at the direction of the Town Clerk and submit it within five business days to the Office of the Town Clerk.

The following Town boards and commissions may be subject to this requirement:

- (1) Land use and other regulatory bodies:
 - Zoning Board of Adjustment
 - ABC Board
 - Historic Preservation Commission
 - Planning Board
6. Appointees to Town Council boards, committees, and commissions shall receive a copy of this handbook and be asked to date and sign an acknowledgement of same.

New Members

NEW APPOINTEES TO BOARDS, COMMISSIONS & COMMITTEES

Thank you for volunteering to serve your community through an appointment by the Mayor and Town Council to an advisory board, committee, or commission. This handbook will acquaint you with the Mayor and Town Council's policies in regard to boards, committees, and commissions and the particular roles and responsibilities of members. This handbook is provided to new appointees by the Office of the Town Clerk along with their notice of appointment.

Boards, committees, and commissions are established to increase community input and participation in Town government. Some of the boards, committees and commissions exist to advise and make recommendations to Town Council, while others have distinct regulatory responsibilities that are established by law.

By accepting this appointment, you are now in a position to work directly with your local government, on behalf of your fellow residents, to enrich community life on a wide variety of issues. The greater your participation in the work of the board, the greater will be the effectiveness of the board in carrying out its charge and ultimately improving the community.

While the Mayor and Town Council set policy and make decisions affecting their constituency, they also consider community participation a vital aspect of good government. Working in partnership with the Mayor and Town Council, Town staff, and your community, we can continue to set the standards for excellence in good government and quality of life.

All board and commission meetings shall comply with the North Carolina Open Meetings Law, which requires that all meetings of "public bodies" be open to the public after proper notice is given. The open meetings law (G.S. 143-318.9 through 143-318.18) defines the term *public body* as any board, commission, committee, and so forth, in state or local government that (1) has at least two members and (2) exercises or is authorized to exercise any of these powers: legislative, policy-making, quasi-judicial, administrative, or advisory.

Unless otherwise specified, a quorum is a majority of the actual members of the board or commission. A quorum of the board or commission shall be required in order for any action to be taken.

COUNCIL POLICIES

Appointees are subject to the covenants of this Handbook as well as the Town Council's Code of Ethics and Attendance Policy. These policies are included in this handbook. In addition, members are subject to any other resolutions or ordinances establishing policies and procedures for boards.

New Members

These policies shall apply to every member of a board, commission, or committee that is part of the Town of Black Mountain regardless of who appoints the member. In addition, these policies shall apply to all appointees by the Town Council to a board, commission, or committee that is not part of the Town of Black Mountain.

RESIDENCY

A member of any board, commission or committee must be a resident of the Town of Black Mountain.

Exceptions to the above statement may exist for some boards for the purposes of regional membership or as NC General Statutes allow. Any exceptions will be handled on a case by case basis.

MULTIPLE TERMS / TERMS OF OFFICE

Excluding elected officials acting as Ex-officio capacity, an individual may not serve on more than one board, committee, or commission at one time.

Advisory board and commission members are appointed by and serve at the pleasure of the Board of Aldermen. Appointments for all advisory bodies are made for three-year terms of office. Terms on various boards and commissions are overlapping so as to avoid replacement of all members of any one board at a single time. All terms shall become effective on the date of the first meeting in the month following the date of appointment, except that all appointments to fill the balance of unexpired terms shall become effective upon the appointee having taken the oath of office.

The Board of Aldermen has expressed their preference to limit advisory board and commission members' terms of service to two consecutive terms; however, they have reserved the right to override that preference when they deem the circumstances of an individual's service to the community to be of such notable importance as to warrant a continuation of service. In those situations where the Board of Aldermen deems special circumstances to exist that warrant the continuation of community service by an individual on a board or commission, any member of the Board of Aldermen may place the name of that individual into nomination and state that they believe special circumstance warrant a continuation of service. The Board of Aldermen may then reappoint said individual by voting in no less than a 4/5 majority of the membership to reappoint the individual to another term of office. This process may be repeated as often as the Board of Aldermen deems the special circumstances to warrant an additional appointment.

A person who has served more than two-thirds of a full term after being appointed to complete the term of a previous board member shall be considered to have served a full term for the purposes of determining eligibility under the provisions of this section.

New Members

RESIGNATIONS, TERMINATIONS AND REPLACEMENTS

Any member of a board or commission who desires to resign shall do so in writing to the staff support and/or Office of the Town Clerk.

Members of boards may be removed from said body for failure to meet attendance requirements.

Unless otherwise provided by law, ordinance or resolution, all appointments by the Mayor and Town Council to a board, commission or committee serve at the pleasure of the appointing office, and may be removed at the discretion of said office with or without cause.

Terms expiring during any month shall be vacated by the person then holding the position until a successor is appointed.

It is the duty of the chairperson of each board or commission to be responsible for notifying the Mayor and Town Council when members of that board or commission have not met the guidelines for faithful attendance. In the event that a member of an advisory board fails to comply with the attendance policies contained herein, it shall be the responsibility of the chair of that advisory board to notify the Mayor and Town Council, in writing, of the policy violation and to request that said member be replaced. Staff may also initiate notification. Notification should be sent to the Town Clerk for dissemination to the Council.

REPORTS

Each board, commission and committee that is part of the Town or established by Town Council is required to submit annual written reports that must contain in depth review of the body's activities including goals, objectives, successes, problems, and/or the need for Council assistance. These reports shall be submitted to the Town Clerk according to the schedule established by the Town Clerk. The Clerk shall provide copies to the Mayor and Council and refer the reports to the appropriate staff as necessary.

Public Records Policy

PUBLIC RECORDS & YOU

All public boards receive and create public records while conducting regular business. You also produce public records when you function in your official Town capacity as a board member. For instance, if you communicate with another individual in your official Town capacity or exchange information about matters under your board's purview, you may create a public record even if you use your personal email, voicemail or video recording to transmit that information. Many people misunderstand the law and assume communications on personal email accounts or via text messages are not subject to the public records law; this is untrue. **All board-related communications are subject to public disclosure.**



Did you know? Your social media posts can be considered public records.

No Advisory Board, Commission, or Committee member is authorized to create or administer social media pages representing the Town or its advisory boards in any way.

WHAT IS A PUBLIC RECORD?

A public record is information created or received while transacting the public business by any agency of North Carolina government or its subdivisions, this includes public boards and commissions. North Carolina's public records law, enacted in 1935, is one of the most open public records laws in the United States. The law provides a very broad definition of what is a public record and stipulates that anyone can request a public record for any reason or without reason. It also affirms that public records and public information are property of the people. You can review the law in full here: [NC General Statute Chapter 132](#).

The purpose of making records public is to allow greater insight into government, provide accountability and transparency in the decision-making process, and ensure open access to the public. Examples of public records include meeting agendas or minutes, policies or directives, final drafts of reports or recommendations, work schedules and assignments, and correspondence related to official business. Not all information is considered a public record; for instance, personal messages to friends or family members and spam are excluded. In addition, there are records that are protected and not public; for instance, employee personnel file information and personal identifying information (social security numbers etc.)

Public records are designated by content and function, **it does not matter in which format it exists or what device was used to transmit the information.** Public records are papers, photographs, videos, maps, emails, voicemail messages, instant messages and text messages. Email and text messages are public records when created by officials and employees for the purpose of conducting official Town business. If the content of an email or other electronic communication meets the definition of a public record, it is subject to disclosure, whether it is in a public or private email account, social media account, or personal cell phone or device.

Public Records Policy

BOARD MEMBER RESPONSIBILITIES

Board members should be aware that your correspondence and exchange of information related to the work of the board may be subject to the [North Carolina public records law](#) and be released to the public upon request. This applies to your personal email accounts, social media accounts, and information transmitted on personal cell phones and other devices or forums, including text and voicemail messages.

Board members have a [legal responsibility for retaining information](#) pertaining to official Town business. Members should identify if information is created or received for official Town business and save emails and correspondence. If you must conduct business via text messaging, a good practice for retention is to forward the message to your email account or capture the text message with a screen shot and upload the image to your email account. Members must manage migrated records in their email account through their lifecycle.

Do not destroy your public records! The [law](#) requires that you retain certain records for a period of time, and that you turn over certain records if a member of the public requests them when they contain content related to your official Town capacity. This is true even if the records are on your personal computer, personal cellphone or personal email account. To review retention schedules of records, please refer to the Town of Black Mountain's [Records and Retention and Disposition Schedule](#).

PUBLIC RECORDS REQUESTS

Inspection of public records must be made available promptly. If records are requested from you from a Town staff member to fulfill a public records request, please make every effort to notify the Town Clerk and to make arrangements to provide the requested information in a timely manner. Failure to provide access to records in accordance with the law may subject the Town to lawsuits to compel production. Individuals can be held personally liable for attorneys' fees if found to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of the public records law. [Read more about public records and public records requests.](#)

If you have any questions or concerns, please contact the Town Clerk for assistance at townclerk@townofblackmountain.org

Roles and Responsibilities

ROLES AND RESPONSIBILITIES OF BOARD MEMBERS, CHAIRPERSONS AND STAFF ADVISORS

The roles and responsibilities listed below are general guidelines. It is important that dialogue take place between the members, chairpersons, and staff on how the specific board can function at its optimum. The members and chairperson of a board serve as advisors to the Mayor and Town Council and receive their charge from the Mayor and Town Council. The staff is an employee of the Town, usually with other job responsibilities, and is accountable to their Department Head and/or Town Manager. Responsibilities clearly defined by the chairperson and staff will make the board and its work more effective.

BOARD MEMBERS

Board members are an important part of the Town of Black Mountain government process. They are selected to be part of a board or commission that advises the Town Council on pertinent issues, policy-making, and project development and implementation. This can be accomplished in the following ways:

- ☐ It is important for every member to be aware of the time, energy, and commitment that is involved in being part of an advisory board.
- ☐ The majority of work of the advisory board is accomplished at the monthly meeting. Therefore, all members in attendance contribute to the most effective work plan.
- ☐ Individual members are encouraged to prepare materials that are substantive and meet required deadlines.
- ☐ Members may be asked by the chairperson to complete specific tasks which may include serving on subcommittees. Every member contributes to the problem-solving process.
- ☐ All members are required to vote on recommendations and actions of the group unless a potential conflict of interests exists.
- ☐ In order for the board to provide the most comprehensive information to the Mayor and Town Council, each member works in the spirit of compromise and negotiation in order to reach consensus when possible. Members are asked to keep up-to-date on information relating to board interest areas.
- ☐ A member must notify the chairperson and the staff support person if he / she cannot attend a meeting.
- ☐ Members shall not represent their individual views through any contacts they have with the media as being representative of the full board unless the board has formally taken a position on the matter.
- ☐ Members shall communicate through the Chairperson upon taking a position on any matter of significance.

Roles and Responsibilities

BOARD CHAIRPERSON

The board chairperson may be appointed by the Mayor, Town Council or the members of their respective board, in accordance with the guidelines and/or legislation establishing such board, and act as a link between the Mayor and Town Council, advisory board members, and the community. It is the duty of the chairperson of each board or commission to be responsible for notifying the Mayor and Board of Aldermen when members of that board or commission have not met the guidelines for faithful attendance.

The chairperson's responsibilities include the following:

- ☐ The chairperson advises the Mayor and Town Council upon request or in reference to the mission of the board and Town Council policy.
- ☐ The chairperson and staff conduct an orientation for new members to familiarize them with the work and operations of the board or commission, as well as the information contained in this handbook.
- ☐ In the event that a member of an advisory board fails to comply with the attendance policy or any policy contained herein the chairperson shall notify the Mayor and Board of Aldermen, in writing, of the policy violation and to request that said member to be replaced.
- ☐ The chairperson delegates assignments to members, recognizing skill, experience, and interest of individuals in the group; he/she makes sure all members get a chance to participate and uses subcommittees as much as possible to empower the group.
- ☐ The chairperson seeks the input of members on the work program and agenda formulation.
- ☐ The chairperson presides over the meetings and acts as facilitator to keep to the agenda.
- ☐ The chairperson makes sure all meetings are open to the public.
- ☐ The chairperson makes sure that resident input is reflected in the group's recommendations.
- ☐ The chairperson uses consensus-building techniques to find optimum recommendations.
- ☐ The chairperson, in conjunction with staff, prepares timetables for completion of projects.
- ☐ The chairman and members develop annual reports which are due to the Mayor and Town Council in accordance with adopted policy.
- ☐ The chairperson is encouraged to discuss the advisory board work with applicants seeking appointment to the board.

Roles and Responsibilities

- ☐ The chairperson may forward names as recommendations to fill individual vacancies for the Mayor and Town Council's consideration, attaching the relevant background information for each nominee.
- ☐ The chairperson may recommend certain skill sets necessary to fill individual vacancies that are a reflection of the needs of the board and community.
- ☐ The chairperson meets with the Mayor and Town Council concerning the work of the board, upon their request.
- ☐ The chairperson shall not represent their individual views through any contacts they have with the media as being representative of the full board unless the board has formally taken a position on the matter.
- ☐ The chairperson keeps the Mayor and Town Council apprised of all significant issues, either directly or through staff support.

BOARD STAFF ADVISORS

Staff provides important resources to boards. The resources and staff time available to boards varies. Boards report to the Mayor and Town Council and the staff report ultimately to the Town Manager, an arrangement that works most effectively when the chairperson and the staff have a clear understanding of what needs to be done and what resources are available to get the job done. The staff carries out his/her responsibilities in the following ways:

- ☐ The staff shall provide assistance to clarify the role of the board or commission, and with routine issues such as the time of meetings, quorums, etc.
- ☐ The staff works with the chairperson to prepare each agenda and necessary meeting materials.
- ☐ The staff notifies all members of upcoming meetings and new developments.
- ☐ The staff provides attendance reports and notifies the Town Clerk's Office of vacancies due to resignations, multiple absences, or other reasons.
- ☐ The staff gathers information, provides research and makes it available to the board or commission.
- ☐ The staff provides technical and professional expertise to the group.
- ☐ The staff prepares draft reports and correspondence and makes sure all Town presentations are prepared in the appropriate format.
- ☐ The staff keeps his/her supervisor and department head informed on the work of the advisory board.

Minutes

Under the open meetings law, “full and accurate” minutes must also be kept of the meetings of “public bodies” that are part of municipal government. Included are all Town Council committees, all other boards and committees of the town that perform either legislative, policy-making, quasi-judicial, administrative, or advisory functions, and all subcommittees of these other boards and committees. The Town Council establishes procedures to ensure that the minutes of these various boards are properly recorded and maintained.

Minutes of a town board, commission, or committee are the official written record of actions taken by the body. It is the responsibility of the chair, through either the secretary or the staff support, to keep a record of the proceedings of the board/commission. Minutes shall be kept in a permanent minute book and shall open to public inspection. The minutes provide future generations with the past history of the public body. They are used for many types of research and can be consulted for purposes of verification that certain actions were taken, when those actions were taken, and why. It is imperative that the minutes be a clear, concise, informative and accurate record of the proceedings of the meeting.

The minutes must be “full and accurate” (G.S. 160A-72; G.S. 143-318.10e) for they are the legal evidence of what the advisory board has said and done. “Full and accurate” does not generally mean, however, that a verbatim transcript of a meeting’s proceedings must be made. Including a detailed record of comments may well be counterproductive and the board or commission may find itself spending an excessive amount of time at its next meeting discussing the details of this record, which could have been omitted altogether. Rather, the minutes must record the results of each vote taken by the board or commission, and they should also show the existence of any condition that is required before a particular action may validly be taken. The full text of each motion should be recorded, including the full text of all ordinances and resolutions passed by the advisory board.

Minutes should include the following essential facts:

1. The name of the board/commission, date, time and place of the meeting.
2. The minutes should state that the meeting was legally convened.
3. Show that a quorum was present at all times during the meeting. The late arrival and the early departure of members (including whether someone leaving was excused by the remaining members) should be noted.
4. The names of the members present and absent.
5. The names of any person addressing the board/commission, a summary of subject matter presented and any action taken as a result of the person’s appearance before the board/commission.
6. A record of all motions. A motion must be recorded verbatim, along with the name of the person making the motion and the person seconding the motion (if applicable). The results of each vote must be recorded and upon the request of any member of the board/commission, votes for and against a motion shall be recorded.

7. A record of all ordinances and resolutions introduced (if applicable). Ordinances and resolutions must be recorded verbatim as adopted by the board/commission. Short resolutions and ordinances should be incorporated into the body of the minutes. Lengthy resolutions and ordinances may be attached as an addendum to the minutes.
8. The exact words of each amendment to any motion, order, ordinance or resolution.
9. A record of all subjects before the board/commission and actions taken.
10. Draft copies of advisory board minutes are generally sent by the secretary or the assigned staff support to members several days before the meeting at which they are to be considered for approval. The circulated draft minutes are a public record that must also be made available for public inspection. The minutes do not become the official record of the committee's action until it approves them. Once the minutes are approved any prior drafts should be destroyed as they no longer have administrative value and are unnecessary to retain.
11. The advisory board may correct minutes that it has already approved if it later finds that they are incorrect. In such a case the correction should be noted in the minutes of the meeting at which the correction is made, with an appropriate notation and cross-reference at the place in the minute book where the provision being corrected appears. Non-substantive corrections, such as those pertaining to grammar or spelling, may be corrected outside of the meeting by way of individual members contacting the secretary or staff support for their particular board or commission. Substantive corrections must be taken back before the body for a vote and amendment.
12. A statement that the meeting adjourned and at what time.
13. Minutes should be signed by the respective chair and secretary (or staff support), if applicable.
14. The secretary or staff support may ask for assistance from the Town Clerk in publishing the minutes.

The minutes should **not** include:

1. Any personal opinions or comments (unless meeting is a bona fide Public Hearing).
2. Irrelevant comments or discussion surrounding a topic under discussion or action being taken.

Order Of Business

- Call meeting to order
- Ascertain quorum present
- Discussion and revision of proposed agenda; adoption of agenda (optional for some boards/commissions)
- Approval of the minutes
- Old business
- New business
- Informal discussion
- Adjourn

Unless the Board or Commission deems a different "order of business" more appropriate for its work and sets it by policy, or by motion at the start of the meeting.

Code of Ethics & Attendance Policy

CODE OF ETHICS POLICY

Pursuant to the requirements of Section 160A-86 of the North Carolina General Statutes, the Board of Aldermen adopted a General Principles and Code of Ethics to guide Boards Members in their lawful decision-making. Each Board or Commission Member is required to sign acknowledge receipt of and abide by the Code of Ethics for Members of Boards and Commissions of the Town of Black Mountain. The purpose of this Code of Ethics & Attendance Policy is to establish guidelines for ethical standards of conduct for Advisory Board Members and to help determine what conduct is appropriate in particular cases. It should not be considered a substitute for the law or for a member's best judgment.

Resolution # R-19-20

Code of Ethics and Attendance Policy for Members of Advisory Boards and Commissions of the Town of Black Mountain, North Carolina

WHEREAS, Section 160A-86 of the North Carolina General Statutes requires local governing boards to adopt a code of ethics and, pursuant to Section 160A-86, the Black Mountain Board of Aldermen has previously adopted a Code of Ethics Resolution #R-10-17 on December 20, 2010 for the Mayor and Board of Aldermen, and subsequently adopted a Code of Ethics Policy for all advisory boards and commissions on ; and

WHEREAS, it is appropriate that members of Town boards, committees, and commissions, as well as Mayoral and Board of Aldermen appointees to non-Town bodies (hereinafter "Board Members"),also adhere to a Code of Ethics; and

NOW THEREFORE BE IT RESOLVED, by the Board of Aldermen of the Town of Black Mountain in recognition of our blessings and obligations as citizens of the State of North Carolina and as public officials representing the citizens of the Town of Black Mountain, and acting pursuant to the requirements of Section 160A-86 of the North Carolina General Statutes, we do hereby adopt the following General Principles and Code of Ethics & Attendance Policy to guide Advisory Board Members in their lawful decision-making.

GENERAL PRINCIPLES AND CODE OF ETHICS

The purpose of this Code of Ethics is to establish guidelines for ethical standards of conduct for Board Members and to help determine what conduct is appropriate in particular cases. It should not be considered a substitute for the law or for a member's best judgment. The stability and proper operation of democratic representative government depend 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 must always remain aware that they may, at various times, play different roles:

- As advisors, who balance the public interest and private rights in considering and recommending, among other things, ordinances, policies, and decisions
- As decision-makers, who arrive at fair and impartial determinations.

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 the Mayor and Board of Aldermen and the citizens of Black Mountain. Each Board Member must find within his or her own conscience the touchstone by which to determine what conduct is appropriate.

Section 1.

Board Members should obey all laws applicable to their official actions. Board Members should 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. However in doing so, Board Members:

- (a) shall be mindful that they were appointed by the Mayor or Board of Aldermen, or by another appointing authority to a Town Board, Committee, or Commission and, therefore, if they are advising or advocating a position that is contrary to a Council policy, that they notify the Mayor and Board of Aldermen of such as soon as practicable;
- (b) who serve in an advisory capacity shall be mindful that their chief responsibility is to advise the Mayor and Board of Aldermen or other decision-making body rather than to advocate to the public at large, particularly when the position of advocacy is contrary to a Council policy;
- (c) shall understand that they hold a position of trust on behalf of the Town and its citizens; and
- (d) shall assert policy positions and opinions on matters within or related to the jurisdiction and subject matter of the body on which they serve only through the transparency of official proceedings of the body or in a capacity and manner appropriate for a member of such body. Board Members shall not represent their individual views as being representative of the full body unless they have been formally authorized by the body to do so.
- (e) shall faithfully attend regular and special meetings of the body.

These guidelines are especially important to Chairpersons who must recognize that they are often viewed as speaking for the body.

To declare that a Board Member is behaving unethically because one disagrees with that official on a question of policy (and not because of the council member's behavior) is unfair, dishonest, irresponsible, and itself unethical.

Section 2.

Board Members should act with integrity and independence from improper influence as they exercise the duties of their offices. Characteristics and behaviors consistent with this standard include the following:

- Adhering firmly to a code of sound values
- Exhibiting trustworthiness
- Using their best independent judgment to pursue the common good as they see it, presenting their opinions to all in a reasonable, forthright, consistent manner

- Remaining incorruptible, self-governing, and unaffected by improper influence while at the same time being able to consider the opinions and ideas of others
- For Board Members who act in a quasi-judicial capacity, disclosing contacts and information about issues that they receive 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, Staff and the public with respect and honoring the opinions of others even when the board members disagree with those opinions
- Showing respect for their offices and not behaving in ways that reflect badly on those offices
- Recognizing that individual Board Members are not generally allowed to act on behalf of the body but may only do so if the body specifically authorizes it, and that the body must take official action as a body

Section 3.a

Board Members should avoid impropriety in the exercise of their official duties. Their official actions should be above reproach and they should not use their official position for personal gain. Although opinions may vary about what behavior is inappropriate, the Board of Aldermen will consider impropriety in terms of whether a reasonable person who is aware of all of the relevant facts and circumstances surrounding the Board Member's action would conclude that the action was inappropriate.

Section 3.b.

If a Board Member believes that his or her actions, while legal and ethical, may be misunderstood, the official should seek the advice of the Town Attorney and should consider publicly disclosing the facts of the situation and the steps taken to resolve it (such as consulting with the attorney).

Section 4.

Board Members should faithfully perform the duties of their offices. They should act as the especially responsible citizens whom others can trust and respect. They should set a good example for others in the community, keeping in mind that trust and respect must continually be earned.

Board Members should be willing to bear their fair share of the body's workload. To the extent appropriate, they should be willing to put the Town's interests ahead of their own.

Section 5.

Board Members should conduct the affairs of the board in an open and public manner. They should comply with all applicable laws governing open meetings and public records, recognizing that doing so is an important way to be worthy of the public's trust. They should remember when they meet that they are conducting the public's business. They should also remember that local government records belong to the public and not to them or Town employees.

In order to ensure strict compliance with the laws concerning openness, the Mayor and Board of Aldermen members have made it clear that an environment of transparency and candor is to be maintained at all times in the governmental unit. They should take deliberate steps to make certain that any meetings held by the body are lawfully conducted and that such meetings do not stray from the purposes for which they are called.

Attendance Policy

Section 6.

Attendance Policy

Board Members should faithfully attend and prepare for meetings and adhere to the following attendance policy.

In order for a board or commission to be effective and efficient, and to accomplish its purpose, its membership must be actively involved and attentive to the business of the body, therefore, the Board of Aldermen may dismiss any member who misses THREE CONSECUTIVE REGULAR MEETINGS or one-half of the meetings held in a single six-month period without good cause (such as temporary severe illness of a member or of a member of such member's family, or overriding but temporary business concerns). Such dismissal may be considered upon or complaint by the board chairperson, a member of the board, staff, or on the Board of Aldermen's own motion. A member must attend fifty percent (50%) of a meeting in order to be considered in attendance for the purposes of this policy.

On January 1st of each year, a member of any board or commission appointed by the Mayor or Board of Aldermen may be automatically removed from said body for failure to attend at least one half of all regular and special meetings of the body held during the immediately preceding calendar year.

Sanctions

In the event that a member of an advisory board fails to comply with the code of ethics or attendance policy the chairperson or staff support shall notify the Mayor and Board of Aldermen, in writing, of the policy violation and to request that said member to be replaced. Following the review of an allegation against a member of a Town board or commission conducted pursuant to Section 2, the Town Board of Aldermen may sanction the member who was the subject of the review. Potential sanctions include removal of the member, adoption of a Resolution of Censure, and any other lawful sanction within the Board of Aldermen's power.

I move the adoption of the foregoing Resolution:

Alderman

READ, APPROVED AND ADOPTED this 4th day of November, 2019.

Don Collins, Mayor

ATTEST:

Angela Reece, Assistant to Manger/Town Clerk

Josh Harrold, Town Manager

Policies for Administering Boards

Appointments to boards, committees, and commissions shall be made as necessary. Town Council may nominate one person for appointment to each of the positions to be filled by Council. After nominations are closed, no further nominations may be made. If a person receives at least one nomination, the appointment may be made upon a motion vote of Council at the same meeting at which the nomination is made.

At least four weeks prior to nominations, the Town shall publicize vacancies to be filled by appointment of the Council as follows: (i) the Town Clerk will provide the Council with a list of upcoming vacancies; and (ii) the Town Clerk shall provide such information to the public through the Town's website, social media and other opportunities. Any vacancies created by resignation or automatic removal shall be included with the next group of nominations.

By nominating a person who has not submitted an application for the subject board, committee, or commission, the nominating Council Member certifies that the person has indicated an interest in serving and that the nominee will submit an application with the Town Clerk's Office by noon the day before the appropriate Council agenda for appointment to be delivered to Council. If such application is not made, the nomination will be deemed to have been withdrawn. The Town Clerk's Office will notify the nominee of the actual deadline for submitting the application the day following the nomination.

OATHS OF OFFICE/ORIENTATION

For a board, committee, or commission requiring an oath of office, a new member may not vote on any matter until the oath of office has been administered. Reappointed members shall also be administered the oath of office.

Staff advisors shall conduct an orientation session for new members with the chair in attendance prior to or at the first regular meeting after appointment. Expectations shall be given concerning attendance, conflicts of interest, information on Town Government, etc.

RESIDENCY REQUIREMENTS

A member of any board, committee or commission must at all times be a resident of the Town of Black Mountain.

Exceptions to the above statement may exist for some boards for purposes of regional membership. Any exceptions will be handled on a case by case basis.

ATTENDANCE

Staff advisors shall file attendance reports with the Town Clerk pursuant to the schedule established by the Town Clerk. The Town Clerk shall send a letter to any member who is in danger of violation of the attendance requirement, asking them to be mindful of said requirement

On January 1st of each year, a member of any board or commission appointed by the Mayor or Board of Aldermen shall be automatically removed from said body for failure to attend at least 85% of all regular and special meetings of the body and assigned committees and subcommittees held during the

immediately preceding calendar year. The Town Clerk shall send a letter to anyone who is removed from a board, committee, or commission for failure to meet the attendance policy. Vacancies resulting from the removal of a member shall be filled by the same method as provided for initial appointments.

OATHS OF OFFICE/ORIENTATION

For a board, committee, or commission requiring an oath of office, a new member may not vote on any matter until the oath of office has been administered. Reappointed members shall also be administered the oath of office.

Staff advisors shall conduct an orientation session for new members with the chair in attendance prior to or at the first regular meeting after appointment. Expectations shall be given concerning attendance, conflicts of interest, information on Town Government, etc.

REPORTS OF BOARDS, COMMITTEES, AND COMMISSIONS

The Town Council finds it appropriate to periodically review each standing board, committee, and commission to which they make appointments for the purpose of assessing whether said board, committee, or commission should be renewed, dismantled, expanded or its charge redefined. To this end, each board, committee, and commission that is part of the Town, or that was established by the Town Council, whether acting alone or in conjunction with one or more other local governments, is required to submit annual written reports that must contain in depth reviews of the body's activities including goals, objectives, successes, problems, and/or the need for Town Council assistance. These reports shall be submitted to the Town Clerk and will be staggered through the year according to a schedule established by the Town Clerk. The Town Clerk shall then provide the Mayor and Town Council with copies of the reports and refer the reports to the appropriate Council Committee for the Committee's information.

Boards, committees, and commissions that are not part of the Town shall submit reports in accordance with the reporting requirements set forth in their contract, if any, with the Town or on a schedule established by the Town Clerk.

In addition to required written reports, the Town Council may request on a case-by-case basis that an oral report be made to the Council.

REPEALER

All prior resolutions of the Town Council establishing procedures for the public notification, nomination, and appointment of persons to boards, committees, and commissions, and setting forth the Town's policies for consecutive terms, oaths of office, residency, attendance, and review reports are, except to the extent that they are supplementary to and consistent herewith, are hereby repealed.

Descriptions of Boards & Commissions

Land use and other regulatory bodies:

ABC Board

3 Member Board each serving a 3- year term.

Meetings will be held on the 3rd Thursday, 3:00 p.m. at the ABC Store.

- The ABC Board is responsible for the general oversight of the Town operated ABC store.
- Members must live within corporate limits of Black Mountain.
- Board of Aldermen will appoint the Chair.

Historic Preservation Commission

5 Member Commission each serving a 3-year term.

Meetings will be held on 3rd Wednesday, 6:00 p.m. at Town Hall.

- The Historic Preservation Commission's purpose is to designate historic districts and landmarks within the Town of Black Mountain. In addition, this commission shall develop and recommend to the Board of Aldermen rules and regulations governing the designation and maintenance of historic properties in the Town.
- Members must live within the territorial jurisdiction of the municipality. Commission shall adopt rules of procedure governing its meetings and the conduct of official business and bylaws governing the election of officers and related matters.
- Commission will elect Chair and Vice Chair.

Planning Board

7 Member Board each serving a 3-year term.

Meetings will be held on the 4th Monday, 6:00 p.m. at Town Hall.

- The Planning Board is established to advise the Board of Aldermen on matters related to land use and community development. The Board shall be governed by the terms of GS§§ 160A-360 through 160A-387 and by the terms of the Town Zoning Ordinance enacted December 1982 and Subdivision Regulations enacted September 1985, and any subsequent amendments thereto. All Board members shall thoroughly familiarize themselves with the provisions of these statutes and ordinances.
- Members must reside within the corporate limits of the Town of Black Mountain.
- The Planning Board will appoint the Chair.

Zoning Board of Adjustment

5 Members (each serving a 3-year term)/3 Alternates (without expiring term). Any vacancy in the membership shall be filled by the first alternate member, who shall serve the remainder of the unexpired term. The Board of Aldermen would only, and always, be appointing new members to the Board into the third alternate position.

Meetings will be held on the 3rd Thursday, 6:00 p.m. at Town Hall.

- The Zoning Board of Adjustment (ZBA) is established as a "quasi-judicial" administrative Board that operates on a level between the enforcement officials of the Town and the courts. The purpose of the ZBA is to hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with enforcement of an ordinance adopted pursuant to the land use regulations adopted by the Town. In addition, under the provisions of the Town's zoning regulations, the ZBA is responsible for the issuance of Conditional Use Permits.
- Members must be full-time residents within the corporate limits of Black Mountain.
- The ZBA Board will appoint the Chair.

Descriptions of Boards & Commissions

Non-transit and other advisory bodies:

Greenways Commission

7 Member Commission each serving a 3-year term.

Meetings will be held on 3rd Tuesday, 7:00 p.m. at the Carver Center.

- The Greenways Commission exists to advise the Board of Aldermen about greenways development and management, to work with staff to develop the greenways system, and to actively promote public education and awareness of the benefits of greenways.
- Members must be full-time residents of the East Buncombe Fire District (recognizing that the Black Mountain Greenways Commission may choose to promote construction of a regional network that expands beyond the limits of the Town.)
- Commission will elect Chair and Vice Chair and may appoint sub-committees.

Recreation Commission

5 Member Commission each serving a 3-year term.

Meetings will be held on the 4th Thursday, 5:30 p.m. at 304 Black Mtn. Ave.

- The Recreation Commission advises the Board of Aldermen on matters related to public recreation opportunities as provided by the Town of Black Mountain.
- A minimum of three-fifths of the membership shall be made up of full-time residents within the corporate limits of Black Mountain. The remaining two-fifths of the membership may be made up of residents who reside in the East Buncombe Fire District but not within the corporate limits of any incorporated municipality.
- The Commission will appoint the Chair.

Urban Forestry Commission

5 Member Commission each serving a 3-year term.

Meetings held on the 1st Tuesday, 5:30 p.m. at 304 Black Mtn. Ave.

- The Urban Forestry Commission assists in the administration of the Town of Black Mountain tree ordinance as it pertains to advice on the regulation of tree planting, maintenance, and removal on publicly owned and maintained property within the Town.
- A minimum of three-fifths of the membership shall be made up of full-time residents within the corporate limits of Black Mountain. The remaining two-fifths may be residents who do not reside within the corporate limits but who do reside in the East Buncombe Fire District, but not within the corporate limits of any other incorporated municipality.
- The Commission will appoint the Chair and Co-Chair and may appoint sub-committees.

ACKNOWLEDGEMENT OF RECEIPT OF HANDBOOK FOR MEMBERS SERVING ON ADVISORY BOARDS, COMMISSIONS, AND COMMITTEES

On the date written below, I received the “Handbook for Advisory Board, Commission, and Committee Members — A Comprehensive Guide to the Town of Black Mountain’s Boards and Commissions.” I acknowledge this handbook contains basic information related to serving as a volunteer on a board or commission as well as specific policies as shown below:

- Code of Ethics & Attendance Policy
- Policies and Procedures for Administering Boards and Commissions

I understand that I am responsible for reviewing the contents of this handbook and asking questions if I do not understand any part of it.

DATE: _

NAME: _

BOARD OR COMMISSION: _

SIGNATURE: _

A signed copy of this form will be maintained in the Office of the Town Clerk

Budget Amendment # 2020-08
Fiscal Year 2019-2020

Dept.	Account #	Account Name	Debit	Credit	Comments
	6700-4200-730	Capital Outlay	96,926		To account
	6700-3745-720	Contribution from MSD		55,348	for change orders
	6700-3915-960	Transfer from Water Fund		41,578	1, 2, and 3
	3091-8100-543	Transfer to CPF	41,578		
	3091-3905-900	Fund Balance Approp		41,578	

Totals: 138,504 138,504

BD # _____

Journal # _____

Fiscal Yr _____

Date _____

Entered By: _____

Approved By: _____

Date _____

CHANGE ORDER

Number 1

PROJECT: Avadim Utility Improvements
OWNER: Town of Black Mountain
CONTRACTOR: Cooper Construction Company, Inc.

DATE OF ISSUANCE: 2/1/2019

ENGINEER: Civil Design Concepts, P.A.
168 Patton Avenue
Asheville, NC 28801

ENGINEER'S PROJECT NO. 21625

CONTRACT FOR:

You are directed to make the following changes in the Contract Documents.

Description: The Jack & Bore for the sewer under the highway increased from 24" dia to 36" dia. Resulting cost increase for upsizing to 36" bore through dirt is \$138.00 per LF, over the total bore length of 346 feet, adding \$ 47,748.00 to base bid price.

If rock boring or tunneling is necessary, the below unit price increases will be added to the base unit prices in the contract.
36" Rock Bore, add \$760.00 per linear foot
36" Tunneling, add \$1,442.00 per linear foot

Purpose of Change Order: In order to be able to tunnel if need be in the event that rock is encountered.

Attachments (List documents supporting change): Cooper Construction Additional Pricing Request #1 Letter

CHANGE IN CONTRACT PRICE:
Original Contract Price

\$ 1,529,738.00

CHANGE IN CONTRACT TIME:
Original Contract Time

365 Days

Previous Change Order No. to No.

Net Change From Previous Change Orders

\$

0 Days

Contract Price Prior to This Change Order

Contract Time Prior to This Change Order

\$ 1,529,738.00

0 Days or Date

Net Increase of This Change Order

Net Increase of This Change Order

\$ 47,748.00

0 Days

Contract Price With All Approved Change Orders

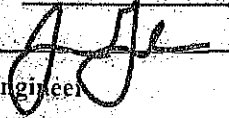
Contract Time With All Approved Change Orders

\$ 1,577,486.00

0 Days

RECOMMENDED:

Print: Jesse Gardner

Sign: 

Engineer

APPROVED:

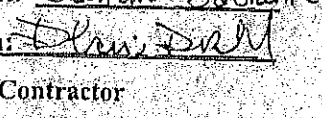
Print: Josh Harold

Sign: 

Owner

APPROVED:

Print: Delores D. Brantley

Sign: 

Contractor

CHANGE ORDER

Number 2

PROJECT: Avadim Utility Improvements

DATE OF ISSUANCE: 5/15/2019

OWNER: Town of Black Mountain

ENGINEER: Civil Design Concepts, P.A.
168 Patton Avenue
Asheville, NC 28801

CONTRACTOR: Cooper Construction Company, Inc.

ENGINEER'S PROJECT NO. 21625

CONTRACT FOR:

You are directed to make the following changes in the Contract Documents.

Description: 36" Diameter bore through 10 linear feet of rock at \$760.00 per linear foot, for a total of \$7,600.00.

Purpose of Change Order: Rock was encountered during the boring.

Attachments (List documents supporting change): Cooper Construction Change Order Request #2

CHANGE IN CONTRACT PRICE:

Original Contract Price

\$ 1,529,738.00

CHANGE IN CONTRACT TIME:

Original Contract Time

365 Days

Previous Change Order No. 1

Net Change From Previous Change Orders

\$ 47,748.00

0 Days

Contract Price Prior to This Change Order

Contract Time Prior to This Change Order

\$ 1,577,486.00

0 Days or Date

Net Increase of This Change Order

Net Increase of This Change Order

\$ 7,600.00

0 Days

Contract Price With All Approved Change Orders

Contract Time With All Approved Change Orders

\$ 1,585,086.00

0 Days

RECOMMENDED:

Print: Jesse Gardner

Sign: [Signature]

Engineer

APPROVED:

Print: Dejan Luchko

Sign: [Signature]

Owner

APPROVED:

Print: Dan DeBent

Sign: [Signature]

Contractor

CHANGE ORDER

Number 3

PROJECT: Avadim Utility Improvements
OWNER: Town of Black Mountain
CONTRACTOR: Cooper Construction Company, Inc.
CONTRACT FOR:

DATE OF ISSUANCE: 10/10/2019
ENGINEER: Civil Design Concepts, P.A.
168 Patton Avenue
Asheville, NC 28801
ENGINEER'S PROJECT NO. 21625

You are directed to make the following changes in the Contract Documents.

Description:	1.) Lump Sum for Connection at Tabernacle & Peridot Asphalt Paving for Tabernacle & Peridot	\$ 13,200.00 \$ 3,000.00
	2.) Lump Sum for Connection at Old US 70 & Blue Ridge Rd Asphalt Paving for Old US 70 & Blue Ridge Rd	\$ 24,000.00 \$ 4,000.00
	3.) Lump Sum for Connection at Cragmont & Tabernacle Asphalt Paving for Old US 70 & Blue Ridge Rd	\$ 31,200.00 \$ 8,000.00
	4.) Lump Sum for Connection at Old US 70 & Kitzles Court Asphalt Paving for Old US 70 & Blue Ridge Rd	\$ 21,600.00 \$ 4,000.00
	5.) Credit for Downsizing from 175kW to 150 kW Generator at the pump station	\$ (-52,000.00)

Purpose of Change Order:

Attachments (List documents supporting change): Cooper Construction Change Order Request #3 - Avadim Utility Improvements Phase 2 Connections

CHANGE IN CONTRACT PRICE:

Original Contract Price

\$ 1,529,738.00

CHANGE IN CONTRACT TIME:

Original Contract Time

365 Days

Previous Change Order No. 2 to No. 3

\$ 7,600.00

Net Change From Previous Change Orders

0 Days

Contract Price Prior to This Change Order

\$ 1,585,086.00

Contract Time Prior to This Change Order

365 Days or Date

Net Increase of This Change Order

\$ 57,000.00

Net Increase of This Change Order

21 Days

Contract Price With All Approved Change Orders

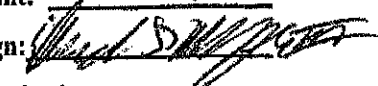
\$ 1,642,086.00

Contract Time With All Approved Change Orders

386 Days

RECOMMENDED:

Print: Ellwood Meyers III

Sign: 
Engineer

APPROVED:

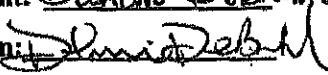
Print: _____

Sign: _____

Owner

APPROVED:

Print: DAVID DeBAUGH

Sign: 

Contractor

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: November 4, 2019

SUBJECT: Budget Amendment for Commerce Park Infrastructure Capital Project #FY20-8

AGENDA INFORMATION

Agenda Location: Consent Agenda
Item Number: 5E
Department: Finance
Contact: Dean Luebbe, Assistant Town Manager/Finance Director
Presenter: Josh Harrold, Town Manager

BRIEF SUMMARY: Three change orders have been submitted on Commerce Park Infrastructure Capital Project for a total of \$112,348. The first two were related to sewer improvements and MSD of Buncombe County has agreed to reimbursement the Town for these expenses (\$55,348). The third change order was for \$57,000 and related to water connection at four separate locations. The original project revenues on this project exceeded expenses by \$15,422, meaning the Town will be responsible for the balance of \$41,578. (\$57,000 less \$15,422 equals \$41,578)

MOTION FOR CONSIDERATION: To approve Budget Amendment #FY20-8 as submitted. In the project fund this amendment increases the expense account, 6700-4200-730 (Capital Outlay) by \$96,926 and the revenue accounts, 6700-3745-720 (Contribution from MSD) by \$55,348 and 6700-3915-960 (transfer from Water Fund) by \$41,578, and in the Water Fund, increases expense account 3091-8100-543 (Transfer to Capital Project Fund) by \$41,578 and increases the revenue account 3091-3905-900 (Fund Balance Appropriated) by \$41,578..

FUNDING SOURCE: MSD and Fund Balance.

ATTACHMENTS: Budget Amendment #FY20-8 and change orders one, two, and three from Cooper Construction.

MANAGER'S COMMENTS AND RECOMMENDATIONS: Adopt as presented.

CAPITAL PROJECT ORDINANCE #O-19-26
COMMERCE PARK INFRASTRUCTURE CAPITAL PROJECTS FUND AMENDMENT

BE IT ORDAINED by the Governing Board of the Town of Black Mountain, North Carolina, that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby amended:

Section 1. The project authorized involves water and sewer related infrastructure improvements to the Commerce Park business development.

Section 2. The officers of this unit are hereby directed to proceed with the capital project within the terms of the agreement documents, and the budget contained herein.

Section 3. At this time, the following amounts have been appropriated and expended for the project:

	BUDGET	ACTUAL
Professional Services	\$110,000	\$77,202
Capital Outlay	\$1,545,160	\$1,374,787
TOTAL	<u>\$1,655,160</u>	<u>\$1,451,989</u>

Section 4. And, the following revenues have been budgeted and actuals received:

	BUDGET	ACTUAL
Golden Leaf Grant	\$775,000	\$408,455
EDA Grant	\$827,580	\$467,393
Commerce Park Match	\$52,580	\$12,990
TOTAL	<u>\$1,655,160</u>	<u>\$888,838</u>

Section 5. Three change orders have been submitted on this project for a total of \$112,348. The first two were related to sewer improvements and MSD of Buncombe County has agreed to reimbursement the Town for these expenses (\$55,348). The third change order was for \$57,000 and related to water connection at four separate locations. The original project revenues on this project exceeded expenses by \$15,422, meaning the Town will be responsible for the balance of \$41,578. (\$57,000 less \$15,422 equals \$41,578) The following Capital Projects Fund budget amendment is needed to update the project.

EXPENDITURE BUDGET

Capital Outlay	<u>\$96,926</u>
TOTAL	<u>\$96,926</u>

REVENUE BUDGET

Contribution from MSD	\$55,348
Transfer from General Fund	<u>\$41,578</u>
TOTAL	<u>\$96,926</u>

Section 6. The Finance Officer is hereby directed to maintain within the Capital Project Fund (Fund 6400, Riverwalk Greenway Capital Projects Fund) sufficient specific detailed accounting records to satisfy the requirements of the funding agency and their agreements. The term of the agreement also shall be met.

Section 7. The Finance Officer is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and on the total grant revenues received or claimed.

Section 8. The Budget Officer is directed to include a detailed analysis of past and future costs and revenues on this grant project in every budget submission made to this Board.

Section 9. Copies of this capital project amendment shall be furnished to the Clerk to the Governing Board, and to the Budget Officer and Finance Officer for direction in carrying out this project.

Adopted this 4th day of November, 2019

Don Collins, Mayor

Josh Harrold, Town Manager

Dean Luebbe, Assistant Town Manager/Finance Director

ATTEST:

Angela Reece, Town Clerk

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: October 14, 2019

SUBJECT: Public Hearing for Phase II Stormwater Ordinance

#O-19-21

AGENDA INFORMATION

Agenda Location: PUBLIC HEARING **Continued from 10-14-19 Meeting**
Item Number: 9A
Department: Planning and Development Services
Contact: Jessica Trotman, Planning Director
Presenter: Jessica Trotman, Planning Director

BRIEF SUMMARY:

As an MS4 Phase II municipality, the Town is required to have a post-construction stormwater ordinance. These rules and regulations are largely established by the Environmental Protection Agency and passed to the states. The proposed changes strengthen the ordinance to enhance water quality protection while also making them easier to read, manage and enforce. These changes have been reviewed by an engineer and the NC Department of Water Quality's Phase II coordinator.

Summary of Material Changes

- Projects which disturb 5,000 square feet of land will require a stormwater permit under the phase II ordinance (currently it is 12,000 square feet). This will result in more projects requiring stormwater permits.
- Pre-construction meetings with staff are not required (currently they are options)
- Pre-construction run-off must be met by phase, not by end of project. This will close a loop hole which phased projects currently benefit from.
- The requirements for SCMs are increased to handle more dramatic storms, moving from a one-year storm to a 25 year storm as calculated by NOAA.
- Adds new language regarding calculation of stormwater requirements as required by session law from 2018.
- Applies the most stringent "high density" requirements to both low and high density projects, increasing stream buffer protection.

MOTION FOR CONSIDERATION:

1. To open the public hearing for **Ordinance #O-19-21** for amendments to Stormwater Phase II.
2. To close the public hearing.
3. To adopt **Ordinance #O-19-21** as presented [or as amended].

FUNDING SOURCE: N/A

ATTACHMENTS: Ordinance #O-19-21

MANAGER'S COMMENTS AND RECOMMENDATIONS: To adopt **#O-19-21** as presented.



LEGAL NOTICE

BLACK MOUNTAIN BOARD OF ALDERMEN

PUBLIC HEARING

Monday, October 14, 2019, at 6:00 p.m.

The Black Mountain Board of Aldermen will meet on **Monday, October 14, 2019, at 6:00 p.m.** in the Board Room in the Town Hall Building, 160 Midland Avenue, Black Mountain, NC. The purpose of this meeting is to hold a public hearing for amendments to the Phase II Stormwater Ordinance.

The meeting is open to the public.


Angela 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.

*Posted to the Town Bulletin Board 09/10/19
Published in the Black Mountain News 09/19/19 and 09/26/19*

www.townofblackmountain.org

Black Mountain News

Classified Ad Receipt
(For Info Only - NOT A BILL)

Customer: TOWN OF BLACK MOUNTAIN
Address: 160 MIDLAND AVE
BLACK MOUNTAIN NC 28711
USA

Ad No.: 0003788798
Pymt Method Invoice
Net Amt: \$117.20

Run Times: 2

No. of Affidavits: 1

Run Dates: 09/19/19, 09/26/19

Text of Ad:



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**Posted to the Town Bulletin Board
09/10/19**

**Published in the Black Mountain News
09/19/19 and 09/26/19**

www.townofblackmountain.org

September 19, 26, 2019
0003788779

ORDINANCE NO. #O-19-21

AN ORDINANCE TO AMEND SECTION 8.2 (The Phase II Stormwater Ordinance) OF APPENDIX A (The Land Use Code) OF THE CODE OF ORDINANCES OF THE TOWN OF BLACK MOUNTAIN

BE IT ORDAINED BY THE TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN THAT:

Section 8.2 of Appendix A (The Land Use Code) of the Code of Ordinances is repealed in its entirety, and Appendix A of the Code of Ordinances is further amended to add the following new Section:

SECTION 8.2 – THE PHASE II STORMWATER ORDINANCE

8.2.1 - PURPOSE

(A) *General.* The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post development stormwater runoff and nonpoint and point source pollution associated with new development and redevelopment as well as illicit discharges into municipal stormwater systems. It has been determined that proper management of post-development stormwater runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.

The ordinance seeks to meet the requirements for the town's National Pollutant Discharge Elimination System (NPDES) Permit.

This ordinance seeks to meet its general purpose through the following specific objectives and means:

- (1) Establishing decision-making processes for development that protect the integrity of watersheds and preserve the health of water resources;
- (2) Requiring that new development and redevelopment maintain the predevelopment hydrologic response in their post-development state as nearly as practicable for the applicable design storm to reduce flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;
- (3) Establishing minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;

- (4) Establishing design and review criteria for the construction, function, and use of structural stormwater SCMs that may be used to meet the minimum post-development stormwater management standards;
- (5) Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of greenspace, riparian buffers and other conservation areas to the maximum extent practicable;
- (6) Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural stormwater SCMs to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;
- (7) Establishing administrative procedures for the submission, review, approval and disapproval of stormwater management plans, for the inspection of approved projects, and to assure appropriate long-term maintenance.
- (8) Coordinating site design plans that include open space with the subdivision ordinance requirements for open space with the zoning administrator or Planning Board if required.
- (9) Assigning responsibility and processes for approving the creation and maintenance of adequate drainage measures.

8.2.2 - APPLICABILITY AND JURISDICTION OF THIS ORDINANCE

- (A) *General.* Beginning with and subsequent to its effective date, this ordinance shall be applicable to all development and redevelopment occurring in within the corporate limits of the Town of Black Mountain, unless exempt pursuant to section 8.2.2 (C) of this Section, Exemptions.
- (B) *Activity Threshold Requiring a Stormwater Permit.* A stormwater permit is required for any development and redevelopment which results in a cumulative disturbance of more than 5,000 square feet of land or increases impervious surface area by a net amount of 5,000 square feet or more if the project has less than or equal to one-acre of cumulative disturbance.

All phased developments must achieve post-construction requirements at the completion of each phase unless otherwise approved by the Stormwater Administer.

(C) *Exemptions.*

- (1) Activities that are exempt from permit requirements of Section 404 of the federal Clean Water Act as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this ordinance.

- (2) Development which cumulatively disturbs less than 5,000 square feet of land and is not part of a larger common plan of development does require a stormwater permit.
 - (3) Pre-existing development or development activities that do not remove or decrease existing stormwater controls shall not be required to install new or increased stormwater controls.
 - (4) When a pre-existing development is redeveloped, either in whole or in part, increased stormwater controls shall only be required for the amount of impervious surface being created that exceeds the amount of impervious surface that existed before redevelopment.
 - (5) Development activities within the town's designated historic district.
- (D) *No Development or Redevelopment Until Compliance and Permit.* No development or redevelopment shall occur except in compliance with the provisions of this ordinance unless exempted. No development for which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.
- (E) *Map.* The Stormwater Map shall be kept on file by the Stormwater Administrator and shall be updated to take into account changes in the land area covered by this ordinance and the geographic location of all structural SCMs permitted under this ordinance. In the event of a dispute, the applicability of this ordinance to a particular area of land or SCM shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

8.2.3 - INTERPRETATION

- (A) *Meaning and Intent.* All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in section 8.2.1, Purpose and also defined in section 8.2.28. If a different or more specific meaning is given for a term defined elsewhere in Town of Black Mountain Code of Ordinance, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.
- (B) *Text Controls in Event of Conflict.* In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text shall control
- (C) *Authority for Interpretation.* The Stormwater Administrator has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the Stormwater Administrator, who shall respond in writing within 30 days. The Stormwater Administrator shall keep on file a record of all written interpretations of this ordinance.

- (D) *References to Statutes, Regulations, and Documents.* Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the Design Manual), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.
- (E) *Computation of Time.* The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the Town of Black Mountain, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the Town of Black Mountain. References to days are calendar days unless otherwise stated.
- (F) *Delegation of Authority.* Any act authorized by this Ordinance to be carried out by the Planning Director of Town of Black Mountain may be carried out by his or her designee as Stormwater Administrator.

8.2.4 - DESIGN MANUAL

- (A) *Reference to Design Manual.* The Stormwater Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the Design Manual as the basis for decisions about stormwater permits and about the design, implementation and performance of structural and non-structural stormwater SCMs.

The Design Manual includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II laws.

- (B) *Relationship of Design Manual to Other Laws and Regulations.* If the specifications or guidelines of the Design Manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the Design Manual.
- (C) *Changes to Standards and Specifications.* If the standards, specifications, guidelines, policies, criteria, or other information in the Design Manual are amended subsequent to the submittal of an application for approval pursuant to this ordinance but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this ordinance with regard to the application.
- (D) *Amendments to Design Manual.* The Design Manual may be updated and expanded from time to time, based on advancements in technology and engineering, improved knowledge of local conditions, or local monitoring or maintenance experience.

Prior to amending or updating the Design Manual, proposed changes shall be generally publicized and made available for review, and an opportunity for comment by interested persons shall be provided.

8.2.5 - RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS

- (A) *Conflict of Laws.* This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.
- (B) *Private Agreements.* This ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this ordinance are more restrictive or impose higher standards or requirements than such an easement, covenant, or other private agreement, the requirements of this ordinance shall govern. Nothing in this ordinance shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this ordinance. In no case shall Town of Black Mountain be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

8.2.6 - SEVERABILITY

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

8.2.7 - EFFECTIVE DATE AND TRANSITIONAL PROVISIONS

- (A) *Effective Date.* This Ordinance shall take effect on December 1, 2019.
- (B) *Final Approvals, Complete Applications.* All development and redevelopment projects for which complete and full applications were submitted and approved by the Town of Black Mountain prior to the effective date of this ordinance and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of development or redevelopment shall be exempt from complying with all provisions of this ordinance dealing with management of post-construction runoff, but shall be required to comply with all other applicable provisions, including but not limited to illicit discharge provisions. If previously approved SCMs are not maintained as approved and regulated by the stormwater ordinance in effect at the time of their approval, such LCMs must be made to comply with this ordinance to the greatest extent possible when repaired or brought into compliance.

A phased development plan shall be deemed approved prior to the effective date of this ordinance if it has been approved by all necessary government units, it remains valid, unexpired, unrevoked and not otherwise terminated, and it shows:

- (1) For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved.
 - (2) For any subsequent phase of development, sufficient detail so that implementation of the requirements of this ordinance to that phase of development would require a material change in that phase of the plan.
- (C) *Violations Continue.* Any violation of provisions existing on the effective date of this ordinance shall continue to be a violation under this ordinance and be subject to penalties and enforcement under this ordinance unless the use, development, construction, or other activity complies with the provisions of this ordinance.

SECTION 2: ADMINISTRATION AND PROCEDURES

8.2.8 - REVIEW AND DECISION-MAKING ENTITIES

(A) *Stormwater Administrator.*

- (1) *Designation.* A Stormwater Administrator shall be designated by the Planning Director to administer and enforce this ordinance in whole or in part, at the Planning Director's discretion.

(B) *Powers and Duties.* In addition to the powers and duties that may be conferred by other provisions of the Town of Black Mountain Code of Ordinances and other laws, the Stormwater Administrator shall have the following powers and duties under this ordinance:

- (1) To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.
- (2) To make determinations and render interpretations of this ordinance.
- (3) To enforce the provisions of this ordinance in accordance with its enforcement provisions.
- (4) To maintain records, maps, forms and other official materials as related to the adoption, amendment, enforcement, and administration of this ordinance.
- (5) To provide expertise and technical assistance to the Town of Black Mountain Board of Alderman, upon request.
- (6) To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.

- (7) To take any other action necessary to administer the provisions of this ordinance.

8.2.9 - REVIEW PROCEDURES

- (A) *Permit Required; Must Apply for Permit.* A stormwater permit is required for all development and redevelopment unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section. A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including structural SCMs and elements of site design for stormwater management other than structural SCMs.

The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the development or redevelopment site consistent with the requirements of this ordinance, whether the approach consists of structural SCMs or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this ordinance.

- (B) *Authority to File Applications.* All applications required pursuant to this Code shall be submitted to the Stormwater Administrator by the land owner or the land owner's duly authorized agent.

- (C) *Establishment of Application Requirements, Schedule, and Fees.*

- (1) *Application Contents and Form.* The Stormwater Administrator shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. At a minimum, the stormwater permit application shall describe in detail how post-development stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this ordinance.
- (2) *Submission Schedule.* The Stormwater Administrator shall establish a submission schedule for applications. The schedule shall establish deadlines by which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications, and that the various stages in the review process are accommodated.
- (3) *Permit Review Fees.* The Town of Black Mountain Board of Alderman shall establish permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.
- (4) *Administrative Manual.* For applications required under this ordinance, the Stormwater Administrator shall compile the application requirements, submission

schedule, fee schedule, a copy of this ordinance, and information on how and where to obtain the Design Manual in an Administrative Manual, which shall be made available to the public.

(D) *Submittal of Complete Application.* Applications shall be submitted to the Stormwater Administrator pursuant to the application submittal schedule in the form established by the Stormwater Administrator, along with the appropriate fee established pursuant to this section. An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this ordinance, along with the appropriate fee. If the Stormwater Administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established above.

(E) *Review.* Within fifteen (15) working days after a complete application is submitted, the Stormwater Administrator shall review the application and determine whether the application complies with the standards of this ordinance.

(1) *Approval.* If the Stormwater Administrator finds that the application complies with the standards of this ordinance, the Stormwater Administrator shall approve the application. The Stormwater Administrator may impose conditions of approval as needed to ensure compliance with this ordinance. The conditions shall be included as part of the approval.

(2) *Fails to Comply.* If the Stormwater Administrator finds that the application fails to comply with the standards of this ordinance, the Stormwater Administrator shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.

(3) *Revision and Subsequent Review.* A complete revised application shall be reviewed by the Stormwater Administrator within fifteen (15) working days after its re-submittal and shall be approved, approved with conditions or disapproved.

If a revised application is not re-submitted within thirty (30) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee for a new submittal.

One re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal shall be accompanied by a permit review fee additional fee, as established pursuant to this ordinance.

8.2.10 - APPLICATIONS FOR APPROVAL

(A) *Concept Plan and Consultation Meeting Required.* Before a stormwater management permit

application is deemed complete, the Stormwater Administrator or developer shall request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed development project. This consultation meeting should take place at the time of the preliminary plan of subdivision or other early step in the development process. The purpose of this meeting is to discuss the post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Local watershed plans, the town's Comprehensive Plan and Land Use Code, and other relevant resource protection plans should be consulted in the discussion of the concept plan.

To accomplish this goal, the following information should be included in the concept plan, which should be submitted in advance of the meeting:

- (1) *Existing Conditions / Proposed Site Plans.* Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (if available); boundaries of existing predominant vegetation; proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.
 - (2) *Natural Resources Inventory.* A written or graphic inventory of natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development and stormwater management.
 - (3) *Stormwater Management System Concept Plan.* A written or graphic concept plan of the proposed post-development stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of any proposed stream channel modifications, such as bridge or culvert crossings.
- (B) *Stormwater Management Permit Application.* The stormwater management permit application shall detail how post development stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this ordinance, including Section 8.2.13, Standards. All such plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their

area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the Design Manual, and that the designs and plans ensure compliance with this ordinance.

The submittal shall include all of the information required in the submittal checklist established by the Stormwater Administrator. Incomplete submittals shall be treated pursuant to Section 8.2.9 (D).

- (C) *As-Built Plans and Final Approval.* Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual “as built” plans for all stormwater management facilities or practices after final construction is completed.

The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities.

- (D) *Other Permits.* No certificate of compliance or occupancy shall be issued by the Building Inspector without final as-built plans and a final inspection and approval by the Stormwater Administrator, except where multiple units are served by the stormwater practice or facilities, in which case the Building Inspector may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

8.2.11 - APPROVALS

- (A) *Effect of Approval.* Approval authorizes the applicant to go forward with only the specific plans and activities authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.
- (B) *Time Limit/Expiration.* An approved plan shall become null and void if the applicant fails to make substantial progress on the site within one year after the date of approval. The Stormwater Administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

In granting an extension, the Stormwater Administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the

applicant's vested rights.

8.2.12 - APPEALS

- (A) *Right of Appeal.* Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance made by the Stormwater Administrator, may file an appeal to the Zoning Board of Adjustment within 30 days.

SECTION 3: STANDARDS

8.2.13 - GENERAL STANDARDS

All development and redevelopment to which this ordinance applies shall comply with the standards of this section.

8.2.14 - DEVELOPMENT STANDARDS FOR ALL PERMITTED PROJECTS

High and low density projects shall comply with each of the following standards requiring a stormwater permit:

- (A) Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.
- (B) Project sites must employ low impact development (LID) practices to analyze the infiltration capacity of natural drainage of the site and develop a system of controls which mimic the existing, natural hydrology and which cumulatively capture and treat the runoff from the first inch of rainfall. LID practice may include any combination of site design techniques, and SCMs to store, infiltrate, evaporate, retain and detain runoff on the site to more closely replicate the pre-development runoff thereby limiting the increase in pollutant loads caused by development.
- (C) All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3) (a) or similar site-specific determination made using Division-approved methodology. Encroachment allowances may be made as described in 4.3.2.
- (D) The approval of the stormwater permit shall require an enforceable restriction on

property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

- (E) The measures shall control and treat runoff from the first inch of rain. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.
- (F) All structural stormwater treatment systems used to meet these requirements shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS);
- (G) General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the Design Manual;

8.2.15 - STANDARDS FOR STORMWATER CONTROL MEASURES

Owners of property subject to this ordinance and required to install structural stormwater control measures shall implement those measures in compliance with each of the following standards:

- (A) *Evaluation According to Contents of Design Manual.* All stormwater control measures and stormwater treatment practices (also referred to as Stormwater Control Measures, or SCMs) required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the Design Manual. The Stormwater Administrator shall determine whether proposed SCMs will be adequate to meet the requirements of this ordinance. It is presumed that all standards in the Design Manual will result in a minimum of 85% average annual removal of Total Suspended Solids.
- (B) *Determination of Adequacy; Presumptions and Alternatives.* Stormwater treatment practices that are designed, and constructed, and maintained in accordance with the criteria and specifications in the Design Manual will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the Design Manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The Stormwater Administrator may require the applicant to provide the documentation, calculations, and examples necessary for the Stormwater Administrator to determine whether such an affirmative showing is made.
- (C) Whenever LID practices are not achievable, or have not been demonstrated, the

measures controlling the final runoff from the site shall control and treat the difference in stormwater runoff volume leaving the project site between pre and post-development conditions for a minimum rate of 25 year, 24-hour storm as determined by NOAA.

- (D) Peak stormwater runoff rates shall be controlled for all development at or exceeding 24 percent built upon area or high density projects as defined by this ordinance, for both LID and conventional approaches. The peak stormwater runoff release rates leaving the site during post-construction conditions shall be equal to or less than the pre-development peak stormwater runoff release rates for the one-year frequency, 24-hour duration storm event as determined by NOAA data for Black Mountain. The emergency overflow and outlet works for any pond or wetland constructed as a stormwater SCM shall be capable of safely passing a discharge with a minimum recurrence frequency of 50 years. For detention basins, the temporary storage capacity shall be restored within 72 hours. Requirements of the Dam Safety Act shall be met when applicable.
- (E) No single SCM shall receive runoff from an area greater than three acres, however the total drainage area from SCMs used in a series may exceed this maximum.
- (F) In addition to the standards for handling stormwater set out in the design manual, development and redevelopment that drains in whole or part to trout waters (class TR) waters shall design and implement the best stormwater practices that do not result in a sustained increase in receiving water temperature, while still meeting the other requirements of this ordinance.
- (G) In addition to the standards for stormwater handling set out in the design manual, development and redevelopment that drains in whole or part to nutrient sensitive waters (class NSW) shall design and implement the best stormwater practices that reduce nutrient loading, while still meeting the other requirements of this ordinance.
- (H) *Separation from Seasonal High Water Table.* For SCMs that require a separation from the seasonal high-water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high-water table.

8.2.16 - VARIANCES

- (A) Any person may petition the Town of Black Mountain for a variance granting permission to use the person's land in a manner otherwise prohibited by this ordinance. The Town of Black Mountain may impose reasonable and appropriate conditions and safeguards upon any variance it grants. To qualify for a variance, the petitioner must show all of the following:

- (1) Unnecessary hardships would result from strict application of this ordinance.

- (2) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
 - (3) The hardships did not result from actions taken by the petitioner.
 - (4) The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice.
- (B) *Statutory exceptions.* Notwithstanding subsection (A) of this section, exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:
- (1) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of SCMs.
 - (2) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of SCMs.
- 1. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.
 - 2. The stormwater runoff from the entire impervious area of the development is collected, treated and discharged so that it pass through a segment of the vegetative buffer and is managed so that it otherwise complies with all applicable state and federal stormwater management requirements.

8.2.17 - ONSITE WASTEWATER

- (A) *Operation and Maintenance Requirements.* New and replaced onsite systems for domestic wastewater installed after the effective date of this ordinance shall be subject to the operation and maintenance requirements of the Buncombe County Environmental Health Department.

(B) *Standards for Operation and Maintenance.* Onsite systems for domestic wastewater shall be operated and maintained so as to avoid adverse effects on surface water and groundwater. Operation and maintenance of onsite systems for domestic wastewater shall be in accordance with the standards of the Buncombe County Environmental Health Department.

(C) *Enforcement.* The Buncombe County Environmental Health Department shall be responsible for the enforcement of the installation, operation and maintenance standards for onsite systems for domestic wastewater within the limits of the town.

SECTION 4: MAINTENANCE

8.2.18 - GENERAL STANDARDS FOR MAINTENANCE OF SCMS

(A) *Function of SCMs as Intended.* The owner of each structural SCM installed pursuant to this ordinance shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the structural SCM was designed.

(B) *Annual Maintenance Inspection and Report.* The person responsible for maintenance of any structural SCM installed pursuant to this ordinance shall submit to the Stormwater Administrator an inspection report from one of the following persons performing services only in their area of competence: a qualified registered North Carolina professional engineer, surveyor, landscape architect. The inspection report shall contain all of the following:

- (1) The name and address of the landowner;
- (2) The recorded book and page number of the lot of each structural SCM;
- (3) A statement that an inspection was made of all structural SCMs;
- (4) The date the inspection was made;
- (5) A statement that all inspected structural SCMs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and
- (6) The original signature and seal of the engineer, surveyor, or landscape architect.

All inspection reports shall be on forms supplied by the Stormwater Administrator. An original inspection report shall be provided to the Stormwater Administrator beginning one year from the date of as-built certification and at date established and enforced by the Planning Department each year following.

8.2.19 - OPERATION AND MAINTENANCE AGREEMENT

(A) *In General.* Prior to the conveyance or transfer of any lot or building site to be served by a structural SCM pursuant to this ordinance, and prior to issuance of any permit for development or redevelopment requiring a structural SCM pursuant to this ordinance, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all subsequent owners of the site, portions of the site, and lots or parcels served by the structural SCM. Until the transference of all property, sites, or lots served by the structural SCM, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

The operation and maintenance agreement shall require the owner or owners to maintain, repair and, if necessary, reconstruct the structural SCM, and shall state the terms, conditions, and schedule of maintenance for the structural SCM. In addition, it shall grant to Town of Black Mountain a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural SCM; however, in no case shall the right of entry, of itself, confer an obligation on Town of Black Mountain to assume responsibility for the structural SCM. The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator within fourteen (14) days following its recordation.

(B) *Special Requirement for Homeowners' and Other Associations.* For all structural SCMs required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:

- (1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
- (2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the structural SCMs. If structural SCMs are not performing adequately or as intended or are not properly maintained, the Town of Black Mountain, in its sole discretion, may remedy the situation, and in such instances the Town of Black Mountain shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the structural SCMs, provided that the Town of Black Mountain shall first consent to the expenditure.
- (3) Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to fifteen (15) per cent of the initial construction cost of the structural SCMs.

Two-thirds (2/3) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the structural SCMs. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

- (4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the Town of Black Mountain depending on the design and materials of the stormwater control and management facility.
- (5) Granting to the Town of Black Mountain a right of entry to inspect, monitor, maintain, repair, and reconstruct structural SCMs.
- (6) Allowing the Town of Black Mountain to recover from the association and its member's any and all costs the Town of Black Mountain expends to maintain or repair the structural SCMs or to correct any operational deficiencies. Failure to pay the Town of Black Mountain all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. In case of a deficiency, the Town of Black Mountain shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.
- (7) A statement that this agreement shall not obligate the Town of Black Mountain to maintain or repair any structural SCMs, and the Town of Black Mountain shall not be liable to any person for the condition or operation of structural SCMs.
- (8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the Town of Black Mountain to enforce any of its ordinances as authorized by law.
- (9) A provision indemnifying and holding harmless the Town of Black Mountain for any costs and injuries arising from or related to the structural SCM, unless the Town of Black Mountain has agreed in writing to assume the maintenance responsibility for the SCM and has accepted dedication of any and all rights necessary to carry out that maintenance.

8.2.20 - INSPECTION PROGRAM

Inspections and inspection programs by Town of Black Mountain may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may

include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in SCMs; and evaluating the condition of SCMs.

If the owner or occupant of any property refuses to permit such inspection, the Stormwater Administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out his or her official duties.

8.2.21 - PERFORMANCE SECURITY FOR INSTALLATION AND MAINTENANCE

(A) *May Be Required.* The Town of Black Mountain may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the structural SCMs are:

- (1) installed by the permit holder as required by the approved stormwater management plan, and/or
- (2) Maintained by the owner as required by the operation and maintenance agreement.

(B) *Amount.*

- (1) *Installation.* The amount of an installation performance security shall be the total estimated construction cost of the SCMs approved under the permit, plus 25%.
- (2) *Maintenance.* The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the SCMs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long-term inflation.

(C) *Uses of Performance Security.*

- (1) *Forfeiture Provisions.* The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this ordinance, approvals issued pursuant to this ordinance, or an operation and maintenance agreement established pursuant to this ordinance.
- (2) *Default.* Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any structure SCM in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make the necessary improvements based on an engineering estimate. Such expenditure of funds shall

only be made after requesting the owner to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the Town of Black Mountain shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

- (3) *Costs in Excess of Performance Security.* If Town of Black Mountain takes action upon such failure by the applicant or owner, the Town of Black Mountain may collect from the applicant or owner the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.
- (4) *Refund.* Within sixty days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the SCMs covered by the security unless a separate landscaping and ongoing maintenance security has been provided. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

8.2.22 - NOTICE TO OWNERS

- (A) *Deed Recordation and Indications On Plat.* The applicable operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance (whichever is applicable), pertaining to every structural SCM shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance, whichever is applicable, shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.
- (B) *Signage.* Where appropriate in the determination of the Stormwater Administrator to assure compliance with this ordinance, structural SCMs shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

8.2.23 - RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES

The owner of each structural SCM shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.⁹

8.2.24 - NUISANCE

The owner of each stormwater SCM, whether structural or non-structural SCM, shall maintain it

so as not to create or result in a nuisance condition.

8.2.25 - MAINTENANCE EASEMENT

Every structural SCM installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair by a maintenance easement. The easement shall be recorded and its terms shall specify who may make use of the easement and for what purposes.

SECTION 5: ENFORCEMENT AND VIOLATIONS FOR COMPLIANCE AND PERMITS

8.2.26 - GENERAL

- (A) *Authority to Enforce.* The provisions of this ordinance shall be enforced by the Stormwater Administrator, or any authorized agent of Town of Black Mountain. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of Town of Black Mountain.
- (B) *Violation Unlawful.* Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this ordinance, or the terms or conditions of any permit or other development or redevelopment approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance.
- (C) *Each Day a Separate Offense.* Each day that a violation continues shall constitute a separate and distinct violation or offense.
- (D) *Responsible Persons/Entities.* Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, SCM, practice, or condition in violation of this ordinance shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs.

For the purposes of this article, responsible person(s) shall include but not be limited to:

- (1) *Person Maintaining Condition Resulting In or Constituting Violation.* An architect, engineer, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.
- (2) *Responsibility For Land or Use of Land.* The owner of the land on which the

violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, development or redevelopment of the property.

8.2.27 - REMEDIES AND PENALTIES

The remedies and penalties provided for violations of this ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

(A) Remedies

- (1) *Withholding of Certificate of Occupancy.* The Stormwater Administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.
- (2) *Disapproval of Subsequent Permits and Development Approvals.* As long as a violation of this ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the Planning Board may disapprove, any request for permit or development approval or authorization provided for by this ordinance or the subdivision for the land on which the violation occurs.
- (3) *Injunction, Abatements, etc.* The Stormwater Administrator, with the written authorization of the Town Manager, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this ordinance. Any person violating this ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.
- (4) *Correction as Public Health Nuisance, Costs as Lien, etc.* If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits of the Town of Black Mountain G.S. § 160A-193, the Stormwater Administrator, with the written authorization of the Town Manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.
- (5) *Stop Work Order.* The Stormwater Administrator may issue a stop work order to the person(s) violating this ordinance. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such

violation or violations.

(B) *Civil Penalties.* Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Stormwater Administrator. Civil penalties may be assessed up to the full amount of penalty to which the Town of Black Mountain is subject for violations of its Phase II Stormwater permit, or if no Phase II Stormwater permit exists for the jurisdiction, civil penalties may be assessed up to the full amount allowed by law.

8.2.28 - PROCEDURES

(A) *Initiation /Complaint.* Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the Stormwater Administrator, who shall record the complaint. The complaint shall be investigated promptly by the Stormwater Administrator.

(B) *Inspection.* The Stormwater Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance.

(C) *Notice of Violation and Order to Correct.* When the Stormwater Administrator finds that any building, structure, or land is in violation of this ordinance, the Stormwater Administrator shall notify, in writing, the property owner or other person violating this ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

The Stormwater Administrator may deliver the notice of violation and correction order personally, by the Code Enforcement staff, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

If a violation is not corrected within a reasonable period of time, as provided in the notification, the Stormwater Administrator may take appropriate action under this ordinance to correct and abate the violation and to ensure compliance with this ordinance.

(D) *Extension of Time.* A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be

corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 60 days. The Stormwater Administrator may grant 60-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance. The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

(E) *Enforcement After Time to Correct.* After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater Administrator shall determine if the violation is corrected. If the violation is not corrected, the Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.

(F) *Emergency Enforcement.* If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance or pose an immediate danger to the public health, safety, or welfare, then the Stormwater Administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Stormwater Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

SECTION 6: DEFINITIONS

8.2.29 - TERMS DEFINED

When used in this Ordinance, the following words and terms shall have the meaning set forth in this section, unless other provisions of this Ordinance specifically indicate otherwise.

Built-upon area (BUA): That portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. “Built-upon area” does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

Department: The North Carolina Department of Environment and Natural Resources.

Design Manual: All references herein to the Design Manual are to the latest published edition or revision as published by the North Carolina Department of Environmental Quality.

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

Division: The Division of Water Quality in the Department.

Larger common plan of development or sale: Any area where multiple separate and distinct construction or land-disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

Low Impact Development: The term low impact development (LID) refers to systems and practices that use or mimic natural processes that result in the infiltration, evapotranspiration or use of stormwater in order to protect water quality and associated aquatic habitat. LID is an approach to land development (or re-development) that works with nature to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features, minimizing effective imperviousness to create functional and appealing site drainage that treat stormwater as a resource rather than a waste product. There are many practices that have been used to adhere to these principles such as bio retention facilities, rain gardens, vegetated rooftops, rain barrels and permeable pavements.

25 year, 24-hour storm: The surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 25 years and with a duration of 24 hours as defined by the National Weather Service.

Owner: The legal or beneficial owner of land, including but not limited to a mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. "Owner" shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an owner, unless the secured lender is included within the meaning of "owner" under another description in this definition, such as a management entity.

Post-construction: The point in which construction activity has been concluded prior to issuing a certificate of occupancy or otherwise putting the property into use.

Redevelopment: Any development on previously-developed land, other than a rebuilding activity that results in no net increase in built-upon area and provides equal or greater storm water control than the previous development.

Stormwater Control Measure (formally known as Best Management Practice): An alternation of land or physical device engineered and/or designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of these goals. Structural SCM includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. "Structural SCM" is synonymous with "structural practice," "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater

management practice,” “stormwater control measures,” “structural stormwater treatment systems,” and similar terms used in this ordinance.

Substantial progress: For the purposes of determining whether substantial progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than thirty (30) days; or installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation. “Substantial progress” for purposes of determining whether an approved plan is null and void is not necessarily the same as “substantial expenditures” used for determining vested rights pursuant to applicable law.

This ordinance shall be in full force and effective on December 1, 2019.

I move the adoption of the foregoing ordinance.

Alderman

READ, APPROVED AND ADOPTED, this the 14th day of October, 2019, by a vote of _____ to _____.

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: November 4, 2019**

SUBJECT: Ordinance Amendment to Authorize Town Manager to Employ Attorneys

AGENDA INFORMATION

Agenda Location: NEW BUSINESS
Item Number: 8A
Department: Legal
Contact: Ronald E. Sneed, Town Attorney
Presenter: Ronald E. Sneed, Town Attorney

BRIEF SUMMARY: In July, the state Court of Appeals, in the case of State of North Carolina on Relation of City of Albemarle v Nance, et al, COA18-916, a complaint filed by outside counsel was to enforce the nuisance ordinance was dismissed because the attorney employed by the city of Albemarle has not be hired by the city council. Albemarle's ordinances specified that attorneys for the city had to be hired for litigation had to be hired by city council. While the result might be different if an action is filed by outside counsel hired by the town manager of Black Mountain, this ordinance amendment is designed to remove the risk of a decision similar to the one in the Albemarle case.

MOTION FOR CONSIDERATION:

To adopt Ordinance No. O-19-27 as presented [or as amended].

FUNDING SOURCE: N/A

ATTACHMENTS: None

COMMENTS AND RECOMMENDATIONS: To adopt **Ordinance #O-19-27** as presented [or amended].

ORDINANCE # O-19-27

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE TOWN OF BLACK MOUNTAIN, NORTH CAROLINA, TO ALLOW THE TOWN MANAGER TO EMPLOY ATTORNEYS OTHER THAN THE TOWN ATTORNEY

BE IT ORDAINED BY THE TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN THAT:

Chapter 2, Article II, Section 2-19 (c) (1) of the Code of Ordinances, Town of Black Mountain, North Carolina, is hereby amended to read as follows:

- (1) Appointing and suspending or removing all town officers and employees not elected by the people, and whose appointment or removal is not otherwise provided for by law, except the town attorney and town auditor, in accordance such general personnel rules, regulations, policies or ordinances as the board of aldermen may adopt, but the town manager shall have the authority to appoint or employ attorneys in addition to the town attorney to advise the Town in the areas of legal expertise of such attorneys, to prosecute lawsuits requiring particular expertise, and to advise the other boards, commissions and departments of the Town where a conflict of interest might occur if the town attorney undertook such representation, such as where the town attorney appears before a board or commission to argue the position of the Town.

This ordinance shall be in full force and effect upon its adoption.

Alderman

READ, APPROVED AND ADOPTED, this the 4th day of November, 2019, by a vote of _____ to _____.

Don Collins, Mayor

ATTEST:

Angela L. Reece, Assistant to Manager/Town Clerk

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: November 4, 2019

SUBJECT: RFQ Proposal Recommendation - Comprehensive Plan and Future Land Use Map Update

AGENDA INFORMATION

Agenda Location: NEW BUSINESS
Item Number: 8B
Department: Planning and Development Services
Contact: Jessica Trotman, Planning Director
Presenter: Josh Harrold, Town Manager

BRIEF SUMMARY:

The Town is required to update the Comprehensive Plan every five years. The RFP for the project was posted and four firms submitted proposals. Staff reviewed and scored the proposals. Clarion received the highest score. Clarion has significant experience in visioning, community engagement and comprehensive planning.

MOTION FOR CONSIDERATION: To approve Clarion as the consulting team for the Comprehensive Plan and Future Land Use Map update and direct Town Manager to execute the contract after it has been approved by the Town Attorney.

FUNDING SOURCE: Funds have been budgeted in the amount of \$45,000 in the FY19-20 Planning Departmental Budget.

ATTACHMENTS: N/A

MANAGER'S COMMENTS AND RECOMMENDATIONS: To approve the proposal submitted by Clarion as the consulting team for the Comprehensive Plan and Future Land Use Map update

Request for Qualifications (RFQ)

Comprehensive Plan and Future Land Use Updates

Town of Black Mountain, NC



October 1, 2019

Town of Black Mountain Town Hall
Attention: Jessica Trotman, Planning Director
160 Midland Ave.
Black Mountain, NC 28711

CLARION

chipley



October 1, 2019

Jessica Trotman
Planning Director
Town of Black Mountain
160 Midland Ave.
Black Mountain, NC 28711

RE: Response to the RFQ to prepare the Comprehensive Plan and Future Land Use Updates

Dear Ms. Trotman:

We are pleased to submit this response to the Town of Black Mountain's request for qualifications (RFQ) to prepare the Town's Comprehensive Plan and Future Land Use Map Updates. Clarion Associates is a national planning and zoning consulting firm with offices in Chapel Hill and Denver, and affiliate offices in Cincinnati and Philadelphia. Firm principals have decades of experience in assisting local governments to prepare comprehensive and small area plans, growth management strategies, public engagement approaches, and development codes for communities throughout the Southeast and across the nation.

To provide Black Mountain with a complete array of planning services, **Clarion Associates is joined by Chipley Consulting** bringing expertise in public engagement and economic development strategies. Our consultant team is highly qualified to perform the services outlined in the RFQ and is fully licensed to prepare these services. Our team is in process of completing several planning projects and has ample time to commit to this project.

In this proposal we describe our extensive track record of developing award-winning plans that articulate the values of client communities and provide a strong focus on plan implementation. The Town will benefit from skills honed by this broad experience. Clarion and Chipley Consulting have a long track record developing plans for North Carolina communities.

We are very excited about the possibility of working with the Town of Black Mountain and welcome an opportunity to discuss our proposal with you in person.

Sincerely,

Leigh Anne King, AICP, LEED AP
Director and Project Adviser
laking@clarionassociates.com

Nate Baker, AICP, CNU-A
Planner and Project Manager
nbaker@clarionassociates.com

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I. Introduction

A. Project Management Approach

B. Planning Philosophy

C. Technology and Resources Available to the Project

D. Public Participation Approach

E. Proposed Project Schedule and General Timeline

A. PROJECT MANAGEMENT APPROACH

The Clarion Associates Team is uniquely situated to work with Black Mountain.

Our team understands the work to be performed and has facilitated projects of similar scale and complexity in North Carolina and throughout the nation. We can help Black Mountain effectively prepare and lead public engagement efforts, assess planning conditions, prepare a new comprehensive plan, and update the future land use map. We understand that the Town seeks to achieve a clear vision, guiding principles, and goals to enhance quality of life, support economic diversification and development, manage growth, protect natural assets and resources, and create and maintain a strong sense of place.

We have an adaptable approach to project management that we tailor to the needs of our clients. Upon detailed discussions with project managers in the Town of Black Mountain, we will develop a project management plan and establish communication channels and protocols that lay out expectations for the project. We establish detailed, yet adjustable, schedules that are revisited and refined in coordination with the client throughout the project. Regularly-scheduled project management calls ensure accountability for tasks and help anticipate upcoming events and deadlines.

We feel we are well poised to partner with the Town for the following reasons:

We Know North Carolina. Clarion and Chipley have worked on planning and UDO projects in communities of different sizes across the state, including Davidson, Asheville, Greenville, Kannapolis, Graham, Elon, and Wake County. The Clarion Chapel Hill office has led development of seven award winning plans for clients located within the Carolinas.

Our Comprehensive Planning Experience is Unmatched. Collectively, Clarion has developed more than 100 plans across the United States and more than 200 ordinances to implement community plans through zoning, design standards, and other provisions.

Our Team is Well Positioned to Partner with Black Mountain.

We Focus on Plan Implementation. We never lose sight of the fact that plans and land use regulations are intended to implement the community's preferred vision for the future. Black Mountain has a number of adopted plans. There are now significant opportunities to update the community vision, enhance plan implementation and tee up code changes. We have considerable experience doing just that, and developing bold yet implementable plans.

We Pursue Genuine and Effective Public Participation. Every community is different when it comes to how to best engage the public. When considering a community's future, all citizens should have their say. Inclusive participation strengthens plans and regulations and helps empower communities to implement their vision. The challenge is often deciding how to get a truly representative cross-section of the community and then what to do with the ideas. We have a successful history of helping communities attract participation from citizens and stakeholders and ensuring that involvement is a real and inspiring choice to be excited about.

We are Zoning Experts. Analyzing land use issues and codes is Clarion's other core practice area. Clarion has conducted dozens of development code updates across the nation, incorporating concise language, clear procedures, user-friendly organization, enforceable standards, and flexibility. We know how to plan-code projects and customize zoning tools to reflect local character and assets, such as new mixed-use districts that help achieve high-quality infill and community enhancing form and design.

We Nurture Enduring Places. Great urban character sets a city apart. It evokes a sense of place and attracts business and economic development. It draws people to call a place "home." Through engagement, we help foster pride in the best of communities' physical character. Then we create character-enhancing plans and regulations rooted in quality development and environmental sustainability.

CLARION

Clarion Associates, LLC is a nationally recognized, land planning and zoning consulting firm with offices in Chapel Hill and Denver. Since our founding in 1992, our firm has had a unique combination of talent that covers the fields of land use planning, design, code preparation, and land use law.

In association with our affiliate offices in Philadelphia and Cincinnati, we offer a complete package of planning, land use and scenario analysis, land use law, growth management, real estate economics, and community development services. This combination allows us to develop creative solutions to difficult land use challenges.

For 25 years, Clarion Associates has committed to providing quality services to our clients. Our size and experience allow us to both provide quality planning and zoning expertise to a wide range of communities, and to dive deeply in our work to focus on the interesting opportunities and challenges of each project. Clarion is a partner-owned firm that employs 18 practicing professionals.

We have represented public sector clients on a variety of land use planning and zoning matters. Our planners have written plans and drafted ordinances, regulations, and design standards throughout the United States, including nearly 200 zoning and development ordinances and more than 100 community plans.

Clarion will serve as the primary team leader, and will provide project management services, planning analysis, public engagement, policy development, implementation strategies, and meeting facilitation. Our Chapel Hill office will lead the planning effort.

CLARION FACTS AND FIGURES



STAFF WORKING TO
MEET THE NEEDS
OF OUR CLIENT
COMMUNITIES



YEARS OF
EFFECTIVE LAND
USE SOLUTIONS



SUCCESSFUL
COMPREHENSIVE
PLANS



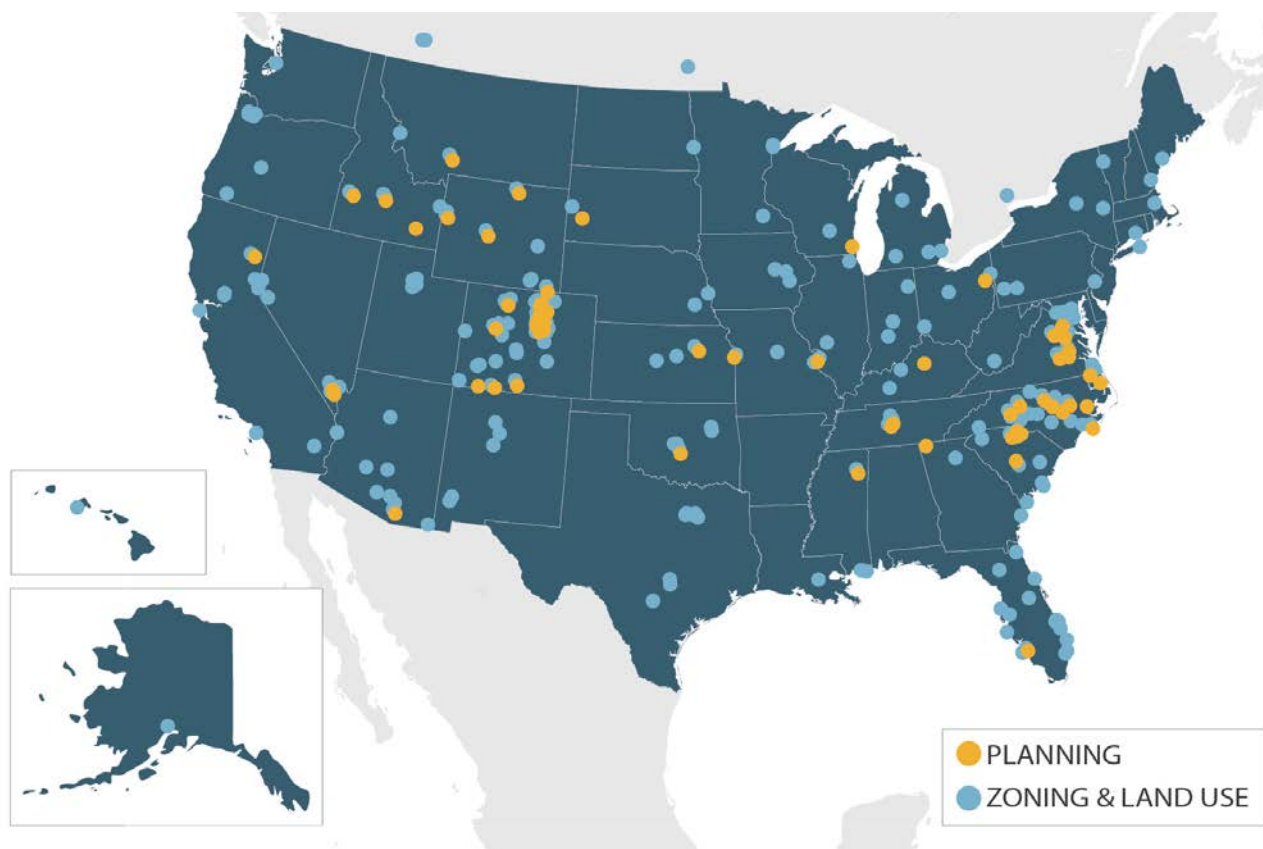
DIVERSE
COMMUNITIES

DEMONSTRATING PLANNING EXCELLENCE. Clarion is most unique among our competitors in that planning is our primary service area and we constantly renew our skills and knowledge of best practices in the public sector planning arena. We focus almost entirely on planning, growth management, plan implementation, and sustainability.

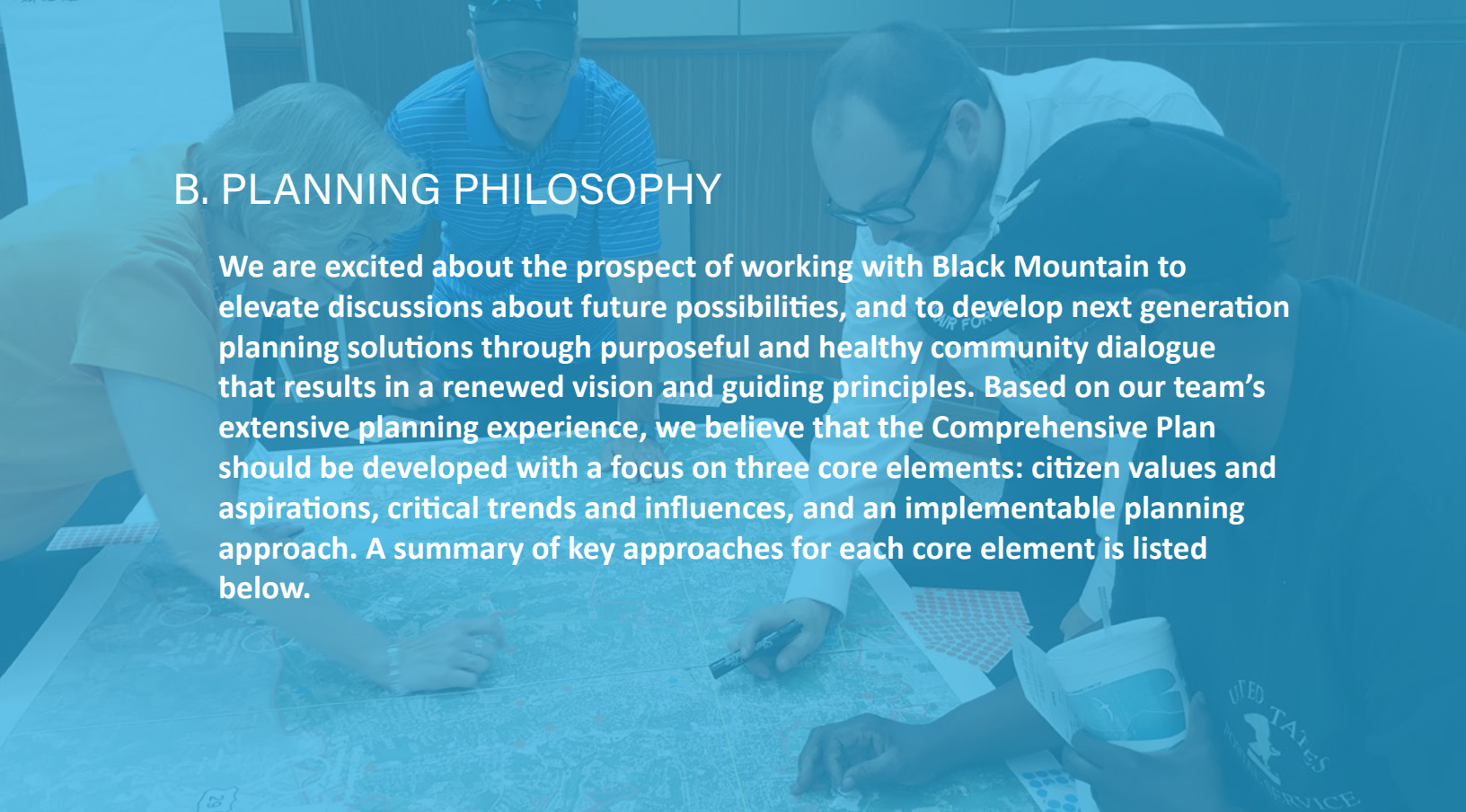
Clarion's planning division was established in 2000. Since that time, Clarion has successfully completed numerous comprehensive plans and other related planning projects as the lead firm. The vast majority of these projects have involved the coordination of multi-disciplinary teams, similar to our team for Black Mountain.

Clarion takes a "hands on" approach with all of our projects. Our ability to do this is supported by our emphasis on maintaining a relatively small group of skilled and efficient planners. We establish strong working relationships with our clients that extend from the first set of meetings through adoption. We have a proven track record of working with staff in other communities and organizations on collaborative planning projects of this nature. In these instances, our primary role as consultants is to provide the needed resources and expertise to support staff as we work together to develop cutting-edge outreach methods, identify and analyze issues, introduce new ideas and approaches into the planning process, and assist decision-makers as they deliberate. We recognize that Town of Black Mountain staff and leadership will be the ones who ultimately carry out the plan, and will work closely with you to ensure that you and the community develop and maintain ownership over the final products.

CLARION'S PROJECT EXPERIENCE



CLARION



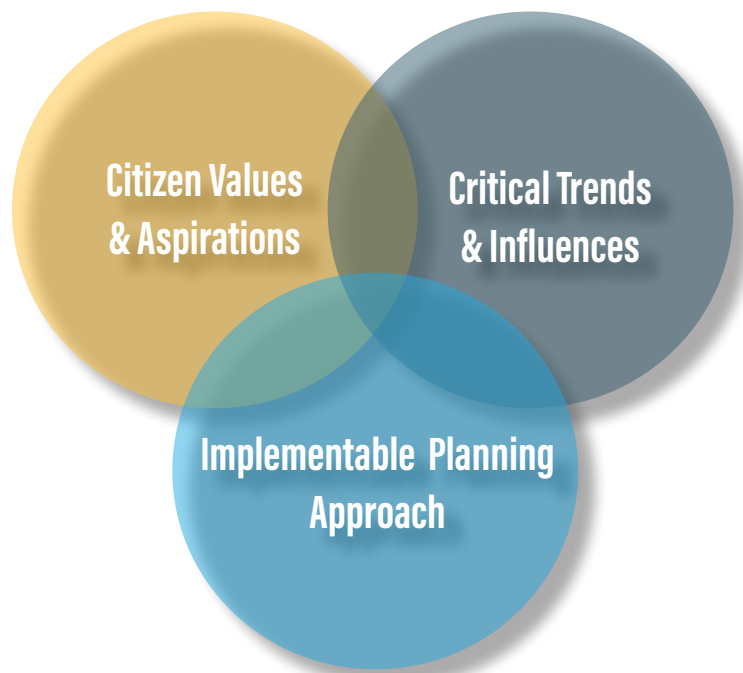
B. PLANNING PHILOSOPHY

We are excited about the prospect of working with Black Mountain to elevate discussions about future possibilities, and to develop next generation planning solutions through purposeful and healthy community dialogue that results in a renewed vision and guiding principles. Based on our team's extensive planning experience, we believe that the Comprehensive Plan should be developed with a focus on three core elements: citizen values and aspirations, critical trends and influences, and an implementable planning approach. A summary of key approaches for each core element is listed below.

CITIZEN VALUES AND ASPIRATIONS

- Develop a project brand that is memorable, positive, and sparks creative thinking.
- Generate discussions using common language planning topics that all can understand and relate to, and that can generate a sense of ownership and investment in the planning process.
- Be innovative and inclusive about public engagement, leveraging social media, exciting activities, and web-based platforms to achieve broad and representative participation and target hard to reach groups. Our philosophy is that every member of the community should have the option to participate.
- Realize that Facebook does not replace face-to-face. Find where the citizens and visitors are going to be, and create an opportunity to educate and engage. Use public workshops, community events, and meeting-in-a-box materials as fun and interactive opportunities to ask critical questions and engage in community dialogue about the possibilities for the future.
- Frequently check in with community leaders, provide ample feedback opportunities, and discuss any challenging topics early on in the process.
- Organize and report on public input themes and craft a planning policy based upon these themes.

CORE ELEMENTS OF OUR PLANNING PHILOSOPHY



CRITICAL TRENDS AND INFLUENCES

- Determine the key issues and themes focusing on community character, growth management, economic development, transportation, and equity, analyze the influences behind these issues, and tell the compelling story.
- Generate key messaging for the critical trends and influences that will shape the community in future years.
- Develop a “snapshot” approach to technical findings that can serve as the common data source for the project and that is easily understandable and relevant to residents and stakeholders.

IMPLEMENTABLE PLANNING APPROACH

- Identify critical policy choices for key planning themes and focus on the implementation options available.
- Create a future land use framework focused on character and growth management that can tie direction to a new Land Use Code and inform future updates to the ordinance.
- Build a policy framework that can inform future public investment and action priorities.
- Coordinate policy direction and intended implementation actions to ensure that all policies are realistic and feasible to implement.

C. TECHNOLOGY AND RESOURCES

We offer a full array of services, resources, and technology for comprehensive plans, area plans, plan implementation, and code projects. Our office regularly uses Adobe products, ArcGIS, Microsoft 365 programs, Sketchup, web resources, online polling services, CommunityViz modeling software, and other technology to manage projects, create inspiring and user-friendly documents and visualizations, and develop products for public engagement events. These resources are available for this project and we are happy to discuss any additional needs as necessary to ensure the success of the project.



MOVE KANNAPOLIS FORWARD
2030 COMPREHENSIVE PLAN

Comparison of Traditional and Conventional Neighborhoods

The design of neighborhood blocks has a strong influence on the character of the entire neighborhood. Subtle design elements can have dramatic impacts on the way people interact with and experience their neighborhoods. Neighborhood design also affects the way residents get around, including how they go to work and how they meet their daily needs. The illustration on this page presents some of the key design elements of traditional neighborhood developments (TNDs). Elements of more automobile-oriented conventional developments are illustrated on the following page.



1. Rear Alley

The rear alley facilitates rear parking access, manages accessory dwellings units, and hides trash and recycling bins and other utilities behind residential buildings.



2. Front Porches

Historic North Carolina homes often include front porches. Families can gather on the porch and interact with the neighborhood. Front porches enhance safety by providing "eyes on the street" and foster relationships among neighbors.



3. Accessory Dwelling Units (ADU)

ADUs are often, but not always, accessed via a rear alley. They offer homeowners an additional space that can be used to house family members needing care, renters that can provide homeowners with an additional revenue stream, or short-term rental opportunities.



4. Pedestrian-Friendly Street

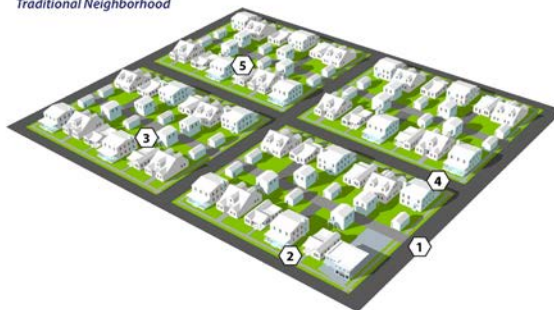
Great neighborhood streets include reduced pavement with on-street parallel parking, ample room between the curb and the sidewalk for lights, utilities, and street trees, sidewalks on both sides, and homes with short setbacks from the property line.



5. Housing Variety

Even within primarily single-family neighborhoods there are opportunities to provide diverse options with a variety of lot widths, multiple housing sizes, including a mix of duplexes and single-family homes.

Traditional Neighborhood



D. PUBLIC PARTICIPATION APPROACH

Public participation is a core part of our planning philosophy. We pursue genuine, inclusive, and effective public participation because it strengthens plans and regulations and helps empower communities to implement their vision. We have a successful history of helping communities attract participation from a diversity of citizens and stakeholders and ensuring that involvement is a real and inspiring choice that creates a sense of ownership.

Our approach, which is described in greater detail in Part 5, involves multiple engagement methods, reaches all key community stakeholders, fosters community-generated ideas, and directly connects public input with plan goals and policies so that participants know their voices are heard.





E. PROPOSED PROJECT SCHEDULE AND TIMELINE

We provide here a schedule that aligns with our project approach, although recognizing that it is not exactly consistent with the timeline proposed in the RFQ. We wish to discuss this project timeline with staff in order to ensure the project is completed satisfactorily, while meeting necessary deadlines. We anticipate project management meetings and phone calls every two weeks with the Town's project managers either in-person or via web-meeting to ensure coordination throughout the project.

	2019		2020								
	Nov	Dec	Jan	Feb	March	April	May	June	July	Aug	Sept
I. Research & Analysis											
II. Plan Vision & Goals											
III. Draft Plan											
IV. Final Comprehensive Plan & Land Use Map											
Project Management Calls	★	★	★	★	★	★	★				
Community Outreach Engagement		I	IE	PW, IE		POH ¹	AH, AH				
	Nov	Dec	Jan	Feb	March	April	May	June	July	Aug	Sept

I Interviews
IE Public Intercept Events
PW Public Workshop

POH Public Open House¹
AH Adoption Hearing
★ Project Management Calls

¹ Potential scope add-on

II. Team Resumes

NATE BAKER, AICP, CNU-A

Associate

Nate Baker brings to Clarion skills in inclusive planning, strategic analytics, and code writing. He began his career as a planner in El Paso, Texas, where he managed development applications and worked toward implementing Plan El Paso. Since joining Clarion, he has worked on a variety of planning projects, including comprehensive plans, area plans, zoning assessments, and unified development ordinances. Nate is a recent Fulbright Research Fellow, and studied international models for regional planning in Brazil. He is fluent in Spanish and Portuguese and has helped communities provide outreach to Latinx populations. Through his work Nate seeks to help communities achieve vibrant, equitable, and sustainable growth.

Project Skills

- Public engagement strategies
- Comprehensive planning and implementation
- Housing policy
- Zoning code assessments and drafting
- Small area planning
- Population, housing, and economic analysis
- Mapping, graphics, and visualization
- Print and digital publication

Representative Major Projects

Plans

- Cary, NC
- Columbia, SC
- Davidson, NC
- El Paso, TX
- Graham, NC
- Greenville, NC
- Kannapolis, NC
- Lady's Island, SC
- Richland County, SC
- Wake County, NC

Codes and Assessments

- Cedar Hill, TX
- El Paso, TX
- Kannapolis, NC
- Norfolk, VA
- Prince George's County, MD
- State College, PA
- Tuscaloosa, AL



Education

Master of City and Regional Planning
University of North Carolina, Chapel Hill, NC

Fulbright Research Fellow
Center of Regional Planning and Development
The Federal University of Minas Gerais
Belo Horizonte, Brazil

Bachelor of Science
Urban and Regional Studies
Cornell University, Ithaca, NY

Professional History

Clarion Associates, LLC
Associate 2014- Present

City of El Paso, TX
Planner, 2012-2013

Professional Associations

The American Institute of Certified Planners

American Planning Association

The Congress for New Urbanism

Publications & Presentations

Planning with Zoning in Mind, APA-NC Conference 2019

Five Small Zoning Changes That Make a Big Difference, APA-NC Conference 2019

Metrics & Inclusive Planning, APA National Conference, San Francisco, CA 2019

Getting Started with Inclusive Planning, Planetizen 2018

A Toolbox for Local Governments to Address Inequality, APA-NC Blog 2018

Strategies for Updating the Future Land Use Map, APA-NC Conference 2018

Connecting the Dots in North Carolina's Metros, Carolina Planning Journal 2018

Planning for Implementation, APA National Conference, New Orleans, LA 2018

The Evolution of Inclusivity in Planning, APA National Conference, New Orleans, LA 2018

Planning for a Sustainable Metropolitan Region in Brazil and North America: Challenges & Strategies
International Society for City and Regional Planners, Durban, South Africa 2016

LEIGH ANNE KING, AICP, LEED AP

Director

Leigh Anne King is a Clarion Director who leads the east coast planning practice. She has 18 years of experience working with local governments to lead planning initiatives including sustainable community land use plans, comprehensive plans, affordable housing studies, growth management strategies, and open space planning initiatives. She was the lead author of seven award winning plans in the Carolinas. Leigh Anne speaks regularly at national and state-level conferences on the topics of comprehensive and strategic planning, affordable workforce housing, and other planning topics. She serves as a co-chair for the APA-NC's Affordable Housing Task Force. Before joining Clarion, Leigh Anne worked for a national land conservation nonprofit.



Master of City and
Regional Planning
University of North Carolina, Chapel Hill

Bachelor of Arts
University of Tennessee, Knoxville

Related Project Experience

Comprehensive and Sustainable Community Plans

Camden County, NC	James City County, VA
Cary, NC	Kannapolis, NC
Charlotte, NC	Manassas, VA
Clemmons, NC	Mooresville, NC
Columbia, SC	Richland County, SC
Davidson, NC	Rock Hill, SC
Eastern Orangeburg County, SC	Tupelo, MS
Fredericksburg, VA	Union County, NC
Greenville, NC	Wake County, NC
Iredell County, NC	Wilson, NC

Affordable Housing Studies, Assessments, and Plans

Columbia, SC	Palm Beach County, FL
Islamorada, FL	Teton County, WY
Lee County, FL	Tuscaloosa, AL
Marathon, FL	

Growth Management Strategies and Multi-Jurisdictional Plans

Rock Hill, SC	Local Area Regional Transportation Plan for Western Union County, NC
Hillsborough, NC	
Orange County, NC	Davidson County – Nashville, TN Open Space Plan
BRAC Regional Alliance Infrastructure Integration Plan	Mississippi County, AR Smart Growth Toolkit

Neighborhood, Small Area, and Site Master Plans

Chapel Hill, NC	Southern Orange County Government Services Master Plan, NC
Cary, NC	
Emerald Isle, NC	Wake Forest, NC
Lynchburg, VA	Wilson, NC

Zoning Ordinance Updates and Design Standards

Henrico County, VA	Biloxi, MS
Orange County, NC	

Professional History

Clarion Associates, LLC
Senior Associate 2005- Present

Center for Urban and Regional Studies
Research Assistant, 2004-2005

The Conservation Fund
Land Use Programs Coordinator 2000- 2003

American Secure Care
Project Manager 1998 – 2000

Office of State Senator, Nashville, Tennessee
Alumni Legislative Intern, 1998

Professional Associations

American Institute of
Certified Planners
Member

American Planning Association
North Carolina Chapter

Leadership in Energy & Environmental Design
Accredited Professional

Publications

Identifying and Addressing Local Affordable
Housing Challenges in North Carolina,
Carolina Planning Journal, Summer 2019

Eating Our Own: How Planners Can Foster the
Development of Local Food Systems
Carolina Planning Journal, Summer 2013

Workforce Housing and the Courts
Planning and Environmental Law
October 2011

Green Infrastructure Plan Evaluation
Frameworks, Journal of Conservation
Planning, March 2005

CLARION



HOLLY WHITE

Graphics and Marketing Coordinator

Education

University of Colorado, Boulder
Bachelor of Environmental Design,
Urban Design

Art Institute of Colorado
Advanced Architectural Graphics

Professional History

Clarion Associates, LLC
Graphics and Marketing Coordinator,
2019 – Present

United Airlines
Multimedia Designer, 2017 – 2019

The Aquaponic Source
Creative Services, 2016 – 2019

Colorado Center for Community
Development
Landscape Design Intern, 2012 – 2015

Professional Associations and Certifications

Permaculture Design Certificate

Publications

Change, Here, Now, North Atlantic
Publishers 2018, Illustrator

Ms. White is an Associate in Clarion's Denver office. Bringing her expertise in 3D visualization and Graphic Design skillset to the Clarion team, she works to support a wide range of projects. Her passion for designing illustrative logos, clean infographics, and overall project branding help Clarion to deliver clear and beautifully designed graphics. Ms. White has a diverse background in Urban, Landscape, and Web Design. Above all, Ms. White is enthusiastic about helping cities and towns preserve their character while enhancing public spaces and engagement.

Representative Major Projects

- **Unified Sustainable Development Ordinance** | Albany, NY
- **Riverbend Park Landscape Design** | Palisade, Colorado*
- **Mainstreet Historic Preservation Plan** | Paonia, Colorado*
- **Town Park Landscape Design** | Meeker, Colorado*

*Work with previous employers

SEALY CHIPLEY

Public Involvement



Sealy Chipley, Principal of Chipley Consulting, specializes in developing targeted public and stakeholder involvement strategies that enhance engagement in the planning process. Through extensive project experience she has developed a thorough understanding of the challenges and opportunities facing communities today, as well as a broad skill set to help communities take appropriate action. Prior to starting her business, she worked at Land of Sky Regional Council, providing public outreach, plan development, and facilitation services to regional planning efforts and to the French Broad River MPO.

EXPERIENCE

8 Years

EDUCATION

BS in Economics, BS Environmental Management & Policy; University of North Carolina at Asheville

PROFESSIONAL AFFILIATIONS

Current President of WTS Western North Carolina Chapter, Member of APA NC, Technology of Participation (ToP) Certified, Completed IMPLAN Economic Modeling Training

REPRESENTATIVE PROJECT EXPERIENCE

Asheville, NC Comprehensive Plan Update: Chipley led the community engagement for underrepresented groups for the comprehensive plan update.

Charlotte, NC UDO Update: Chipley led the development of a public involvement plan for the City's UDO and Place Types update. Ms. Chipley assisted in the implementation of the plan.

Greenville Downtown Design Guidelines: Chipley supported community engagement and outreach for the City's Design Guidelines. Outreach included public meetings, focus groups, and an online survey.

Southern Blue Ridge Bicycle Plan: Chipley led community engagement strategies for a regional bicycle plan for NCDOT in the far western counties of North Carolina. Chipley completed a bicycle tourism analysis as well.

Chapel Hill's Mobility and Connectivity Study: Chipley supported a combined bicycle, pedestrian, greenway connectivity, and transit study. Ms. Chipley was involved in designing a robust community engagement strategy with multiple prongs including pop-up events, online interactive mapping tools, community meetings, and survey development and implementation.

Parking Study for Downtown Mooresville: Chipley led community engagement efforts to collect input for a parking study in downtown Mooresville.

Black Mountain Bicycle Plan: Chipley led the public involvement efforts to collect input on needed bicycle amenities and complete streets components for NCDOT.

Rutherford College and Valdese Pedestrian Plan: Chipley organized community outreach to garner effective input for a pedestrian plan with a goal to connect the two communities. The final client was NCDOT.

Mountain Mobility Community Transportation Planning Study: Chipley led the community engagement for the project that identified efficiency measures for Mountain Mobility in Buncombe County.

Forest City Pedestrian Plan: Chipley supported public involvement for the pedestrian plan in Forest City.



III. Work and References

CLARION REFERENCES

DAVIDSON, NC | THE DAVIDSON COMPREHENSIVE PLAN

Jason Burdette, *Planning Director*
(704) 940-9621
jburdette@townofdavidson.org

KANNAPOLIS, NC | COMPREHENSIVE PLAN AND UDO REWRITE

Zac Gordon, *Planning Director*
(704) 920-4325
zgordon@kannapolisnc.gov

STATE COLLEGE, PA | ZONE STATE COLLEGE

Ed LeClear, *Director of Planing and
Community Development*
(814) 234-7109
elecclear@statecollegepa.us

GRAHAM, NC | THE GRAHAM 2035 COMPREHENSIVE PLAN

Nathan Page, *Planning Director*
(336) 570-6705
npage@cityofgraham.com

Clarion's Award-Winning Projects

Cary, NC | The Cary Community Plan

Greenville, NC | Horizons 2026 Plan

Columbia & Richland County, SC | Comprehensive Plans

Camden County, NC | Comprehensive Plan

Orangeburg County, SC | Sustainability Study

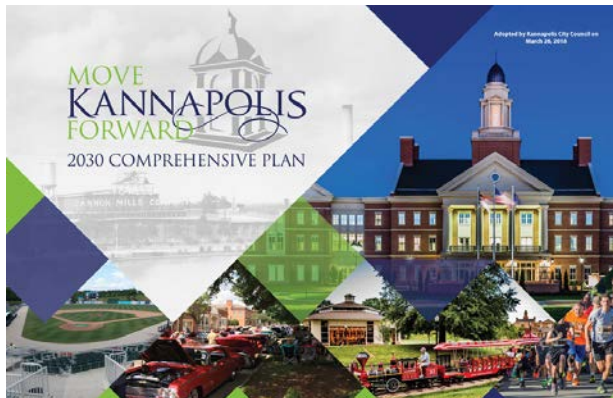
Wilson, NC | Comprehensive Plan

Iredell County, NC | Horizons Plan

CLARION PROJECT EXPERIENCE

Clarion Associates and our teaming partners have completed a wide-variety of projects throughout the state of North Carolina, the Southeast, and the nation, including many award-winning plans. The projects we've selected below demonstrate our team's experience leading the development of complex comprehensive planning efforts that integrate land use and transportation planning.

COMPREHENSIVE PLAN AND UDO REWRITE | KANNAPOLIS, NC

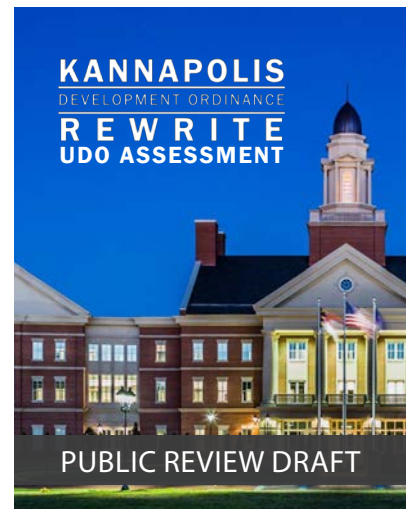


The Move Kannapolis Forward 2030 Comprehensive Plan builds on investments that are transforming the former mill town. The plan harnesses the strength of its historic heritage, growing connections to Charlotte, and burgeoning industries for economic and environmental resilience in a way that is inclusive of all community members.

Outreach was a critical component of the planning process and public engagement took place through public intercept events

at multiple community gatherings, discussions at local businesses, feedback at large public meetings, and online using social media and surveys. The plan established new direction for creating mixed use urban centers, revitalizing corridors, preserving the historic mill village neighborhood, prioritizing infrastructure in distressed areas, growing smart on the edges, and integrating high quality green space. A key phase of the planning process included evaluating relationships between the draft Conceptual Growth Framework and Future Land Use and Character maps. These maps correspond with policies for form, design, and use to enhance the character and walkability of existing and future development. The plan was unanimously adopted in March 2018.

Clarion is now under contract with the City to prepare an update to its Unified Development Ordinance and has completed the UDO Assessment. The Assessment builds on the Future Land Use and Character map and direction set in the character areas to establish new regulations for green building, infill standards, contextual compatibility, parks and open space, connectivity, design, and multimodal streets. It also establishes the framework for a more streamlined development process and user-friendly document.



SEE THE MOVE KANNAPOLIS FORWARD PLAN AT <http://www.kannapolisnc.gov/MoveForward>

THE DAVIDSON COMPREHENSIVE PLAN | DAVIDSON, NC



The Town of Davidson is known nationally for its progressive planning, urban placemaking, and unique small-town experience. Home to the historic Davidson College and located in northern Mecklenburg County, Davidson has worked carefully over the last two decades to manage growth and maintain community character.

Building on several recent planning efforts, including the Davidson Rural Area Plan, the Davidson Mobility Plan, and the Town's Strategic Plan, Town leaders initiated a process to create a renewed community vision. The Town hired Clarion Associates in the fall of 2018 to lead the process to update the Comprehensive Plan – *What's Next Davidson*. The project scope of work included development and facilitation of the public engagement process, analysis of conditions and trends, and using the public inputs to generate a draft Comprehensive Plan.

Recent community discussions raised ideas about how past plans had been implemented. To address these ideas and honor prior planning efforts, this process began with a decentralized public engagement strategy focused on high-level planning principles. The second phase of the engagement process included a *Conversation on What's Next* community forum that offered small group opportunities to discuss the three critical questions for the Town's future, and the *Shaping What's Next* multi-day workshop that resulted in a growth framework and visual preferences for community placemaking.

With that guidance, the Clarion team worked with the Plan Advisory Group over a series of meetings to share the draft plan and refine for public review and comment. Several important new tools were included in this draft, including a new Growth Management Tiers Map and related Utility Service and Annexation Criteria, and the Conservation and Growth Framework that identifies character areas to guide development in the Town's planning area and priority areas for public or private conservation efforts.

The draft plan is anticipated to be made available for public review later in the fall of 2019.

SEE THE *WHAT'S NEXT DAVIDSON* SNAPSHOT AND PUBLIC ENGAGEMENT REPORTS AT
<https://whatsnextdavidson.com/resources/>



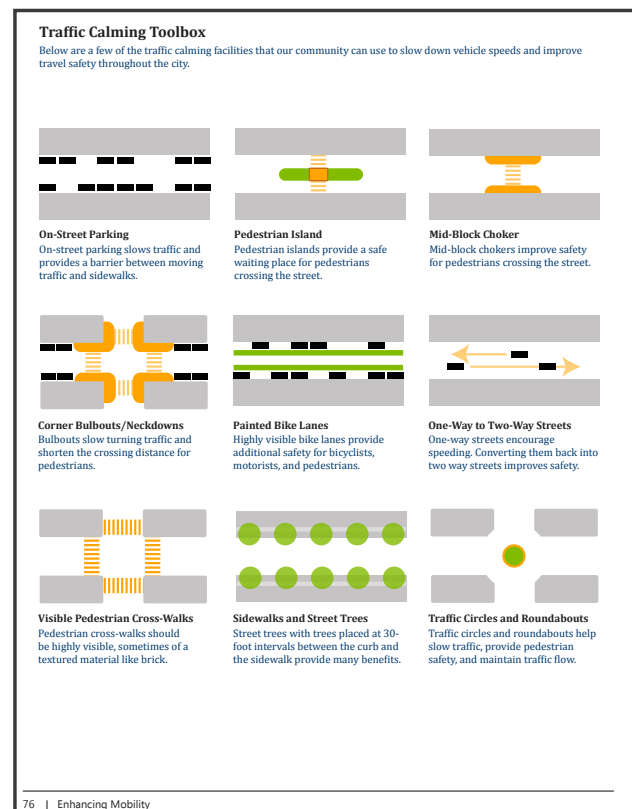
Where will the next 40,000 residents of Greenville live, work, and play? That is the critical question that sparked the Horizons 2026 Plan update. In 2015, the City of Greenville hired the Clarion Associates team to help shape the update to the city's comprehensive plan. Taking a new tailored approach, the Horizons 2026 planning process melded traditional land use planning with best practices for urban design and place making to develop a future growth framework for Greenville.

The thematically based plan was designed to streamline the policy framework to make the plan more user-friendly and to create a strategic implementation approach that allows the plan to guide future city actions and investments, such as stewarding a vibrant Uptown neighborhood through redevelopment and focusing on special areas projected to have an outsized influence on the city's future. This framework is now used to frame the city's annually updated strategic planning process.

Citizens, stakeholders, a business and civic leadership, and the Comprehensive Plan Committee were active partners in the development of the plan. Community members participated in various public engagement opportunities such as the *Workshop for Our Future* kickoff event, an online survey on community interests and values, a leadership roundtable breakfast meeting, the *How Will We Grow?* public workshop series, and nine Comprehensive Plan Committee meetings.

Horizons 2026 also included four special area plans. These area plans set out the planning influences, community aspirations, land use planning guidance, design and capital planning strategies for these key locations in the city. The Southwest Bypass Area Plan was unique in embracing a potential future planning effort for the corridor including all regional partners, and set out aspirations for a multijurisdictional effort that has since continued at the county level.

Horizons 2026 and the special area plans were unanimously adopted without any public dissenting opinions by the City Council in the fall of 2016. The plan won a special recognition award by the North Carolina Chapter of the American Planning Association at the 2017 state conference.



SEE THE AWARD WINNING HORIZONS 2026 COMMUNITY PLAN AT

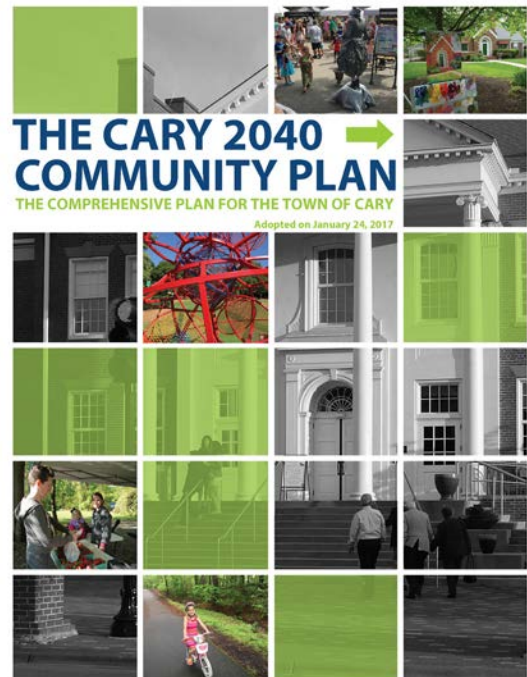
<http://www.greenvillenc.gov/government/community-development/planning-division>

CARY COMMUNITY PLAN | CARY, NC

The Town of Cary has for decades been one of the premier communities in North Carolina and the Southeast, and is increasingly being recognized as one of the best places to live in the country. To address changing planning conditions, market preferences, and regional transportation initiatives, the Cary Town Council commissioned a complete review of all plans and the creation of a new comprehensive Community Plan. Clarion was hired to lead a multidisciplinary team to prepare the Phase 1 Charter document (“the plan for the plan”), and to lead the multi-year Phase 2 effort to develop the Cary Community Plan. The Cary 2040 Community Plan is shaped by the most robust public engagement process in the Town’s history that integrated technical analysis and community values.

This process included development of a character-based approach to land use planning, providing greater flexibility for actual land uses and more guidance regarding the design and place making components to help guide new development and redevelopment. In addition to the town-wide land use and character plan, the plan included five special area plans, including the prominent Eastern Cary Gateway - the location of one of the last significant undeveloped areas with Interstate 40 interchange access in the Town.

The planning process included an in-depth integration of the updates to the Town’s Comprehensive Transportation Plan and the Town’s Land Use Plan. This included both high level testing of the Town’s long range transportation plan to support the town-wide vision for future growth, and small area planning to create coordinated transportation and land use solutions that support community character objectives. The plan was unanimously adopted by the Cary Town Council January 2017. The plan won a special recognition award by the North Carolina Chapter of the American Planning Association at the 2017 state conference.

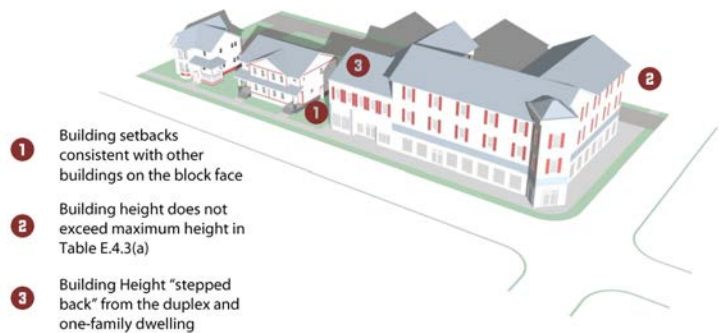


SEE THE FINAL ADOPTED CARY COMMUNITY PLAN AT

<https://www.townofcary.org/projects-initiatives/cary-community-plan>

ZONE STATE COLLEGE | STATE COLLEGE, PA

Clarion is working with State College, Pennsylvania to update their six-decade-old zoning ordinance. The project began in 2017 with an analysis of the current zoning ordinance as well as an annotated outline that describes how the new zoning and land development regulations could be restructured. Drafts of both new ordinances have been produced. The drafts streamline administration by improving and simplifying development review procedures. The districts, uses, procedures, and overall organization redesigned to be more user-friendly and create opportunities for mixed-use development. Districts have been deleted, added, and consolidated to simplify their organization and encourage walkable infill development. The development and design standards are being overhauled to improve urban scale and design of infill buildings.



SEE THE PROJECT WEBSITE TO LEARN MORE:

<http://www.zonestatecollege.org/>

Chapter XIX Zoning
Part C Zone Districts
Section C.4 Commercial and Mixed Use Districts

C.4.8 NC: Neighborhood Commercial District¹

(a) Purpose
The purpose of the NC: Neighborhood Commercial District is to provide lands that accommodate a range of small-scale commercial development that provides goods and services to a neighborhood. District regulations are intended to encourage uses, development intensities, and development form that is consistent with a pedestrian-friendly and neighborhood scale. Development allowed in the district includes limited retail uses, personal services, eating or drinking establishments and related uses. Mixed uses are allowed with residential above the ground floor at a scale and form that is consistent with the district character.

(b) Use Standards
Allowed uses and use-specific standards for principal, accessory, and temporary uses are established in Part D: Use Regulations.

(c) Density and Dimensional Standards

Standard	All Uses [2] [3] [4] [5]
Lot Area, min. (sf)	3,500
Lot Width, min. (ft.)	25
Front Yard Depth (ft.)	(1)
Side Yard Depth	5
Rear Yard Depth	15
Open Space, min. (% of lot area)	n/a
Lot Coverage, max. (% of lot area)	50
Height, max. (stories)	3

Notes: sf = square feet; ft. = feet; min. = minimum; max. = maximum; de = dwelling unit

(1) The minimum and maximum front yard setback shall be within 90 percent and 110 percent of the average front yard setback for buildings on the same block face. If less than 50 percent of the lots on the block face have buildings, the minimum front yard setback shall be 8 feet and the maximum setback shall be 20 feet.

(2) Residential development shall only be located above the ground floor

(3) Footprint of individual building shall not exceed 3,000 sf.

(4) Off-street parking shall be located to the side or rear of the building.

(5) All buildings shall have a roof with a minimum pitch of 3:1.

State College, Pennsylvania
Zoning Ordinance
C-42

Chapter XIX Zoning
Part C Zone Districts
Section C.4 Commercial and Mixed Use Districts

(d) Reference to Other Standards

Sec. E.1	Form	Sec. E.5	Inclusionary Housing
Sec. E.2	Off-Street Parking, Bicycle Parking, and Loading	Sec. E.6	Green Building
Sec. E.3	Landscaping and Buffer	Sec. E.7	Green Building Incentives
Sec. E.4	Neighborhood Compatibility	Chapter ##	Subdivision and Land Development

¹The NC: Neighborhood Commercial District is a new zone district. It provides lands to accommodate neighborhood-serving, low intensity commercial development at a neighborhood-serving scale in form that is compatible with surrounding residential neighborhoods.

State College, Pennsylvania
Staff Review Draft
Zoning Ordinance
C-43



Chipley Consulting is a woman-owned firm based in Asheville. We offer a range of economics, planning and communications services. We assist public and private decision-makers with local and regional economic analyses, including market assessments and economic impact assessments. Our value lies in delivering concise and discerning information to help clients make effective and efficient decisions.

Our approach to communications is informed by our staff's experience managing public involvement efforts on a variety of projects under different contexts. When engaging hard-to-reach populations we utilize neighborhood leaders, lessons from previous local outreach efforts, and demographic research that reflect cultural sensitivities and preferred forms of expression within the community. During the project, our team will evaluate the success of initial engagement efforts and refine our mix of outreach tools to enhance future participation.

Chipley Consulting is a W/DBE certified firm in the states of North Carolina and South Carolina.

CHIPLEY CONSULTING REFERENCES

TOWN OF ELON, NC | ELON COMPREHENSIVE STRATEGIC PLAN UPDATE

Richard White, *Former Town Manager for Elon, NC (Currently Assistant City Manager for City of Asheville)*

(828) 259-5604

rwhite@ashevillenc.gov

CITY OF ASHEVILLE, NC | COMPREHENSIVE PLAN UPDATE

Stacy Merten, *Historic Resources Commission Planning and Development*

(828) 259-5836

smerten@ashevillenc.gov

SILOS AND SMOKESTACKS NATIONAL HERITAGE AREA | ECONOMIC IMPACT ASSESSMENT

Cara Miller, *Executive Director SSNHA*

(319) 234-4567

cmiller@silosandsmokestacks.org

CHIPLEY CONSULTING PROJECT EXPERIENCE

ENVISION ELON | ELON, NC



Chipley Consulting led the market assessment and economic development components for a comprehensive land use plan for the Town of Elon. Chipley assessed demographic and workforce commuting patterns along with residential, housing, and local industry trends. A feasibility assessment was conducted to identify new residential and workforce development opportunities. Chipley developed strategies needed to satisfy projected population growth and upcoming commercial prospects. In addition, Chipley led a variety of stakeholder interviews and was an important part of a multi-day charrette process.



CITY OF ASHEVILLE COMPREHENSIVE PLAN UPDATE | ASHEVILLE, NC

Chipley Consulting led the underrepresented community engagement process for the City of Asheville's Comprehensive Plan Update. One of the main goals was to actively engage residents who had been less involved in past planning efforts. To achieve this objective, many outreach techniques were utilized. Chipley staff attended neighborhood meetings throughout the City to gain input and share upcoming event information about the plan. Staff attended a variety of community events, elementary school classes, and churches. Individual interviews included the African American Heritage Council, AARP, Just Economics, the Latino Steering Committee, and the Neighborhood Advisory Committee. In addition, Chipley worked with a class at Lenoir Rhyne University. Students in a graduate certificate program developed their own community outreach campaign and reported their findings back to Chipley and the rest of the team. The Asheville Vision Group, made up of local authors, completed the same outreach campaign with their network. The result was an extremely diverse amount of input being incorporated into the Plan update.



BLACK MOUNTAIN BICYCLE PLAN | BLACK MOUNTAIN, NC

Chipley led the community engagement efforts for the bicycle plan in the Town of Black Mountain. The approach included working with small groups and community leaders; attending local events such as Cycle to Farm, Walk/Bike to School Day, Community Bike Ride, and Park Rhythms outdoor town concerts; and developing and implementing both resident and visitor surveys. Chipley used an online, interactive map as a complement to the survey that allows residents to provide place-specific input regarding necessary bicycling improvements. The firm also supported the development of final plan recommendations and creating all the maps for the project.



LAND USE PLAN UPDATE | WAYNESVILLE, NC

Chiple Consulting supported efforts to complete a Comprehensive Land Use Plan update for the Town of Waynesville, NC. Chiple summarized analysis for existing economic and demographic conditions, including employment and housing trends. Chiple supported the development of the Economics chapter of the plan and provided recommended implementation strategies based on the Town's current conditions and desired future.

Chiple also participated in steering committee meetings, public meetings, and led interviews of key professionals in Waynesville.



IV. Team Capacity

PROJECT TEAM ROLES

Our team brings together professional planners, designers, and analysts to provide a wide-ranging set of skills to complete the project. Our experience includes land use planning, sustainable development best practices, transportation planning and engineering, alternatives modeling, project management, public engagement strategies, market analysis, and graphics and visualization tools.

	CLARION		chipley	
	Chapel Hill, NC		Denver, CO	Asheville, NC
				
	Nate Baker	Leigh Anne King	Holly White	Sealy Chipley
Project Management	✓	✓		✓
Public Engagement	✓	✓		✓
Planning Influences Analysis	✓		✓	✓
Comprehensive Planning	✓	✓		✓
Graphic Design & Mapping	✓		✓	



Nate Baker, AICP, CNU-A
Planner & Project Manager

CLARION

Leigh Anne King, AICP, LEED AP
Director and Project Adviser

Holly White
Website, Graphics, and Visualization

chipley

Sealy Chipley
Principal & Planner

PROJECT TEAM



American Institute of
Certified Planners

Congress for New
Urbanism

Master of City and Regional
Planning, University of
North Carolina, Chapel Hill

Fulbright Research Fellow
Belo Horizonte, Brazil

Bachelor of Science
Urban and Regional Studies
Cornell University, Ithaca,
NY

NATE BAKER, AICP, CNU-A | PLANNER & PROJECT MANAGER

Role: Planner & Project Manager

Commitment to Project: 25% of professional time

Nate Baker has been a planner in Clarion Associates' Chapel Hill office since 2015 and will be the project manager for the Comprehensive Plan. He has nearly a decade of experience on comprehensive plans and development regulations. His work focuses on robust and inclusive public engagement, character-focused future land use frameworks, and growth management strategies. Mr. Baker has recently worked on several projects to develop comprehensive plans, land use and character frameworks, UDO rewrites, and growth analyses, including the Kannapolis, NC, Comprehensive Plan and UDO rewrite, the Davidson, NC, Comprehensive Plan, the Cary, NC, Community Plan, the Graham, NC, Comprehensive Plan, the State College, PA Zoning Ordinance rewrite, and the Tuscaloosa, AL UDO assessment. Mr. Baker has a unique understanding of the translation between land use plans and zoning ordinances.

Mr. Baker previously worked as a planner in El Paso, Texas, where he managed large subdivision projects, contributed to long range land use and transportation plans, and worked on implementation of the newly adopted comprehensive plan. Through his work, he seeks to help communities achieve safe, affordable, sustainable, resilient, and vibrant growth. Mr. Baker is fluent in Spanish and Portuguese and has helped communities provide outreach to Hispanic and Latino populations.



American Institute of
Certified Planners

LEED AP

Master of City and Regional
Planning, University of
North Carolina, Chapel Hill

Bachelor of Arts
University of Tennessee,
Knoxville

LEIGH ANNE KING, AICP, LEED AP | DIRECTOR

Role: Director and Project Advisor

Commitment to Project: 5% of professional time

Leigh Anne King is the Director of the Chapel Hill planning practice and will be the project adviser for the Comprehensive Plan. She started with the firm in 2005. She has nearly 20 years of experience on comprehensive plans, land use plans, growth management plans, neighborhood plans, affordable housing implementation programs and ordinances, design strategies, zoning ordinance updates, and impact fee support studies. Most recently she has worked on development of several plans in North Carolina, including the Wake County Comprehensive Plan, the Charlotte Comprehensive Plan, the Mooresville Comprehensive Plan, the Davidson Comprehensive Plan, the Cary Community Plan, and the Kannapolis Comprehensive Plan. Her primary focus is on project management, developing public engagement strategies, and development of policy frameworks and implementation strategies. She was the primary author of seven award winning plans in the Carolinas. She frequently speaks at national and state conferences on the topics of comprehensive planning, affordable housing, local food systems, and sustainability.

HOLLY WHITE | MARKETING & GRAPHICS COORDINATOR

Role: Website, Graphics, and Visualization Designer

Commitment to Project: 10% of professional time

Holly White is the Graphics and Marketing Associate in Clarion's Denver office. Holly came to Clarion Associates in 2019 with a diverse background in urban, landscape, and web design practices. Ms. White's duties rely on her expertise in 3D visualization and Graphic Design skill sets while assisting team members with design of work products and built environment renderings. With proficiency in Trimble Sketchup, Adobe Illustrator, Photoshop, InDesign, and MS Office Suite; Holly's passion for designing illustrative logos, clean info graphics, and overall project branding help Clarion to deliver clear and beautifully designed graphics that support a wide range of projects. Above all, Ms. White is enthusiastic about helping cities and towns preserve their character while enhancing public spaces and engagement.



Bachelor of Environmental
Design University of
Colorado Boulder

Architectural Graphics,
Art Institute of Colorado

SEALY CHIPLEY | PRINCIPAL

Role: Planner & Project Management

Commitment to Project: 25% of professional time

Sealy Chipley, Principal of Chipley Consulting provides a range of economics, planning and communications services. Ms. Chipley performs local and regional economic analyses, including market assessments and economic impact assessments. Ms. Chipley is adept at communicating the findings in a clear, concise manner to provide public and private decision-makers with information they need to make effective decisions. She also specializes in developing targeted stakeholder involvement strategies that enhance community engagement. Through extensive project experience she has developed a thorough understanding of the challenges and opportunities facing communities today, and a broad skill set to help communities take appropriate action. Prior to starting her business, she worked at Land of Sky Regional Council. Ms. Chipley also worked RTI International in the Economics Department.



Bachelor of Science,
Economics, University of
North Carolina - Asheville

Bachelor of Science,
Environmental
Management & Policy,
University of North
Carolina - Asheville



V. Project Elements

PROJECT UNDERSTANDING

People are drawn to Black Mountain because of its strong sense of place, grounded in the natural beauty of the Blue Ridge Mountains, small-town character, historic rural heritage, and proximity to Asheville and the Appalachian Mountains. The Town has worked hard to maintain its unique charm as more people choose Black Mountain as their new home and vacation spot. With the continued appeal of Western North Carolina's natural beauty, climate, culture, and competitive cost of living, Black Mountain's assets as a community will continue to attract growth.

The continued attractiveness of Black Mountain as a place to live and visit is a boon but brings the difficult challenge of managing that growth. To best address these challenges, the Town is preparing an update to its Comprehensive Plan and Future Land Use Map. This plan update is in response to growth, population change, and regional infrastructure investments like the new interchange at I-40 and Blue Ridge Road, as well as recent planning for active transportation, like a greenway along the Swannanoa River.

Clarion and Chipley Consulting have extensive experience working on public engagement, economic development analyses, comprehensive plans, and zoning ordinance rewrites throughout North Carolina. We are also very familiar with the particular challenges facing local governments throughout the state and can provide the guidance and ideas to address them. We understand that the following project objectives are important to Black Mountain.

MANAGE GROWTH FOR THE BETTERMENT OF THE TOWN

As Black Mountain faces growing development pressures, the Town will need to carefully consider how it will provide new residents and visitors with services like fire and police as well as basic amenities like parks, all while protecting and managing the surrounding natural beauty. The growth pressure will also impact the Town's transportation system, which will need to accommodate increasing demands from the new I-40 interchange and associated infrastructure investments. Our planning efforts will examine the spatial and land-use characteristics of Black Mountain's growth, and help the Town refine its growth management, transportation, and placemaking policies to better align with its renewed community vision.



HELP SUPPORT AND ENHANCE THE TOWN'S UNIQUE CULTURE AND SENSE OF PLACE

Incorporated in 1893 following the construction of a road and railroad through the area, Black Mountain has retained much of a small-town atmosphere with small shops, art galleries, bed and breakfasts, and cultural centers and events in the Town and nearby area. The downtown is surrounded by primarily single-family residential neighborhoods from a variety of eras, with some variety of housing types and designs.

The Town has done substantial work in preserving its history, thanks in part to the Historic Preservation Commission established in 2001. In addition to continuing the tradition of historic preservation in the downtown area, there are many opportunities to enhance design and development of new and infill development in Black Mountain. We want to discuss with Town staff the challenges and opportunities that exist in ensuring existing and future development supports placemaking, walkability, and sustainable growth.

SYNTHESIZE EXISTING POLICY DIRECTION AND SET PRIORITIES

The Plan update will build off existing planning efforts, and create a framework for future plans, including the Parks and Recreation Master Plan, Pedestrian Transportation Plan, Comprehensive Pedestrian Plan, Greenway Master Plan, Blue Ridge Road Small Area Plan, Black Mountain Bike Plan, Stormwater Master Plan, and Upper Swannanoa River Watershed Management Plan. We will review these and other plans, evaluate the implementation status and relevancy of policy direction, and synthesize relevant policies into the Comprehensive Plan Update. The final product can modernize the policies and tools employed by the Town, align the future land use plan and transportation approaches, and address capital infrastructure needs.

We look forward to working with staff and the community to help answer the following three big questions: *Where is the Town? Where does the community want to go? and How can it get there?*

PROPOSED METHODOLOGY AND TASKS

Our recommended approach for the Comprehensive Plan and Future Land Use Map updates is based on experience creating plans for other communities. We offer this as a starting point for discussions with the Town about the best process that will effectively and efficiently use local resources and achieve the goals of the initiative that are set out in the RFQ. This approach organizes work under the four phases identified in the RFQ:

1. Research & Analysis
2. Plan Vision & Goals
3. Draft Plan
4. Final Comprehensive Plan and Land Use Map

PROJECT INNOVATIONS

The Black Mountain Comprehensive Plan and Future Land Use Map likely need updates to reflect emerging community conditions, new planning best practices, new economic development opportunities, and infrastructure plans. However, policy direction in the existing plan, along with policies in other Town plans, is likely still relevant and should be carried forward. With this in mind, we anticipate this project is an opportunity to build on policy in these plans, provide strategic updates that are informed by new information and targeted assessments, and simplify the comprehensive plan document while making it more readable and accessible.

PHASE I: RESEARCH & ANALYSIS

STAFF INVOLVED: NATE BAKER, SEALY CHIPLEY | NOVEMBER 2019 - JANUARY 2020

1.1: DEVELOP PROJECT MANAGEMENT PLAN

The RFQ states that “the consultant, partnership with staff, will establish a comprehensive and concise set of goals and objectives to guide decision-making during the project.” To achieve this, the Clarion team will work with Town staff to finalize the details of the project work plan and schedule, and present the confirmed approaches in the form of a Project Management Plan. This will include a protocol for communications throughout the project and a schedule for regular interval project check-ins.

We recommend holding regular phone calls (every 2 weeks) throughout the project with staff to maintain momentum and project progress. These meetings will be used to share public input findings, technical analysis and trends, organize for upcoming activities and events, and discuss draft plan components. We also recommend that the Planning Board and Board of Alderman are briefed at key milestones in the process to keep them engaged with project progress. The consultant team may assist with preparing for these briefings.

1.2: CREATE PROJECT BRAND AND PUBLIC ENGAGEMENT STRATEGY

To achieve a noticeable presence in the community, we recommend developing a clear project brand at the outset that will capture the public's attention and help market the process. The team will present ways that residents, business owners, neighborhood groups, visitors, and other interested stakeholders can engage in and stay informed about the progress of the initiative.

The Clarion team will collaborate with the Town to develop the project branding and public engagement plan. This effort could build off Black Mountain's established branding and social media platforms and create visibility for the project on the Town's website. We recommend developing a project page on the Town's website. Our team can assist with targeted messaging on these platforms to "push" project information out to the community and link to engagement activities on the project web-page. Social media and eblasts can be used to advertise in-person and workshop events.

Depending upon the availability of resources and coordination with staff, public engagement for this process may include a selection from the following public engagement strategies:

- **DEVELOP A PROJECT BRANDING APPROACH AND TIMELINE.** This could include a mechanism for capturing contact information from interested parties to create an eblast database that can be used throughout the project to advertise events and deliverables for review. The Clarion team will assist with development of project content for the project website and social media for key milestones and project events throughout the project.
- **CONDUCT A MEMORABLE KICKOFF EVENT** to launch project participation, educate attendees about key planning influences and trends, and gather input on the community's vision for the future of Black Mountain. Activities can include keypad polling exercises to gauge participants reactions to community trends; mapping exercises to identify places to maintain, change, and replicate; vision and idea wall; and other tailored boards and activities. Efforts should be coordinated so that any previous or concurrent public engagement processes help inform this process and be confirmed in engagement efforts. The event could also include a deeper dive on land use issues.
- **ONLINE "PUSH" TO GENERATE PUBLIC INPUT ON KEY PLANNING POLICY ISSUES** using social media and online surveys. This effort should align with the kickoff event activities and provide a decentralized opportunity for residents to engage.
- **"MEETING IN A BOX" for Public Intercept Events** to provide opportunities for Town Staff to bring the planning process to HOA meetings, places of worship, workplaces, book clubs, or other group events. This can be a very effective way for people to share information about the process and project and drive interested residents to online engagement opportunities, the kickoff workshop, and public intercept events.

We recommend a project-specific web-page on the Town's website to brand the process and provide clear information about how community members can engage and the status of the process.

1.2: CONDUCT INITIAL ASSESSMENT OF EXISTING PLANS AND INFLUENCES

In collaboration with Town staff, the Clarion team will review existing plans, policies, and key planning influences. The team's review of existing plans will evaluate and audit relevant policies, actions, and maps. The Clarion team will prepare a matrix for Town staff to fill in strategies and actions in the plans, and will conduct a conference call with Town staff to identify the status of implementation for all strategies and actions. The policy synopsis will help with identification of policy direction and implementation actions that are still relevant and should be considered during this planning process.

The planning influences assessment will evaluate demographics, economic indicators, housing data, land use, utilities, infrastructure, open space, and natural and historic resources. We recommend first determining analysis priorities and then teasing out key trends from the data rather than providing a traditional community profile inventory. The findings will be collected and presented in a concise draft memorandum or PowerPoint, used to help guide stakeholder interviews, and will help provide an empirical foundation for evaluating policy choices and planning themes. A PowerPoint, memorandum, or report will be finalized following completion of the stakeholder interviews.

1.3: CONDUCT KICKOFF MEETINGS, RECONNAISSANCE TOUR, AND STAKEHOLDER INTERVIEWS

The Clarion team will prepare for and help facilitate a two-day project kickoff trip to Black Mountain. During the first day, the project team (consultants and staff) will discuss the project management plan, planning influences assessment, and public engagement strategy, and make final adjustments. The team will conduct a mapping exercise to discuss the Town's planning area and identify specific geographic areas that are notable in terms of growth management, areas of growth and change, neighborhoods, and future land use challenges and opportunities. The Clarion team will tour the planning area with staff to identify potential areas for change, take photographs of critical locations, and observe the profile of the existing development pattern in Black Mountain. The Clarion team will work with Town staff to identify the appropriate study area boundary for the Comprehensive Plan, taking into account the planning area boundary in the current Comprehensive Plan, utility capacity, and the potential for future growth. Additionally, the team work with Town staff to explore the best land use planning framework to guide land development decisions. The Clarion team could work with staff to explore options and evaluate the best choice for Black Mountain and determine how this framework could anticipate future updates to, or a comprehensive rewrite of, the Town's Land Use Code.

On the second day, the Clarion team will coordinate with Town staff to conduct interviews with individuals or groups of key community stakeholders and elected and appointed officials about the critical opportunities and challenges that should be addressed in the plan. This may include the Board of Alderman, Planning Board, Town staff, citizen advisory boards, business representatives, community organizations, transportation partners, neighborhood leaders, faith-based community representatives, and/or other relevant stakeholders.

Following the kickoff trip, the Clarion team will finalize the Planning Influences PowerPoint, Memorandum, or Report, with key themes and updated maps, data, charts, and graphs. The final product can be put on the Town or project web-page.

PHASE II: PLAN VISION AND GOALS

STAFF INVOLVED: NATE BAKER, LEIGH ANNE KING, SEALY CHIPLEY | JANUARY - FEBRUARY 2020

2.1: PREPARE & CONDUCT PUBLIC KICKOFF MEETING & ONLINE SURVEY

The Clarion team will prepare for and facilitate a public kickoff meeting to launch the project, educate citizens about community trends and conditions, and provide citizens with an opportunity to share ideas and concerns related to the planning themes. Key planning topics - growth management, natural resource management, housing, placemaking, economic development, and land use - will be addressed in this kickoff event.

This kickoff meeting will be designed to provide an overview presentation at the start of the meeting to share with participants the purpose and process for updating the Comprehensive Plan and Future Land Use Map. This will include a keypad polling exercise to gather input on the planning themes that have been identified and their relative importance. Participants will then be provided with an opportunity to view workshop materials at their own pace and provide public input using a variety of engagement methods: idea walls, dot voting, mapping exercises, visual preference surveys, and other interactive activities. An online public survey will be prepared to include narrative questions made available at the public meeting to collect additional input for a period of time following the meeting.

2.2: SHARE PUBLIC INPUT RESULTS

The Clarion team will prepare a summary memorandum or PowerPoint of public input gathered at the public meeting and from the online survey that can be shared with elected and appointed officials and placed on the web-page. The final product will include summaries, themes, and inventories of public input.

2.3: PREPARE DRAFT VISION AND GOALS

Using the public inputs, the Clarion team will prepare a vision and goals. The team could also prepare a conceptual vision map and/or land use planning principles to help guide the updates to the Future Land Use Map. These will be coordinated with the established planning themes and public input to ensure consistency throughout the project. Town staff and the appropriate elected and appointed bodies will be given an opportunity to review and refine the statements, and they can be placed on the project web-page to capture further public comment.

2.4: DEVELOP FORMAL OUTLINE FOR COMPREHENSIVE PLAN

The team will develop the outline and structure for the Comprehensive Plan. This outline can also be used as a framework for public engagement efforts to paint a clear and consistent picture of the planning topics over the course of the project. At a minimum, the plan structure will include an introduction; a policy element with goals and policies; the future land use element with growth management, natural resource management, land use, and placemaking guidance; and an implementation section. To keep the document simple, the planning influences product will be referenced separately.

OPTIONAL - 2.5: TEST VISION AND GOALS WITH THE PUBLIC

Although not specifically included in the RFQ, additional public engagement may be desirable to test the vision, goals, and potential maps, policies, and actions. Additional public engagement can be coordinated on an as-needed basis with Town staff. *(Budget addition: \$4,000)*

PHASE III: DRAFT PLAN

STAFF INVOLVED: NATE BAKER, SEALY CHIPLEY, HOLLY WHITE | FEBRUARY - APRIL 2020

3.1: PREPARE COMPREHENSIVE PLAN POLICY FRAMEWORK

The Clarion team will prepare a readable, attractive, and user-friendly draft policy framework (goals and policies) for each plan element, building off public inputs the policy guidance being carried forward from prior plans. Clarion will provide Town staff with drafts of each chapter for review and prior to any testing with elected or appointed officials. Particular emphasis will be placed on policy guidance for growth management, placemaking, and natural resources, housing, economic development, and resiliency. The goals and policies for these chapters will be coordinated to ensure that the future land use vision is supported by public and stakeholder input. The Clarion team will also include opportunities for expanding coordination and information-sharing with community and regional partners.

3.2: PREPARE AND REFINE THE UPDATED FUTURE LAND USE MAP

The Clarion team will prepare the complete draft of the future land use map incorporating the vision and goals as determined through public engagement. The map will be refined, updated, and tested with staff, and elected or appointed officials, as necessary.

3.3: PREPARE IMPLEMENTATION STRATEGIES

Building off prior work, the Clarion team will prepare a draft implementation chapter that will include key community initiatives in coordination with Town staff. A strategy will be included in the implementation section of the plan that sets out priorities, action steps, and the linkage between the Comprehensive Plan and the Town's budget and capital improvements processes. This will also include development of a set of criteria to be used in identifying the priorities among projects.

Focusing on land use changes identified during the planning process, the Clarion team will identify any critical updates recommended for the Town's Land Use Code to implement the community's new comprehensive plan. A list of these recommended changes can be incorporated within the implementation strategies.

3.4: TEST PLAN WITH STAKEHOLDERS AND OFFICIALS

Clarion will prepare documents and presentation materials for stakeholders, elected and appointed officials, and members of the public to review the draft Comprehensive Plan and Future Land Use Map. The Town may want to consider holding a public open house to unveil the draft plan and maps. The Clarion team can help prepare for meetings and work sessions.

Optional: The Clarion Team can facilitate a public open house, collect input, and create a Public Feedback Memorandum or PowerPoint. *(Budget addition: \$4,000)*

PHASE IV: FINAL COMPREHENSIVE PLAN AND LAND USE MAP

STAFF INVOLVED: NATE BAKER, LEIGH ANNE KING, SEALY CHIPLEY | MAY 2020

5.1. PREPARE FINAL PLAN PRODUCTS

In coordination with Town staff, the Clarion team will prepare the final plan products in digital and hard copy form.

5.2: CONDUCT TWO PUBLIC HEARINGS

We will prepare presentations for two public hearings – one meeting each to present the draft Comprehensive Plan to the Planning Board and to the Board of Alderman.

5.3: FINALIZE AND TRANSMIT FINAL ADOPTED COMPREHENSIVE PLAN

Our team will work with Town staff to incorporate adjustments requested by the Planning Board and the Board of Alderman into the final adopted version of the Comprehensive Plan. All relevant digital files, including a Word or Adobe version of the plan will be provided to Town staff to allow them to make adjustments to the plan over time.



CLARION



Planning | Zoning & Land Use | Real Estate | Sustainability & Resiliency

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: November 4, 2019

SUBJECT: Snow Removal Ordinance #O-19-28

AGENDA INFORMATION

Agenda Location:	NEW BUSINESS
Item Number:	8C
Department:	Administration
Contact:	Josh Harrold, Town Manager
Presenter:	Josh Harrold, Town Manager

BRIEF SUMMARY: Currently the Town does not have an ordinance indicating whom is responsible for cleaning of sidewalks after a snow event, nor does it have an ordinance regarding parking on streets during snow removal. The ordinance seeks to clarify that property owners abutting the sidewalk are responsible for clearing snow and ice and prohibits parking on the street during snow events so that the snow plows can get through and plow the streets.

MOTION FOR CONSIDERATION: To adopt Ordinance #O-19-28 as presented [or as amended].

FUNDING SOURCE: N/A

ATTACHMENTS: Ordinance #O-19-28

MANAGER'S COMMENTS AND RECOMMENDATIONS: To approve as presented.

ORDINANCE NO. #O-19-28

AN ORDINANCE TO ADD TEXT SECTIONS TO CHAPTER 43, SECTIONS 43-4 THROUGH 43-5 FOR SNOW REMOVAL ON SIDEWALKS AND CHAPTER 47, SECTIONS 47-132 THROUGH 47-133 FOR NO PARKING ON STREETS DURING SNOW REMOVAL TO THE TOWN OF BLACK MOUNTAIN CODE OF ORDINANCES

WHEREAS, the Black Mountain Code of Ordinances was adopted by the Board of Aldermen on the 13th day of December 1993; and

NOW, THEREFORE, BE IT RESOLVED Chapter 43 and Chapter 47 are amended with the following (additions are underlined in bold italic and deletions are shown in red struck text):

Chapter 43 - STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

ARTICLE I. - IN GENERAL

Sec. 43-1. – Obstructions **and deposit of debris.**

No obstruction of any kind or character shall be allowed upon the streets or sidewalks of the town.

(a)The streets and sidewalks of the town shall be kept free of all obstructions and open to traffic at all times, and it shall be unlawful for any person to deposit any article or do any act which obstructs such streets and sidewalks.

(b)It shall be unlawful for the owner or any contractor engaged in construction or improvement of any property abutting upon streets and sidewalks of the town to allow the deposit of any mud, dirt, construction material or other debris upon such streets and sidewalks.

(c)If the person responsible for obstructing streets or sidewalks, as prohibited in subsection (a) of this section, or depositing mud, dirt, construction material or debris on streets or sidewalks, as prohibited in subsection (b) of this section, after due notice, fails to remove such obstruction, dirt, mud, construction material or other debris, the director of public works is hereby authorized to effect the removal thereof, and in addition to all other remedies, the town may assess costs incurred by it which shall be a lien against the property from which any obstruction, dirt, mud, construction material or other debris has been removed and deposited upon the streets and sidewalks of the town.

(d) In addition to and separate and apart from the other remedies set forth in this section, a violator of any of the provisions of this section may be assessed a civil penalty as set forth in Sec. 20-207. - Penalty, and each and every day during which a violation occurs shall be a separate and distinct offense.

State Law reference— Driving motor vehicle on sidewalk prohibited, G.S. 20-160; placing glass or injurious obstruction upon highway prohibited, G.S. 136-91; city's duty to keep public streets free from unnecessary obstructions, G.S. 160A-296(a)(2); authorization to prohibit placing trash on streets, G.S. 160A-303.1.

Sec 43-2 Obstruction of streets, sidewalks by persons prohibited.

It shall be unlawful for any person, singly or in a group, to:

(1) Obstruct or cause to be obstructed vehicular or pedestrian traffic on the streets or sidewalks or in parks or other public areas within the corporate limits of the town; or

(2) Obstruct or cause to be obstructed corners, stairways or doorways to prevent or hamper free access by members of the public to private buildings fronting streets, sidewalks, parks or other public areas or to public buildings within such corporate limits.

State Law reference— Standing, sitting or lying upon highways or streets prohibited, G.S. 20-174.1; regulation of mass gatherings, G.S. 130A-251 et seq.

Sec 43-3 Keeping sidewalks, drainage swales and gutters clear, clean and unobstructed

(a) General provisions.

(1) Authority: This section is adopted pursuant to N.C.G.S., secs. 160A-174 and 160A-296.

(2) Purpose: It is the purpose, intent and objective of this section to require property owners to keep the public sidewalks, drainage swales and gutters in proper repair, open for travel and free from unnecessary obstructions.

(b) Definitions.

(1) Abut: To be contiguous, or to join at a border or boundary, as where no other private land, road or street intervenes.

(2) Town: Town of Black Mountain.

(3) Responsible party: Includes but not limited to, the owner, occupant, lessee, or tenant, of real property within the city.

(4) Street: A paved or unpaved route which provides the principal means of access to abutting property.

(5) Weather event: Snow, sleet, ice, rain, heavy winds, flooding, etc.

(c) Maintenance requirements.

(1) Sidewalk, and curb: It shall be the responsibility of the responsible party to ensure that the public sidewalk and curb abutting a property owner's property are kept clear of dirt, grass, weeds, mud, trash, debris and vegetation of any kind to prevent a hazard to the public. The vegetation shall be removed, cut or trimmed so as not to require a pedestrian to take evasive action to avoid physical contact with the same or otherwise hinder the safe passage of pedestrians.

(2) Drainage swales: The responsible party that has a drainage swale running along the street that abuts the responsible party's property shall mow and otherwise properly maintain such swale so that it can continue to serve its proper drainage function.

(3) Ice: The responsible party whose property abuts a paved sidewalk upon which ice may in any manner accumulate from any source other than from a weather event, shall remove such ice from the sidewalk on or before 10:00 a.m. each day in which the temperature exceeds 40 degrees Fahrenheit.

(5) Weather event: The responsible party whose property abuts a paved sidewalk, shall remove snow, hail, sleet and other similar accumulation from such within 48 hours after the snow, hail, sleet or other similar accumulation ceases to fall.

(d) Prohibitions.

(1) Failure to remove: It shall be unlawful and a violation of this section for any person charged with the responsibility to remove ice, snow, sleet, hail or other similar weather event accumulations to fail to remove same within the time limit stated herein.

(2) Encroachment into streets: It shall be unlawful and a violation of this section for any person to cause to be moved, pushed, scraped, shoveled or thrown, any ice or snow from private property into the traveled portion of any street right of way in such a manner as to impede the normal movement of traffic on the street.

(e) Enforcement.

(1) Property owner ultimately responsible: Whether vacant, occupied, improved or unimproved, the property owner remains ultimately responsible for compliance with this section.

(2) Civil: A violation of the provisions of this section shall subject the violator to a civil penalty pursuant to the authority granted by N.C.G.S., sec. 160A-175 and does not subject the offender to the criminal penalty provisions of N.C.G.S., sec. 20-205 and sec. 20-207 of Chapter 20, Article V of the Code of Ordinances of the Town of Black Mountain. No penalty

shall be assessed pursuant to this section until the person alleged to be in violation has been notified of the violation as set forth below.

(3)Notice of violation: Whenever any town official charged with the duty of enforcing the regulations in this section has reasonable cause to believe that a person is in violation of the provisions of this section, that official shall notify the alleged violator and/or property owner of the violation, providing for up to ten days to comply with the requirements of this section. If the violator cannot be ascertained, then the notice of violation shall be sent to the record owner of the land on which the violation exists. Nothing herein shall prevent the town official from requiring any lesser period of time to bring the violation into compliance with this section to protect life and/or property.

(4)Service of notice of violation: Notices of violation shall be in writing and shall be served by personal delivery or by certified or registered mail, return receipt requested. The notice of violation shall specify the violation, what must be done to remedy the violation, an opportunity to cure the violation within a prescribed period of time and the consequences of non-compliance.

(5)Civil penalty: Any person, who fails to comply with a notice of violation issued under this section within the time period set forth in the notice of violation, shall be subject to a civil penalty in the amount of \$50.00 per day the violation continues with each day of violation constituting a separate and distinct violation. In no event, shall the amount of the civil penalty arising out of the original notice of violation exceed \$5,000.00. If the civil penalty is not paid within the time frame set forth in the notice of civil penalty assessment, the matter may be referred to the town's collection office for debt set-off.

(6)Abatement: Nothing herein shall prevent the town from immediately proceeding to abate the violation to prevent a threat to life and/or property. If the town abates the violation, the cost of the abatement shall be borne by the property owner and collected in the same manner as a civil penalty.

(7)Equitable action: In addition to or in lieu of other remedies as set forth herein, the town attorney may seek injunctive relief, an order of abatement or other appropriate relief in the appropriate court of law.

This ordinance shall be in full force and effective on December 1, 2019.

I move the adoption of the foregoing ordinance.

Alderman

READ, APPROVED AND ADOPTED by a vote of _____ to _____ this the 4th day of November, 2019.

Don Collins, Mayor

ATTEST:

Angela L. Reece, Assistant to Manager/Town Clerk

Minutes Follow This Section

** 10/14/19 Regular Session Minutes are not ready as of publication of this packet. They will be loaded ASAP. Please check back for updated packet closer to meeting time.



TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
AGENDA WORKSHOP MEETING MINUTES
October 10, 2019

THE BLACK MOUNTAIN BOARD OF ALDERMEN held an agenda workshop on Thursday, October 10, 2019 at 5:00 p.m. in the board room of Town Hall, 160 Midland Avenue, Black Mountain, NC. The purpose of the meeting was to review the agenda for the regular monthly meeting scheduled for Monday, October 14, 2019 at 6:00 p.m.

1. CALL TO ORDER

Mayor Don Collins called the meeting to order at 5:00 p.m. with the following members present:

Mayor Don Collins
Vice Mayor Maggie Tuttle
Alderman Ryan Stone – absent
Alderman Larry Harris – arrived at 5:02 p.m.
Alderman Tim Raines
Alderman Carlos Showers

The following staff members were present:

Dean Luebbe, Assistant Town Manager
Angela Reece, Assistant to Manager/ Town Clerk
Shawn Freeman, Police Chief
Scottie Harris, Fire Chief
Jessica Trotman, Planning Director
Joshua Henderson, Recreation Director
Jamey Matthews, Public Works Director

The Board reviewed the items that were proposed for the September 9, 2019 regular session meeting and REMOVED the following items: Item 8D, Enterprise Lease Agreement until further information is presented to the Board.

Mayor Don Collins opened the meeting. Assistant Town Manager, Dean Luebbe presented the proposed agenda to the Board of Aldermen. Pastor Anthony Rodriguez of Valley Hope Church in Swannanoa will give the invocation.

Mr. Luebbe discussed **Item 5B**, Budget Amendment for Downtown Parking & Circulation Study Accounting stating this item and **Item 5C**, Budget Amendment for Veterans Park/Swannanoa River are to reflect accounting for projects began in FY 2018-19 which will continue in FY 2019-20.

Mr. Luebbe discussed **Item 5D**, Budget Amendment for Tomahawk Stream Stabilization reminding the Board that the Town received a check for \$28,000 from the Pigeon River Fund and said this project also crosses fiscal years and needs to reflect funding in the current budget year as the project is set to begin in November or December. Mr. Luebbe stated **Item 5E**,

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Capital Project Ordinance Amendment – Tomahawk Stream Capital Projects Fund accompanies the budget amendment to amend the project ordinance.

Attorney Sneed discussed **Item 7A**, Offer received to purchase Town owned property located at 2992 U.S. Hwy 70 Black Mountain (former Public Works Building) reminding everyone a bid was received from Black Mountain Machinery in the amount of \$527,000 and said an upset bid has been received in the amount of \$554,000 from Jay Lurie. Attorney Sneed stated this was again re-advertised for additional upset bids as per legal requirements and said the next ten day period will be up on October 21st at 5:00 p.m.

Mr. Luebbe discussed **Item 8A**, Award Contract(s) for Snow Removal Services to B.H. Granning Landscapes, Inc. as presented stating this company fit the needs of the town especially with regards to moving snow in the highest elevations of town. Public Works Director, Jamey Matthews clarified that the company has six contracts with NCDOT and twenty with Duke Energy and said they are well equipped for the task. Director Matthews clarified that he would work with their staff to determine the need for stand by on heavy snow events.

Mr. Luebbe discussed **Item 8B**, The Settings water system reminding the Board that this project is several years in the making and stated an agreement has been drafted for the town to take over water infrastructure that is in the ground with The Settings HOA maintaining and being responsible for water infrastructure that is above ground. Attorney Sneed discussed the proposed MOU, Agreement, and Resolution with the Board. Attorney Sneed stated the agreement details steps for The Settings HOA to provide access through easements to repair any necessary underground water infrastructure. Alderman Larry Harris clarified this agreement is only for the town to perform maintenance of water lines. Public Services Director Jamey Matthews clarified the town will not maintenance their pump station or their water tank. Director Matthews stated the water lines are relatively new and said the town has been performing maintenance on them over the years passing the cost of repair to the HOA. Attorney Sneed reminded everyone this agreement is several years old and is just now being executed.

Mr. Luebbe discussed **Item 8C**, Lake Tomahawk Sediment Management Proposal Phase I stating Manager Harrold has received proposals for repairs to the pedestrian bridge and sediment management at Lake Tomahawk and is recommending awarding the contract to Wildlands Engineering. Mr. Luebbe stated Manager Harrold advised he reached out to two different engineering firms to obtain estimates of the cost to repair the forebay and examine the pedestrian bridge abutment foundation on the eastern side. Manager Harrold advised one of the firm's estimate included installing a concrete headwall under the bridge while the other firm provided a holistic approach to forebay repair and included analyzing sediment loads to see how to mitigate the impacts moving forward. Manager Harrold advised his recommendation was to go with the more holistic approach to address the situation and provide the Town with a plan to address future flooding and impacts to the lake. Alderman Harris clarified this firm is one of the firms who restored the creek bank along Tomahawk Branch and inquired regarding the project scope differences. Alderman Harris asked staff to provide more information regarding the proposal by Civil Design Concepts and inquired what made this proposal cost much higher.

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Mr. Luebbe discussed **Item 8D**, Enterprise Lease Agreement and stated a lease has not been presented for consideration and recommended removing this item at this time.

***Alderman Larry B. Harris moved to table Item 8D, Enterprise Lease Agreement until further information is presented to the Town.
The motion was approved by a vote of 4-0.***

Planning Director Jessica Trotman discussed **Item 9A**, Public Hearing to adopt Phase II Stormwater Ordinance stating as an MS4 Phase II municipality, the Town is required to have a post-construction stormwater ordinance. Director Trotman stated these rules and regulations are largely established by the Environmental Protection Agency and passed to the states and said the proposed changes strengthen the ordinance to enhance water quality protection while also making them easier to read, manage and enforce. Director Trotman stated these changes have been reviewed by an engineer and the NC Department of Water Quality's Phase II coordinator. Director Trotman stated the goal is for the amount of water leaving your property to be the same as it was before anything was constructed on it. She gave a summary of the material changes below.

- Projects which disturb 5,000 square feet of land will require a stormwater permit under the phase II ordinance (currently it is 12,000 square feet). This will result in more projects requiring stormwater permits.
- Pre-construction meetings with staff are not require (currently they are options)
- Pre-construction run-off must be met by phase, not by end of project. This will close a loop hole which phased projects currently benefit from.
- The requirements for SCMs are increased to handle more dramatic storms, moving from a one-year storm to a 25 year storm as calculated by NOAA.
- Adds new language regarding calculation of stormwater requirements as required by session law from 2018.
- Applies the most stringent "high density" requirements to both low and high density projects, increasing stream buffer protection.

Director Trotman stated the average design cost for stormwater engineering plans could be approximately \$2,500 to \$3,000 for a three bedroom two bath single family home. Director Trotman clarified that the design manual referenced in this ordinance is approved by the State and contains structural stormwater measures and design guidelines. Mayor Collins inquired if this recommendation has been taken to the Planning Board and Director Trotman stated is was not as it is a Federal Mandate. Attorney Ron Sneed stated the only leeway the Board has to modify this is consideration of the square footage for a disturbed area but cautioned that federal

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regulations look at the runoff and test it for compliance and said what Director Trotman was trying to achieve is more strict guidelines to facilitate compliance with federal standards to mitigate as much runoff as possible. Alderman Harris stated he is supportive of the ordinance but would like information regarding costs to homeowners. Director Trotman stated this is an extremely complicated, time consuming process and said staff have worked diligently to bring the Town in compliance with federal and state mandates.

Planning Director Trotman discussed **Item 9B**, Public Hearing for Stormwater Illicit Discharge and Connection stating these sections were previously included in the Phase II ordinance and said staff have extracted them into a single ordinance for improved organization, readability and enforcement. Director Trotman stated the only material change is the addition of “straight-piping” of untreated waste water into a receiving surface water is prohibited. Director Trotman stated staff would like the clarification for the public to be clear that illicit discharges are illegal and said the allowable items by the ordinance are established by the state and represent amounts determined to be uncontaminated for discharged into the stormwater system. Director Trotman stated the ordinance is word-for-word and has not been altered. There was no further discussion by the Board.

Alderman Larry B. Harris moved to enter into closed session discuss property acquisition as permitted NCGS § 143-318.11(a)(5) at 5:32 p.m.

The motion was approved by a vote of 4-0

Alderman Larry B. Harris moved to return to open session at 5:39 p.m.

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

Alderman Larry B. Harris moved to direct Town Attorney, Ron Sneed, to draft an offer to purchase property (Buncombe County Pin #060981377800000 and Plat Book/Page 0018 / 0115) from Dewey Morris for a sum of \$48,750 with an interest rate of 2.645% with a down payment of \$5,000 and two equal installments over the next two years in the amount of \$22,500 each with interest.

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

The total sum of the purchase will be \$50,000.

There being no further discussion, on a motion by Vice Mayor Maggie Tuttle, with a vote of 4-0 Mayor Don Collins adjourned the meeting at 5:41 p.m.

There being no further discussion, on a motion by Vice Mayor Maggie Tuttle, with a vote of 4-0 Mayor Don Collins adjourned the meeting at 5:41 p.m.

ATTEST:

Angela Reece, Assistant to Manger/Town Clerk

Don Collins, Mayor

OFFER TO PURCHASE AND CONTRACT - VACANT LOT/LAND
[Consult "Guidelines" (form 12G) for guidance in completing this form]

NOTE: This contract is intended for unimproved real property that Buyer will purchase only for personal use and does not have immediate plans to subdivide. It should not be used to sell property that is being subdivided unless the property has been platted, properly approved and recorded with the register of deeds as of the date of the contract. If Seller is Buyer's builder and the sale involves the construction of a new single family dwelling prior to closing, use the standard Offer to Purchase and Contract—New Construction (Form 800-T) or, if the construction is completed, use the Offer to Purchase and Contract (Form 2-T) with the New Construction Addendum (Form 2A3-T).

For valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Buyer offers to purchase and Seller upon acceptance agrees to sell and convey the Property on the terms and conditions of this Offer To Purchase and Contract and any addendum or modification made in accordance with its terms (together the "Contract").

1. TERMS AND DEFINITIONS: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) **"Seller":** Dewey Morris and wife, Marie Morris

(b) **"Buyer":** Town of Black Mountain

(c) **"Property":** The Property shall include all that real estate described below together with all appurtenances thereto including the improvements located thereon.

NOTE: If the Property will include a manufactured (mobile) home(s), Buyer and Seller should consider including the Manufactured (Mobile) Home provision in the Additional Provisions Addendum (Standard Form 2A11-T) with this offer.

Street Address: Herron Street
City: Black Mountain Zip: 28711
County: Buncombe, North Carolina

NOTE: Governmental authority over taxes, zoning, school districts, utilities and mail delivery may differ from address shown.

Legal Description: (Complete ALL applicable)
Plat Reference: Lot/Unit _____, Block/Section _____, Subdivision/Condominium _____
_____, as shown on Plat Book/Slide _____ at Page(s) _____
The PIN/PID or other identification number of the Property is: 0609-81-3778-00000
Other description: _____
Some or all of the Property may be described in Deed Book 1345 at Page 220

(d) **"Purchase Price":**

\$ 48,270.00
\$ 100.00
\$ 400.00
\$ _____
\$ _____
\$ 43,270.00
\$ 4,500.00

paid in U.S. Dollars upon the following terms:
BY DUE DILIGENCE FEE made payable and delivered to Seller by the Effective Date
BY INITIAL EARNEST MONEY DEPOSIT made payable and delivered to Escrow Agent named in Paragraph 1(f) by ☐ cash ☐ personal check ☐ official bank check ☐ wire transfer, ☐ electronic transfer, EITHER ☐ with this offer OR ☐ within five (5) days of the Effective Date of this Contract.
BY (ADDITIONAL) EARNEST MONEY DEPOSIT made payable and delivered to Escrow Agent named in Paragraph 1(f) by cash, official bank check, wire transfer or electronic transfer no later than 5 p.m. on _____, **TIME BEING OF THE ESSENCE.**
BY ASSUMPTION of the unpaid principal balance and all obligations of Seller on the existing loan(s) secured by a deed of trust on the Property in accordance with the attached Loan Assumption Addendum (Standard Form 2A6-T).
BY SELLER FINANCING in accordance with the attached Seller Financing Addendum (Standard Form 2A5-T).
BALANCE of the Purchase Price in cash at Settlement (some or all of which may be paid with the proceeds of a new loan)



Should Buyer fail to deliver either the Due Diligence Fee or any Initial Earnest Money Deposit by their due dates, or should any check or other funds paid by Buyer be dishonored, for any reason, by the institution upon which the payment is drawn, Buyer shall have one (1) banking day after written notice to deliver cash, official bank check, wire transfer or electronic transfer to the payee. In the event Buyer does not timely deliver the required funds, Seller shall have the right to terminate this Contract upon written notice to Buyer.

(e) **"Earnest Money Deposit"**: The Initial Earnest Money Deposit, the Additional Earnest Money Deposit and any other earnest monies paid or required to be paid in connection with this transaction, collectively the "Earnest Money Deposit", shall be deposited and held in escrow by Escrow Agent until Closing, at which time it will be credited to Buyer, or until this Contract is otherwise terminated. In the event: (1) this offer is not accepted; or (2) a condition of any resulting contract is not satisfied, then the Earnest Money Deposit shall be refunded to Buyer. In the event of breach of this Contract by Seller, the Earnest Money Deposit shall be refunded to Buyer upon Buyer's request, but such return shall not affect any other remedies available to Buyer for such breach. In the event of breach of this Contract by Buyer, the Earnest Money Deposit shall be paid to Seller. The payment of the Earnest Money Deposit to Seller and the retention of any Due Diligence Fee by Seller (without regard to their respective amounts, including zero) together shall serve as liquidated damages ("Liquidated Damages") and as Seller's sole and exclusive remedy for such breach, but without limiting Seller's rights under Paragraphs 4(d) and 4(e) for damage to the Property. It is acknowledged by the parties that the amount of the Liquidated Damages is compensatory and not punitive, such amount being a reasonable estimation of the actual loss that Seller would incur as a result of a breach of this Contract by Buyer. The payment to Seller and/or retention by Seller of the Liquidated Damages shall not constitute a penalty or forfeiture but actual compensation for Seller's anticipated loss, both parties acknowledging the difficulty determining Seller's actual damages for such breach. If legal proceedings are brought by Buyer or Seller against the other to recover the Earnest Money Deposit, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney fees and court costs incurred in connection with the proceeding.

(f) **"Escrow Agent"** (insert name): Ronald E. Sneed, P.A.

NOTE: In the event of a dispute between Seller and Buyer over the disposition of the Earnest Money Deposit held in escrow, a licensed real estate broker ("Broker") is required by state law (and Escrow Agent, if not a Broker, hereby agrees) to retain the Earnest Money Deposit in the Escrow Agent's trust or escrow account until Escrow Agent has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, if a Broker or an attorney licensed to practice law in North Carolina ("Attorney") is holding the Earnest Money Deposit, the Broker or Attorney may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of N.C.G.S. §93A-12.

THE PARTIES AGREE THAT A REAL ESTATE BROKERAGE FIRM ACTING AS ESCROW AGENT MAY PLACE THE EARNEST MONEY DEPOSIT IN AN INTEREST BEARING TRUST ACCOUNT AND THAT ANY INTEREST EARNED THEREON SHALL BE DISBURSED TO THE ESCROW AGENT MONTHLY IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.

(g) **"Effective Date"**: The date that: (1) the last one of Buyer and Seller has signed or initialed this offer or the final counteroffer, if any, and (2) such signing or initialing is communicated to the party making the offer or counteroffer, as the case may be. The parties acknowledge and agree that the initials lines at the bottom of each page of this Contract are merely evidence of their having reviewed the terms of each page, and that the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement.

(h) **"Due Diligence"**: Buyer's opportunity to investigate the Property and the transaction contemplated by this Contract, including but not necessarily limited to the matters described in Paragraph 2 below, to decide whether Buyer, in Buyer's sole discretion, will proceed with or terminate the transaction.

(i) **"Due Diligence Fee"**: A negotiated amount, if any, paid by Buyer to Seller with this Contract for Buyer's right to terminate the Contract for any reason or no reason during the Due Diligence Period. It shall be the property of Seller upon the Effective Date and shall be a credit to Buyer at Closing. The Due Diligence Fee shall be non-refundable except in the event of a material breach of this Contract by Seller, or if this Contract is terminated under Paragraph 6(n) or as otherwise provided in any addendum hereto. Buyer and Seller each expressly waive any right that they may have to deny the right to conduct Due Diligence or to assert any defense as to the enforceability of this Contract based on the absence or alleged insufficiency of any Due Diligence Fee, it being the intent of the parties to create a legally binding contract for the purchase and sale of the Property without regard to the existence or amount of any Due Diligence Fee.

(j) **"Due Diligence Period"**: The period beginning on the Effective Date and extending through 5:00 p.m. on October 30, 2019 **TIME BEING OF THE ESSENCE.**

(k) **"Settlement"**: The proper execution and delivery to the closing attorney of all documents necessary to complete the transaction contemplated by this Contract, including the deed, settlement statement, deed of trust and other loan or conveyance documents, and the closing attorney's receipt of all funds necessary to complete such transaction

(l) **"Settlement Date"**: The parties agree that Settlement will take place on or before November 10, 2019
(the "Settlement Date"), unless otherwise agreed in writing, at a time and place designated by Buyer.

(m) **"Closing"**: The completion of the legal process which results in the transfer of title to the Property from Seller to Buyer, which includes the following steps: (1) the Settlement (defined above); (2) the completion of a satisfactory title update to the Property following the Settlement; (3) the closing attorney's receipt of authorization to disburse all necessary funds; and (4) recordation in the appropriate county registry of the deed(s) and deed(s) of trust, if any, which shall take place as soon as reasonably possible for the closing attorney after Settlement. Upon Closing, the proceeds of sale shall be disbursed by the closing attorney in accordance with the settlement statement and the provisions of Chapter 45A of the North Carolina General Statutes. If the title update should reveal unexpected liens, encumbrances or other title defects, or if the closing attorney is not authorized to disburse all necessary funds, then the Closing shall be suspended and the Settlement deemed delayed under Paragraph 9 (Delay in Settlement/Closing).

WARNING: The North Carolina State Bar has determined that the performance of most acts and services required for a closing constitutes the practice of law and must be performed only by an attorney licensed to practice law in North Carolina. State law prohibits unlicensed individuals or firms from rendering legal services or advice. Although non-attorney settlement agents may perform limited services in connection with a closing, they may not perform all the acts and services required to complete a closing. A closing involves significant legal issues that should be handled by an attorney. Accordingly it is the position of the North Carolina Bar Association and the North Carolina Association of REALTORS® that all buyers should hire an attorney licensed in North Carolina to perform a closing.

(n) **"Special Assessments"**: A charge against the Property by a governmental authority in addition to ad valorem taxes and recurring governmental service fees levied with such taxes, or by an owners' association in addition to any regular assessment (dues), either of which may be a lien against the Property. A Special Assessment may be either proposed or confirmed.

"Proposed Special Assessment": A Special Assessment that is under formal consideration but which has not been approved prior to Settlement. Whether payable in a lump sum or future installments.

"Confirmed Special Assessment": A Special Assessment that has been approved prior to Settlement whether payable in a lump sum or future installments.

NOTE: Any Proposed and Confirmed Special Assessments must be identified by Seller in paragraph 5(b), and Buyer's and Seller's respective responsibilities for Proposed and Confirmed Special Assessments are addressed in paragraphs 4(a) and 6(k).

2. BUYER'S DUE DILIGENCE PROCESS:

WARNING: BUYER IS STRONGLY ENCOURAGED TO CONDUCT DUE DILIGENCE DURING THE DUE DILIGENCE PERIOD. If Buyer is not satisfied with the results or progress of Buyer's Due Diligence, Buyer should terminate this Contract, *prior to the expiration of the Due Diligence Period*, unless Buyer can obtain a written extension from Seller. SELLER IS NOT OBLIGATED TO GRANT AN EXTENSION. Although Buyer may continue to investigate the Property following the expiration of the Due Diligence Period, Buyer's failure to deliver a Termination Notice to Seller prior to the expiration of the Due Diligence Period will constitute a waiver by Buyer of any right to terminate this Contract based on any matter relating to Buyer's Due Diligence. Provided however, following the Due Diligence Period, Buyer may still exercise a right to terminate if Seller fails to materially comply with any of Seller's obligations under paragraph 6 of this Contract or for any other reason permitted under the terms of this Contract or North Carolina law.

(a) **Loan**: Buyer, at Buyer's expense, shall be entitled to pursue qualification for and approval of the Loan if any.

NOTE: Buyer's obligation to purchase the Property is not contingent on obtaining a Loan. Therefore, Buyer is advised to consult with Buyer's lender prior to signing this offer to assure that the Due Diligence Period allows sufficient time for the appraisal to be completed and for Buyer's lender to provide Buyer sufficient information to decide whether to proceed with or terminate the transaction.

(b) **Property Investigation**: Buyer or Buyer's agents or representatives, at Buyer's expense, shall be entitled to conduct all desired tests, surveys, appraisals, investigations, examinations and inspections of the Property as Buyer deems appropriate, including but NOT limited to the following:

- (i) **Soil And Environmental:** Reports to determine whether the soil is suitable for Buyer's intended use and whether there is any environmental contamination, law, rule or regulation that may prohibit, restrict or limit Buyer's intended use.
- (ii) **Septic/Sewer System:** Any applicable investigation(s) to determine: (1) the condition of an existing sewage system, (2) the costs and expenses to install a sewage system approved by an existing Improvement Permit, (3) the availability and expense to connect to a public or community sewer system, and/or (4) whether an Improvement Permit or written evaluation may be obtained from the County Health Department for a suitable ground absorption sewage system.
- (iii) **Water:** Any applicable investigation(s) to determine: (1) the condition of an existing private drinking water well, (2) the costs and expenses to install a private drinking water well approved by an existing Construction Permit, (3) the availability, costs and expenses to connect to a public or community water system, or a shared private well, and/or (4) whether a Construction Permit may be obtained from the County Health Department for a private drinking water well.
- (iv) **Review of Documents:** Review of the Declaration of Restrictive Covenants, Bylaws, Articles of Incorporation, Rules and Regulations, and other governing documents of any applicable owners' association and/or subdivision. If the Property is subject to regulation by an owners' association, it is recommended that Buyer review the completed Owners' Association And Addendum (Standard Form 2A12-T) provided by Seller prior to signing this offer. It is also recommended that the Buyer determine if the owners' association or its management company charges fees for providing information required by Buyer's lender or confirming restrictive covenant compliance.
- (v) **Appraisals:** An appraisal of the Property
- (vi) **Survey:** A survey to determine whether the property is suitable for Buyer's intended use and the location of easements, setbacks, property boundaries and other issues which may or may not constitute title defects.
- (vii) **Zoning and Governmental Regulation:** Investigation of current or proposed zoning or other governmental regulation that may affect Buyer's intended use of the Property, adjacent land uses, planned or proposed road construction, and school attendance zones.
- (viii) **Flood Hazard:** Investigation of potential flood hazards on the Property, and/or any requirement to purchase flood insurance in order to obtain the Loan.
- (ix) **Utilities and Access:** Availability, quality, and obligations for maintenance of utilities including electric, gas, communication services, storm water management, and means of access to the Property and amenities.
- (x) **Streets/Roads:** Investigation of the status of the street/road upon which the Property fronts as well as any other street/road used to access the Property, including: (1) whether any street(s)/road(s) are public or private, (2) whether any street(s)/road(s) designated as public are accepted for maintenance by the State of NC or any municipality, or (3) if private or not accepted for public maintenance, the consequences and responsibility for maintenance and the existence, terms and funding of any maintenance agreements.

NOTE: NC General Statutes Section 136-102.6(f) (the "Statute") requires that under circumstances described in the Statute, a buyer must be provided a subdivision streets disclosure statement prior to entering into an agreement to buy subdivided property described in the Statute. If Buyer or Seller are uncertain whether the sale of the Property described in this Contract is subject to the Statute, consult a NC real estate attorney.

- (xi) **Sale/Lease of Existing Property:** As noted in paragraph 3(b), this Contract is not conditioned upon the sale/lease or closing of other property owned by Buyer. Therefore, if Buyer must sell or lease other real property in order to qualify for a new loan or to otherwise complete the purchase of the Property, Buyer should seek to close on Buyer's other property prior to the end of the Due Diligence Period or be reasonably satisfied that closing on Buyer's other property will take place prior to the Settlement Date of this Contract.

(c) **Buyer's Obligation to Repair Damage:** Buyer shall, at Buyer's expense, promptly repair any damage to the Property resulting from any activities of Buyer and Buyer's agents and contractors, but Buyer shall not be responsible for any damage caused by accepted practices applicable to any N.C. licensed professional performing reasonable appraisals, tests, surveys, examinations and inspections of the Property. This repair obligation shall survive any termination of this Contract.

(d) **Indemnity:** Buyer will indemnify and hold Seller harmless from all loss, damage, claims, suits or costs, which shall arise out of any contract, agreement, or injury to any person or property as a result of any activities of Buyer and Buyer's agents and contractors relating to the Property except for any loss, damage, claim, suit or cost arising out of pre-existing conditions of the Property and/or out of Seller's negligence or willful acts or omissions. This indemnity shall survive this Contract and any termination hereof.

(e) **Buyer's Right to Terminate:** Buyer shall have the right to terminate this Contract for any reason or no reason, by delivering to Seller written notice of termination (the "Termination Notice") during the Due Diligence Period (or any agreed-upon written extension of the Due Diligence Period), **TIME BEING OF THE ESSENCE**. If Buyer timely delivers the Termination Notice, this Contract shall be terminated and the Earnest Money Deposit shall be refunded to Buyer.

(f) **CLOSING SHALL CONSTITUTE ACCEPTANCE OF THE PROPERTY IN ITS THEN EXISTING CONDITION UNLESS PROVISION IS OTHERWISE MADE IN WRITING.**

3. **BUYER REPRESENTATIONS:**

(a) **Loan:** Buyer ☐ does **X** does not intend to obtain a new loan in order to purchase the Property. If Buyer is obtaining a new loan, Buyer intends to obtain a loan as follows: ☐ Conventional ☐ Other: _____ loan at a ☐ Fixed Rate ☐ Adjustable Rate in the principal amount of _____ for a term of _____ year(s), at an initial interest rate not to exceed _____ % per annum (the "Loan"). **NOTE:** Buyer's obligations under this Contract are not conditioned upon obtaining or closing any loan.

NOTE: If Buyer does not intend to obtain a new loan, Seller is advised, prior to signing this offer, to obtain documentation from Buyer which demonstrates that Buyer will be able to close on the Property without the necessity of obtaining a new loan.

(b) **Other Property:** Buyer ☐ DOES **X** DOES NOT have to sell or lease other real property in order to qualify for a new loan or to complete the purchase. *(Complete the following only if Buyer DOES have to sell or lease other real property:)*

Other Property Address: _____

☐ **(Check if applicable)** Buyer's other property IS under contract as of the date of this offer, and a copy of the contract has either been previously provided to Seller or accompanies this offer. *(Buyer may mark out any confidential information, such as the purchase price and the buyer's identity, prior to providing a copy of the contract to Seller.)* Failure to provide a copy of the contract shall not prevent this offer from becoming a binding contract; however, SELLER IS STRONGLY ENCOURAGED TO OBTAIN AND REVIEW THE CONTRACT ON BUYER'S PROPERTY PRIOR TO ACCEPTING THIS OFFER.

☐ **(Check if applicable)** Buyer's other property IS NOT under contract as of the date of this offer. Buyer's property *(check only ONE of the following options):*

☐ is listed with and actively marketed by a licensed real estate broker.

☐ will be listed with and actively marketed by a licensed real estate broker.

☐ Buyer is attempting to sell/lease the Buyer's Property without the assistance of a licensed real estate broker.

NOTE: This Contract is NOT conditioned upon the sale/lease or closing of Buyer's other property. If the parties agree to make this Contract conditioned on a sale/lease or closing of Buyer's other property, an appropriate contingency addendum should be drafted by a North Carolina real estate attorney and added to this Contract.

(c) **Performance of Buyer's Financial Obligations:** To the best of Buyer's knowledge, there are no other circumstances or conditions existing as of the date of this offer that would prohibit Buyer from performing Buyer's financial obligations in accordance with this Contract, except as may be specifically set forth herein.

4. **BUYER OBLIGATIONS:**

(a) **Responsibility for Proposed Special Assessments:** Buyer shall take title subject to all Proposed Special Assessments.

(b) **Responsibility for Certain Costs:** Buyer shall be responsible for all costs with respect to:

- (i) any loan obtained by Buyer, including charges by an owners association and/or management company as agent of an owners' association for providing information required by Buyer's lender;
- (ii) charges required by an owners' association declaration to be paid by Buyer for Buyer's future use and enjoyment of the Property, including, without limitation, working capital contributions, membership fees, or charges for Buyer's use of the common elements and/or services provided to Buyer, such as "move-in fees";
- (iii) determining restrictive covenant compliance;
- (iv) appraisal;
- (v) title search;
- (vi) title insurance;
- (vii) any fees charged by the closing attorney for the preparation of the Closing Disclosure, Seller Disclosure and any other settlement statement;
- (viii) recording the deed; and
- (ix) preparation and recording of all instruments required to secure the balance of the Purchase Price unpaid at Settlement.

(c) **Authorization to Disclose Information:** Buyer authorizes the Buyer's lender(s), the parties' real estate agent(s) and closing attorney: (1) to provide this Contract to any appraiser employed by Buyer or by Buyer's lender(s); and (2) to release and disclose any buyer's closing disclosure, settlement statement and/or disbursement summary, or any information therein, to the parties to this transaction, their real estate agent(s) and Buyer's lender(s).

5. **SELLER REPRESENTATIONS:**

(a) **Ownership:** Seller represents that Seller:

X has owned the Property for at least one year.

☐ has owned the Property for less than one year.

☐ does not yet own the Property.

(b) **Assessments:** To the best of Seller's knowledge there ☐ are ☐ are not any Proposed Special Assessments. If any Proposed Special Assessments, identify: None

Seller warrants that there ☐ are ☒ are not any Confirmed Special Assessments. If any Confirmed Special Assessments, identify: _____

NOTE: Buyer's and Seller's respective responsibilities for Proposed and Confirmed Special Assessments are addressed in paragraphs 4(a) and 6(k).

(c) **Owners' Association(s) and Dues:** To best of Seller's knowledge, ownership of the Property ☐ subjects ☐ does not subject Buyer to regulation by one or more owners' association(s) and governing documents, which impose various mandatory covenants, conditions and restrictions upon the Property and Buyer's enjoyment thereof, including but not limited to obligations to pay regular assessments (dues) and Special Assessments. If there is an owners' association, then an Owners' Association Disclosure and Addendum For Properties Exempt from Residential Property Disclosure Statement (Standard Form 2A12-T) shall be completed by Seller, at Seller's expense, and must be attached as an addendum to this Contract.

(d) **Sewage System Permit:** (☐ Applicable ☒ Not Applicable) Seller warrants that the sewage system described in the Improvement Permit attached hereto has been installed, which representation survives Closing, but makes no further representations as to the system.

(e) **Private Drinking Water Well Permit:** (☐ Applicable ☒ Not Applicable) Seller warrants that a private drinking water well has been installed, which representation survives Closing, but makes no further representations as to the well. (If well installed after July 1, 2008, attach Improvement Permit hereto.

6. SELLER OBLIGATIONS:

(a) **Evidence of Title, Payoff Statement(s) and Non Foreign Status:**

- (i) Seller agrees to use best efforts to provide to the closing attorney as soon as reasonably possible after the Effective Date, copies of all title information in possession of or available to Seller, including but not limited to: title insurance policies, attorney's opinions on title, surveys, covenants, deeds, notes and deeds of trust, leases, and easements relating to the Property.
- (ii) Seller shall provide to the closing attorney all information needed to obtain a written payoff statement from any lender(s) regarding any security interest in the Property as soon as reasonably possible after the Effective Date, and Seller designates the closing attorney as Seller's agent with express authority to request and obtain on Seller's behalf payoff statements and/or short-pay statements from any such lender(s).
- (iii) If Seller is not a foreign person as defined by the Foreign Investment in Real Property Tax Act, Seller shall also provide to the closing attorney a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act). In the event Seller shall not provide a non-foreign status affidavit, Seller acknowledges that there may be withholding as provided by the Internal Revenue Code.

(b) **Authorization to Disclose Information:** Seller authorizes: (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys, and (3) the closing attorney to release and disclose any seller's closing disclosure, settlement statement and/or disbursement summary, or any information therein, to the parties to this transaction, their real estate agent(s) and Buyer's lender(s).

(c) **Access to Property:** Seller shall provide reasonable access to the Property through the earlier of Closing or possession by Buyer, including, but not limited to, allowing the Buyer and/or Buyer's agents or representatives an opportunity to (i) conduct Due Diligence, (ii) verify the satisfactory completion of negotiated repairs/improvements, and (iii) conduct a final walk-through inspection of the Property. Seller's obligation includes providing existing utilities operating at Seller's cost including any connections and de-winterizing. To the extent applicable, Seller shall also be responsible for timely clearing that portion of the Property required by the County to perform tests, inspections and/or evaluations to determine the suitability of the Property for a sewage system and/or private drinking water well.

NOTE: See WARNING in paragraph 2 above for limitation on Buyer's right to terminate this Contract as a result of Buyer's continued investigation of the Property following the expiration of the Due Diligence Period.

(d) **Removal of Seller's Property:** Seller shall remove from the Property, by the date possession is delivered, (i) all personal property which is not a part of the purchase and (ii) unless otherwise agreed, all garbage and debris.

(e) **Affidavit And Indemnification Agreement:** Seller shall furnish at Settlement an affidavit(s) and indemnification agreement(s) in form satisfactory to Buyer and Buyer's title insurer, if any, executed by Seller and any person or entity who has performed or furnished labor, services, materials or rental equipment to the Property within 120 days prior to the date of Settlement and who may be entitled to claim a lien against the Property as described in N.C.G.S. §44A-8 verifying that each such person or entity has been paid in full and agreeing to indemnify Buyer, Buyer's lender(s) and Buyer's title insurer against all loss from any cause or claim arising therefrom.

(f) **Designation of Lien Agent, Payment and Satisfaction of Liens:** If required by N.C.G.S. §44A-11.1, Seller shall have designated a Lien Agent, and Seller shall deliver to Buyer as soon as reasonably possible a copy of the appointment of Lien Agent. All deeds of trust, deferred ad valorem taxes, liens and other charges against the Property, not assumed by Buyer, must be paid and satisfied by Seller prior to or at Settlement such that cancellation may be promptly obtained following Closing. Seller shall remain obligated to obtain any such cancellations following Closing.

(g) **Good Title, Legal Access:** Seller shall execute and deliver a GENERAL WARRANTY DEED for the Property in recordable form no later than Settlement, which shall convey fee simple marketable and insurable title, without exception for mechanics' liens, and free of any other liens, encumbrances or defects, including those which would be revealed by a current and accurate survey of the Property, except: ad valorem taxes for the current year (prorated through the date of Settlement); utility easements and unviolated covenants, conditions or restrictions that do not materially affect the value of the Property; and such other liens, encumbrances or defects as may be assumed or specifically approved by Buyer in writing. The Property must have legal access to a public right of way.

NOTE: Buyer's failure to conduct a survey or examine title of the Property prior to the expiration of the Due Diligence Period does not relieve the Seller of their obligation to deliver good title under this paragraph.

NOTE: If any sale of the Property may be a "short sale," consideration should be given to attaching a Short Sale Addendum (Standard Form 2A14-T) as an addendum to this Contract.

(h) **Deed, Taxes, and Fees:** Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Contract, and for state and county excise taxes, and any deferred, discounted or rollback taxes, and local conveyance fees required by law. The deed is to be made to: The Town of Black Mountain.

(i) **Agreement to Pay Buyer Expenses:** Seller shall pay at Settlement \$ 0.00 toward any of Buyer's expenses associated with the purchase of the Property, at the discretion of Buyer and/or lender, if any, including any FHA/VA lender and inspection costs that Buyer is not permitted to pay.

(j) **Owners' Association Fees/Charges:** Seller shall pay: (i) any fees required for confirming Seller's account payment information on owners' association dues or assessments for payment or proration; (ii) any fees imposed by an owners' association and/or a management company as agent of the owners' association in connection with the transaction contemplated by this Contract other than those fees required to be paid by Buyer under paragraph 4(b) above; and (iii) fees incurred by Seller in completing the Residential Property and Owners' Association Disclosure Statement, and resale or other certificates related to a proposed sale of the Property.

(k) **Payment of Confirmed Special Assessments:** Seller shall pay, in full at Settlement, all Confirmed Special Assessments, whether payable in a lump sum or future installments, provided that the amount thereof can be reasonably determined or estimated. The payment of such estimated amount shall be the final payment between the Parties.

(l) **Late Listing Penalties:** All property tax late listing penalties, if any, shall be paid by Seller.

(m) **Owners' Association Disclosure and Condominium Resale Statement Addendum (Standard Form 2A12-T):** If applicable, Seller shall provide the completed Owners' Association Disclosure and Condominium Resale Statement Addendum to Buyer on or before the Effective Date.

(n) **Seller's Failure to Comply or Breach:** If Seller fails to materially comply with any of Seller's obligations under this Paragraph 6 or Seller materially breaches this Contract, and Buyer elects to terminate this Contract as a result of such failure or breach, then the Earnest Money Deposit and the Due Diligence Fee shall be refunded to Buyer and Seller shall reimburse to Buyer the reasonable costs actually incurred by Buyer in connection with Buyer's Due Diligence without affecting any other remedies. If legal proceedings are brought by Buyer against the Seller to recover the Earnest Money Deposit, the Due Diligence Fee and/or the reasonable costs actually incurred by Buyer in connection with Buyer's Due Diligence, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney fees and court costs incurred in connection with the proceeding.

7. **PRORATIONS AND ADJUSTMENTS:** Unless otherwise provided, the following items shall be prorated, with Seller responsible for the prorated amounts through the date of Settlement and either adjusted between the parties or paid at Settlement:
- (a) **Taxes on Real Property:** Ad valorem taxes and recurring governmental service fees levied with such taxes on real property shall be prorated on a calendar year basis;
 - (b) **Rents:** Rents, if any, for the Property;
 - (c) **Dues:** Owners' association regular assessments (dues) and other like charges.

8. **RISK OF LOSS/CONDITION OF PROPERTY AT CLOSING:** The risk of loss or damage by fire or other casualty prior to Closing shall be upon Seller. Seller is advised not to cancel existing insurance on the Property until after confirming recordation of the deed.

Buyer's obligation to complete the transaction contemplated by this Contract shall be contingent upon the Property being in substantially the same or better condition at Closing as on the date of this offer, reasonable wear and tear excepted. If the Property is not in substantially the same or better condition at Closing as on the date of this offer, reasonable wear and tear excepted, Buyer may terminate this Contract by written notice delivered to Seller and the Earnest Money Deposit shall be refunded to Buyer. If the Property is not in such condition and Buyer does NOT elect to terminate this Contract, Buyer shall be entitled to receive, in addition to the Property, the proceeds of any insurance claim filed by Seller on account of any damage or destruction to the Property.

9. **DELAY IN SETTLEMENT/CLOSING:** Absent agreement to the contrary in this Contract or any subsequent modification thereto, if a party is unable to complete Settlement by the Settlement Date but intends to complete the transaction and is acting in good faith and with reasonable diligence to proceed to Settlement ("Delaying Party"), and if the other party is ready, willing and able to complete Settlement on the Settlement Date ("Non-Delaying Party") then the Delaying Party shall give as much notice as possible to the Non-Delaying Party and closing attorney and shall be entitled to a delay in Settlement. If the parties fail to complete Settlement and Closing within fourteen (14) days of the Settlement Date (including any amended Settlement Date agreed to in writing by the parties) or to otherwise extend the Settlement Date by written agreement, then the Delaying Party shall be in breach and the Non-Delaying Party may terminate this Contract and shall be entitled to enforce any remedies available to such party under this Contract for the breach.

10. **POSSESSION:** Unless otherwise provided herein, possession, including all means of access to the Property (keys, codes, including security codes, gate openers, electronic devices, etc.) shall be delivered at Closing as defined in Paragraph 1(m). No alterations, excavations, tree or vegetation removal or other such activities may be done before possession is delivered

11. **ADDENDA:** CHECK ALL STANDARD ADDENDA THAT MAY BE A PART OF THIS CONTRACT, IF ANY, AND ATTACH HERETO. ITEMIZE ALL OTHER ADDENDA TO THIS CONTRACT, IF ANY, AND ATTACH HERETO.

- | | |
|---|--|
| ☐ Additional Provisions Addendum (Form 2A11-T) | ☐ Owners' Association Disclosure And Condominium Resale |
| ☐ Additional Signatures Addendum (Form 3-T) | Statement Addendum (Form 2A12-T) |
| ☐ Back-Up Contract Addendum (Form 2A1-T) | ☒ Seller Financing Addendum (Form 2A5-T) |
| ☐ Loan Assumption Addendum (Form 2A6-T) | ☐ Short Sale Addendum (Form 2A14-T) |

☐ Identify other attorney or party drafted addenda: _____

NOTE: UNDER NORTH CAROLINA LAW, REAL ESTATE BROKERS ARE NOT PERMITTED TO DRAFT ADDENDA TO THIS CONTRACT.

12. **ASSIGNMENTS:** This Contract may not be assigned without the written consent of all parties except in connection with a tax-deferred exchange, but if assigned by agreement, then this Contract shall be binding on the assignee and assignee's heirs and successors.

13. **TAX-DEFERRED EXCHANGE:** In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Buyer and Seller shall execute such additional documents, including assignment of this Contract in connection therewith, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

14. **PARTIES:** This Contract shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective heirs, successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

15. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the Closing, it shall survive the Closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

16. **ENTIRE AGREEMENT:** This Contract contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed herein. All changes, additions or deletions hereto must be in writing and signed by all parties. Nothing contained herein shall alter any agreement between a REALTOR® or broker and Seller or Buyer as contained in any listing agreement, buyer agency agreement, or any other agency agreement between them.

17. **CONDUCT OF TRANSACTION:** The parties agree that any action between them relating to the transaction contemplated by this Contract may be conducted by electronic means, including the signing of this Contract by one or more of them and any notice or communication given in connection with this Contract. Any written notice or communication may be transmitted to any mailing address, e-mail address or fax number set forth in the "Notice Information" section below. Any notice or communication to be given to a party herein, any fee, deposit of other payment to be delivered to a party herein, may be given to the party or to such party's agent. Seller and Buyer agree that the "Notice Information" and "Acknowledgment of Receipt of Monies" sections below shall not constitute a material part of this Contract, and that the addition or modification of any information therein shall not constitute a rejection of an offer or the creation of a counteroffer.

18. **EXECUTION:** This Contract may be signed in multiple originals or counterparts, all of which together constitute one and the same instrument.

19. **COMPUTATION OF DAYS/TIME OF DAY:** Unless otherwise provided, for purposes of this Contract, the term "days" shall mean consecutive calendar days, including Saturdays, Sundays, and holidays, whether federal, state, local or religious. For the purposes of calculating days, the count of "days" shall begin on the day following the day upon which any act or notice as provided in this Contract was required to be performed or made. Any reference to a date or time of day shall refer to the date and/or time of day in the State of North Carolina.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

This offer shall become a binding contract on the Effective Date. Unless specifically provided otherwise, Buyer's failure to timely deliver any fee, deposit or other payment provided for herein shall not prevent this offer from becoming a binding contract, provided that any such failure shall give Seller certain rights to terminate the contract as described herein or as otherwise permitted by law.

Date: _____

Buyer: _____

Date: _____

Buyer: _____

Entity Buyer: _____

The Town of Black Mountain
(Name of LLC/Corporation/Partnership/Trust/etc.)

By: John M. Harpold

Name: JOHN M. HARPOLD

Print Name

Title: Town Manager

Date: 10/14/2019

Date: 10-17-19

Seller: Dewey Morris

Dewey Morris

Date: _____

Seller: _____

Marie Morris

Entity Seller: _____

(Name of LLC/Corporation/Partnership/Trust/etc.)

By: _____

Name: _____

Print Name

Title: _____

Date: _____

WIRE FRAUD WARNING

TO BUYERS: BEFORE SENDING ANY WIRE, YOU SHOULD CALL THE CLOSING ATTORNEY'S OFFICE TO VERIFY THE INSTRUCTIONS. IF YOU RECEIVE WIRING INSTRUCTIONS FOR A DIFFERENT BANK, BRANCH LOCATION, ACCOUNT NAME OR ACCOUNT NUMBER, THEY SHOULD BE PRESUMED FRAUDULENT. DO NOT SEND ANY FUNDS AND CONTACT THE CLOSING ATTORNEY'S OFFICE IMMEDIATELY.

TO SELLERS: IF YOUR PROCEEDS WILL BE WIRED, IT IS RECOMMENDED THAT YOU PROVIDE WIRING INSTRUCTIONS AT CLOSING IN WRITING IN THE PRESENCE OF THE ATTORNEY. IF YOU ARE UNABLE TO ATTEND CLOSING, YOU MAY BE REQUIRED TO SEND AN ORIGINAL NOTARIZED DIRECTIVE TO THE CLOSING ATTORNEY'S OFFICE CONTAINING THE WIRING INSTRUCTIONS. THIS MAY BE SENT WITH THE DEED, LIEN WAIVER AND TAX FORMS IF THOSE DOCUMENTS ARE BEING PREPARED FOR YOU BY THE CLOSING ATTORNEY. AT A MINIMUM, YOU SHOULD CALL THE CLOSING ATTORNEY'S OFFICE TO PROVIDE THE WIRE INSTRUCTIONS. THE WIRE INSTRUCTIONS SHOULD BE VERIFIED OVER THE TELEPHONE VIA A CALL TO YOU INITIATED BY THE CLOSING ATTORNEY'S OFFICE TO ENSURE THAT THEY ARE NOT FROM A FRAUDULENT SOURCE.

WHETHER YOU ARE A BUYER OR A SELLER, YOU SHOULD CALL THE CLOSING ATTORNEY'S OFFICE AT A NUMBER THAT IS INDEPENDENTLY OBTAINED. TO ENSURE THAT YOUR CONTACT IS LEGITIMATE, YOU SHOULD NOT RELY ON A PHONE NUMBER IN AN EMAIL FROM THE CLOSING ATTORNEY'S OFFICE, YOUR REAL ESTATE AGENT OR ANYONE ELSE.

[THIS SPACE INTENTIONALLY LEFT BLANK]

NOTICE INFORMATION

NOTE: INSERT AT LEAST ONE ADDRESS AND/OR ELECTRONIC DELIVERY ADDRESS EACH PARTY AND AGENT APPROVES FOR THE RECEIPT OF ANY NOTICE CONTEMPLATED BY THIS CONTRACT. INSERT "N/A" FOR ANY WHICH ARE NOT APPROVED.

BUYER NOTICE ADDRESS:

Mailing Address: 160 Midland Avenue

Black Mountain, NC 28711

Buyer Fax #: _____

Buyer E-mail: _____

SELLER NOTICE ADDRESS:

Mailing Address: 1005 30th Street

Hickory, NC 28602

Seller Fax #: _____

Seller E-mail: _____

CONFIRMATION OF AGENCY/NOTICE ADDRESSES

Selling Firm Name: N/A

Acting as ☐ Buyer's Agent ☐ Seller's (sub)Agent ☐ Dual Agent

Firm License#: _____

Mailing Address: _____

Individual Selling Agent: _____

☐ Acting as a Designated Dual Agent (check only if applicable)

Selling Agent License#: _____

Selling Agent Phone#: _____

Selling Agent Fax#: _____

Selling Agent E-mail: _____

Listing Firm Name: N/A

Acting as ☐ Seller's Agent ☐ Dual Agent

Firm License#: _____

Mailing Address: _____

Individual Listing Agent: _____

☐ Acting as a Designated Dual Agent (check only if applicable)

Listing Agent License#: _____

Listing Agent Phone#: _____

Listing Agent Fax#: _____

Listing Agent E-mail: _____

[THIS SPACE INTENTIONALLY LEFT BLANK]

ACKNOWLEDGMENT OF RECEIPT OF MONIES

Seller: Dewey Morris ("Seller")
Buyer: Town of Black Mountain ("Buyer")
Property Address: Herron Street, Black Mountain, NC 28711 ("Property")

☐ LISTING AGENT ACKNOWLEDGMENT OF RECEIPT OF DUE DILIGENCE FEE

Paragraph 1(d) of the Offer to Purchase and Contract between Buyer and Seller for the sale of the Property provides for the payment to Seller of a Due Diligence Fee in the amount of \$ _____, receipt of which Listing Agent hereby acknowledges.

Date: _____ Firm: _____
By: _____
(Signature)

(Print name)

☒ SELLER ACKNOWLEDGMENT OF RECEIPT OF DUE DILIGENCE FEE

Paragraph 1(d) of the Offer to Purchase and Contract between Buyer and Seller for the sale of the Property provides for the payment to Seller of a Due Diligence Fee in the amount of \$ 100.00, receipt of which Seller hereby acknowledges.

Date: 10-17-19 Seller: Dewey Morris
(Signature)

Date: _____ Seller: _____
(Signature)

☐ ESCROW AGENT ACKNOWLEDGMENT OF RECEIPT OF INITIAL EARNEST MONEY DEPOSIT

Paragraph 1(d) of the Offer to Purchase and Contract between Buyer and Seller for the sale of the Property provides for the payment to Escrow Agent of an Initial Earnest Money Deposit in the amount of \$ 400.00. Escrow Agent as identified in Paragraph 1(f) of the Offer to Purchase and Contract hereby acknowledges receipt of the Initial Earnest Money Deposit and agrees to hold and disburse the same in accordance with the terms of the Offer to Purchase and Contract.

Date: 10/14/2019 Firm: Ronald E. Sneed, P.A.
By: [Signature]
(Signature)
RONALD E. SNEED
(Print name)

☐ ESCROW AGENT ACKNOWLEDGMENT OF RECEIPT OF (ADDITIONAL) EARNEST MONEY DEPOSIT

Paragraph 1(d) of the Offer to Purchase and Contract between Buyer and Seller for the sale of the Property provides for the payment to Escrow Agent of an (Additional) Earnest Money Deposit in the amount of \$ _____. Escrow Agent as identified in Paragraph 1(f) of the Offer to Purchase and Contract hereby acknowledges receipt of the (Additional) Earnest Money Deposit and agrees to hold and disburse the same in accordance with the terms of the Offer to Purchase and Contract.

Date: _____ Firm: _____
Time: _____ ☐ AM ☐ PM By: _____
(Signature)

(Print name)

SELLER FINANCING ADDENDUM

Property: Herron Street, Black Mountain, NC 28711 (PIN 0609-81-3778-00000)

Seller: Dewey Morris and wife, Marie Morris

Buyer: Town of Black Mountain

This Addendum is attached to and made a part of the Offer to Purchase and Contract ("Contract") between Seller and Buyer for the Property.

Seller agrees to provide Buyer with Seller Financing in the amount set forth in the Contract on the following terms and conditions:

1. The Seller Financing shall be evidenced by a balance of purchase money promissory note ("Note") secured by a balance of purchase money deed of trust ("Deed of Trust") on the Property.
2. The Deed of Trust shall be a ☒ first ☐ second lien on the Property. If the Deed of Trust will be junior to another deed of trust, the principal amount of the senior lien(s) shall not exceed the amount of the Loan as represented in the Contract.
3. The Seller Financing shall bear interest prior to default at the rate of 2.654 % per annum and shall be payable as follows: in two annual installments of \$22,500.00 each, beginning one year from the date of closing

The Seller Financing shall bear interest after default at the rate of 2.654 % per annum.

4. Unless otherwise provided herein, the Note may be prepaid in whole or in part at any time without penalty. If there are any restrictions on this prepayment right, the restrictions are as follows: Buyer understands that prepayment will have tax consequences for the Seller and agrees not to prepay

5. The Seller Financing ☒ shall ☐ shall not become due and payable in accordance with the terms of the Deed of Trust upon Buyer's sale or other transfer of the Property.

6. Additional Seller Financing terms (if any): _____

7. Unless otherwise provided herein, the Note and Deed of Trust shall be in form of and contain the provisions of the currently approved North Carolina Bar Association Forms 4 and 5, completed in accordance with the terms provided above or contained in this Contract.

NOTE: In the event of Buyer's default of the Seller Financing, Seller's remedies will likely be limited to foreclosure of the Property. If a deed of trust given to secure Seller Financing is subordinate to, or is later subordinated to, senior financing, and such senior financing is subsequently foreclosed, the Seller will likely have no remedy to recover under the Note or Deed of Trust. The advice of an attorney is recommended prior to Seller agreeing to provide seller financing.

IN THE EVENT OF A CONFLICT BETWEEN THIS ADDENDUM AND THE CONTRACT, THIS ADDENDUM SHALL CONTROL, EXCEPT THAT IN THE CASE OF SUCH A CONFLICT AS TO THE DESCRIPTION OF THE PROPERTY OR THE IDENTITY OF THE BUYER OR SELLER, THE CONTRACT SHALL CONTROL.



This form jointly approved by:
North Carolina Bar Association
North Carolina Association of REALTORS®, Inc.

Buyer initials Jmh Seller initials DM



STANDARD FORM 2A5-T
Revised 7/2019
© 7/2019

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

Date: _____

Buyer: _____

Date: _____

Buyer: _____

Entity Buyer:

The Town of Black Mountain

(Name of LLC/Corporation/Partnership/Trust/etc.)

By: John M. Harold

Name: JOSEPH M HAROLD
Print Name

Title: TOWN MANAGER

Date: 10/14/2019

Date: 10-17-19

Seller: Dewey P Morris
Dewey Morris

Date: _____

Seller: _____
Marie Morris

Entity Seller:

(Name of LLC/Corporation/Partnership/Trust/etc.)

By: _____

Name: _____
Print Name

Title: _____

Date: _____

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
N.C. VITAL RECORDS
CERTIFICATE OF DEATH

2015 PG 1776

RCVD NOV 24 '15

REGISTRATION DISTRICT NO. <u>018-00</u>		LOCAL NO. <u>1771</u>		COUNTY OF DEATH <u>Catawba</u>		STATE FILE NO.	
DECEDENT'S LEGAL NAME		1b. FIRST		1c. LAST		1d. SUFFIX	
MARIE		MELISSA		MORRIS		SETZER	
2. SEX		3a. AGE - LAST BIRTHDAY (Yrs)		3b. UNDER 1 YEAR		4. DATE OF BIRTH (Month/Day/Year)	
F		96				FEBRUARY 13, 1919	
5. BIRTHPLACE (County/State or Foreign Country)		6. DATE OF DEATH (Month/Day/Year)		7a. COUNTY OF DEATH			
WAKEFIELD, KS		NOVEMBER 20, 2015		CATAWBA			
7b. FACILITY NAME (If not institution, give street and number)		7c. CITY OR TOWN		7d. COUNTY OF DEATH			
CATAWBA REGIONAL HOSPICE		NEWTON		CATAWBA			
8. MARITAL STATUS		9. SURVIVING SPOUSE (Give name prior to first marriage)		10a. DECEDENT'S USUAL OCCUPATION (Do not use retired)		10b. KIND OF BUSINESS/INDUSTRY	
Married		DEWEY PAUL MORRIS		HOME MAKER		OWN HOME	
11. SOCIAL SECURITY NUMBER		12a. RESIDENCE - STATE OR FOREIGN COUNTRY		12b. COUNTY		12c. CITY OR TOWN	
245-14-4306		NORTH CAROLINA		CATAWBA		HICKORY	
12d. STREET AND NUMBER		12e. INSIDE CITY LIMITS		12f. ZIP CODE		13. WAS DECEDENT EVER IN U.S. ARMED FORCES?	
1005 30TH STREET, S.W.		Yes		28602		No	
14. DECEDENT'S EDUCATION (Check the box that best describes the highest degree or level of school completed at the time of death)		15. DECEDENT'S RACE (Check the box that best describes whether the decedent is Spanish/Hispanic/Latino. Check the "No" box if decedent is not Spanish/Hispanic/Latino)		16. DECEDENT'S RACE (Check one or more races to indicate what the decedent considered himself or herself to be)			
☐ 8th grade or less ☐ 9th-12th grade; no diploma ☐ High school graduate or GED completed ☐ Some college credit, but no degree ☐ Associate degree (e.g., AA, AS) ☐ Bachelor's degree (e.g., BA, BS) ☐ Master's degree (e.g., MA, MS, MEd, MEd, MSW, MBA) ☐ Doctorate (e.g., PhD, EdD) or Professional degree (e.g., MD, DDS, DVM, LL.S., JD)		☐ No, not Spanish/Hispanic/Latino ☐ Yes, Mexican, Mexican American, Chicano ☐ Yes, Puerto Rican ☐ Yes, Cuban ☐ Yes, other Spanish/Hispanic/Latino (Specify)		☒ White ☐ Black or African American ☐ American Indian or Alaska Native (Name of the enrolled or principal tribe) ☐ Asian Indian ☐ Chinese ☐ Filipino ☐ Japanese ☐ Korean ☐ Vietnamese ☐ Native Hawaiian ☐ Guamanian or Chamorro ☐ Samoan ☐ Other Pacific Islander (Specify)			
17. FATHER'S NAME (First, Middle, Last)		18. MOTHER'S NAME PRIOR TO FIRST MARRIAGE (First, Middle, Last)		19a. MAILING ADDRESS (Street and Number, City, State, Zip Code)			
JAMES S. SETZER		LOIS ROSE LEE		1005 30TH STREET, S.W. HICKORY, N.C. 28602			
19b. INFORMANT'S NAME		19c. RELATIONSHIP TO DECEDENT		20a. PLACE OF DISPOSITION (Name of cemetery, crematory, other place)		20b. LOCATION (City or Town and State)	
DEWEY PAUL MORRIS		HUSBAND		CATAWBA MEMORIAL PARK		HICKORY, N.C. 28602	
21a. SIGNATURE OF FUNERAL DIRECTOR		21b. LICENSE NUMBER		21c. NAME OF EMBALMER		21d. LICENSE NUMBER	
[Signature]		FS 641		NATASHA KABAR		FS 2695	
22. NAME AND ADDRESS OF FUNERAL HOME		23. PART I. Enter the chain of events (diseases, injuries or complications) that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing the etiology on lines b, c and/or d. Enter only one cause on a line. DO NOT ABBREVIATE.		Approximate interval: Onset to death			
BASE-SMITH FUNERAL HOME, 334 2ND STREET, N.W. HICKORY, N.C. 28601		Cerebral Stroke					
24. MANNER OF DEATH		25a. WAS CASE REFERRED TO MEDICAL EXAMINER?		27. TIME OF DEATH (Approximate)		28. DID TOBACCO USE CONTRIBUTE TO DEATH?	
☐ Natural ☐ Accident ☐ Suicide ☐ Homicide ☐ Pending ☐ Cannot be determined		☐ Yes ☐ No ☐ Declined by Medical Examiner		4:06 PM		☐ Yes ☐ No ☐ Probably ☐ Unknown	
29. IF FEMALE:		30. DATE PRONOUNCED		31a. DATE OF INJURY		31b. TIME OF INJURY	
☐ Pregnant at time of death ☐ Not pregnant within past year ☐ Not pregnant, but pregnant within 42 days of death ☐ Not pregnant, but pregnant 43 days to 1 year before death ☐ Unknown if pregnant within the past year							
31c. INJURY AT WORK?		31d. PLACE OF INJURY - at home, farm, street, factory, office, building, etc.		31e. IF TRANSPORTATION INJURY SPECIFY:			
☐ Yes ☐ No				☐ Driver/Operator ☐ Passenger ☐ Pedestrian ☐ Other (Specify)			
31f. DESCRIBE HOW INJURY OCCURRED		31g. LOCATION OF INJURY (Street/Number/City/State)		32. CERTIFIER (Check only one)			
				☒ Certifying physician/nurse practitioner/physician assistant - To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner stated. ☐ Medical Examiner - On the basis of examination, and/or investigation, in my opinion death occurred at the time, date, and place, and due to the cause(s) and manner stated.			
33a. SIGNATURE AND TITLE OF CERTIFIER		33b. LICENSE NUMBER		33c. DATE SIGNED (Month/Day/Year)		33d. DATE REGISTERED BY STATE	
DR. WILLIAM THOMPSON 3975 ROBINSON RD, NEWTON, N.C. 28658		25038		11-21-2015			
34. FOR LOCAL RECORDS (Print Name)		35. DATE FILED (Month/Day/Year)		36. DATE CORRECTED (Month/Day/Year)		37. DATE AMENDED (Month/Day/Year)	
[Signature]		NOV 23 2015					

DHHS 1872
(REVISED 09/15)
N.C. VITAL RECORDS

This is to certify that this is a true and correct reproduction of the official record filed in Catawba Co.

WITNESS MY HAND AND OFFICIAL SEAL
November 24, 2015

Book 2015 Page 1776



Donna Hicks Spencer
Register of Deeds

Any alteration or erasure voids this certificate. Do not accept unless on security paper with seal clearly embossed in corner.

Donna Hicks Spencer
Register of Deeds



TOWN OF BLACK MOUNTAIN

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

Date: **October 14, 2019**

Time: **6:00 p.m.**

Regular Session Minutes

*The agenda and all related documentation may be accessed electronically via Wi-Fi in Town Hall. From your laptop or smartphone, access the Town's website at www.townofblackmountain.org. Click on **Town Government** and select **Mayor and Board of Alderman** to download materials for all Town board meetings.*

P 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
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, Assistant to Manager/Town Clerk
Ron Sneed, Town Attorney
Shawn Freeman, Police Chief
Scottie Harris, Fire Chief
Jessica Trotman, Planning Director
Joshua Henderson, Recreation Director

Mayor Don Collins welcomed everyone and led the Pledge of Allegiance. Pastor Bruce Kimbrel of Meadowbrook 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.

Black Mountain Board of Aldermen
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In his announcements, Mayor Collins reminded everyone to silence their cell phones and asked them to be respectful of their neighbors by keeping conversations to a minimum or having none at all. Mayor Collins congratulated the Black Mountain Fire Department for a successful event Mayor Collins congratulated staff for being selected from among their peers to chair statewide boards. Town Manager Harrold serves as the President of the NC Association of Zoning Officials (NCAZO) and Town Clerk Reece serves as the NC Association of Municipal Clerks State Certification Committee Chair (NCAMC).

Alderman Carlos Showers addressed everyone, sharing unfortunate news regarding his health. Alderman Showers announced he has been diagnosed with stage 4 pancreatic cancer and stated he is beginning treatment soon. Alderman Showers thanked everyone who has sent prayers, cards, food, or anything else to he and his family and assured the public he will continue to fight and said he has no plans to step down.

2. PROCLAMATION AND AWARD RECOGNITION - NONE

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.*

There were no citizen comments.

***Alderman Ryan Stone moved to remove Items 4C and 4D from the agenda.
The motion was approved by a vote of 5-0.***

4. COMMUNICATIONS FROM BOARDS, COMMISSIONS & AGENCIES

A. AARP NC Mountain Region – Rebecca Chaplin, Associate State Director Black Mountain YMCA- Melinda Mull

Rebecca Chaplain and Melinda Mull presented the AARP and Black Mountain YMCA reports and information to the Board of Aldermen. Alderman Larry B. Harris suggested staff follow up with AARP regarding livable community concepts to incorporate them into the comprehensive plan update that is forthcoming.

B. Advanced Data, Cyber Security- Brian Scheewe

Brian Scheewe presented the Advanced Data, Cyber Security report to the Board of Aldermen and discussed threats facing municipalities. Mr. Scheewe presented findings for the Town's security and suggested additional staff training and coordinated trainings to test the system.

Black Mountain Board of Aldermen
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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 September 5, 2019 (Agenda Session), September 9, 2019 (Regular Session), and September 26, 2019 (Closed Session).*

B. Budget Amendment Downtown Parking & Circulation Study Accounting #FY20-4

Manager Harrold stated this project is grant funded and has spanned across fiscal years citing the necessity to amend the budget to reflect this.

Motion: *To approve Budget Amendment #FY20-4 as submitted, increasing the expense accounts, 1010-5400-040 (Prof Services) by \$23,750 and the revenue accounts, 1010-3396-300 (Parking Study Grant) by \$19,000 and 1000-3905-900 (Fund Balance Appropriated by \$4,750.*

C. Budget Amendment for Veterans Park/ Swannanoa River #FY20-5

Manager Harrold stated this project is also grant funded and reminded the Board the majority of the funding was received and expended in the last fiscal year budget but stated a budget amendment is necessary to reflect the project carrying over to the current budget.

Motion: *To approve Budget Amendment #FY20-5 as submitted, increasing the expense accounts, 1010-5400-040 (Professional Services) by \$21,625 and the revenue account, 1000-3905-900 (Fund Balance Appropriated by \$21,625.*

D. Budget Amendment for Tomahawk Stream Stabilization #FY20-6

Manager Harrold stated this project is also grant funded and said this project is continuing across fiscal years so a budget amendment is necessary.

Motion: *To approve Budget Amendment #FY20-6 as submitted, increasing the expenditure accounts, 6500-5400-040 (Professional Services) by \$30,000 and 6500-5400-730 (Capital Outlay) by \$118,000 the revenue accounts, 6500-3700-710 (NC Division of Water Resources) by \$74,000 and 6500-3915-945 (Transfer from General Fund) by \$74,000.*

E. Capital Project Ordinance AMENDMENT –Tomahawk Stream Capital Projects Fund #O-19-23

Manager Harrold stated a project ordinance amendment is necessary to reflect capital project fund expenditures across fiscal years.

Black Mountain Board of Aldermen
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Motion: *To approve Ordinance #O-19-23 as presented.*

F. Budget Amendment for HVAC Repairs for 304 Black Mtn. Ave Building #FY20-7

Manager Harrold stated this budget amendment is to reflect repairs completed at 304 Black Mountain Avenue to the HVAC system. Manager Harrold advised the Board he selected replacement of units over repair of existing units due to the refrigerant being discontinued in 2020 which would make the current units obsolete. Manager Harrold stated the new units have a ten year warranty.

Motion: *To approve Budget Amendment #FY20-7 as submitted, increasing the expense accounts, 1010-5400-730 (Capital Outlay) by \$14,675 and the revenue account, 1000-3905-900 (Fund Balance Appropriated by \$14,675.*

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

The motion was approved by a vote of 5-0.

Alderman Carlos Showers stated it was important for citizens to recognize and appreciate the work staff has done to seek out and obtain grant funding for many of the larger projects in town. Alderman Showers commended staff for their hard work.

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.

There were no citizen comments.

7. UNFINISHED BUSINESS

A. Consideration of Offer(s) received to purchase Town owned property located at 2992 U.S. Hwy 70, Black Mountain NC (Former Public Works Building) #R-19-18

Town Attorney Sneed recalled tentative offers being presented to the Board of Aldermen to purchase Town owned property. Attorney Sneed stated NC G.S. 160A-265. Article 12, Sale and Disposition of Property guides the process for accepting bids and advertisement of upset bids. Attorney Sneed stated the Board has received an upset bid in the amount of \$554,000 and said the process will be advertised again to see if another bid will be submitted. Attorney Sneed stated he will proceed with closing if no further bids are received.

B. Cherry Street One-Way Travel

Manager Harrold recalled the adoption of the one-way resolution previously by the Board and stated he attended a meeting with the Cherry Street business owners to gather additional input.

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Manager Harrold stated a few business owners were not happy with the decision to change it to a one-way pattern traveling north bound. Manager Harrold recalled prior presentations and recommendations given by engineers encouraging a north bound traffic pattern citing safety of pedestrians, disabled parking access, and general public safety provided to the Board and public and deferred to Planning Director Trotman to provide the latest feedback gathered from the most recent meeting regarding the pattern. Ms. Trotman stated fifteen businesses were represented from Cherry Street and State Street and stated the consensus was now not in favor of a north bound traffic pattern. Mayor Collins asked for clarification as to why a south bound traffic pattern is not feasible and Ms. Trotman stated one of the primary concerns is the left turn into Cherry from State Street which often causes traffic to back up through the intersection at Montreat Road. Ms. Trotman stated business owners along State Street who often witness this were in favor of a north bound traffic pattern. Ms. Trotman also stated the pedestrian crossing at the top of Cherry Street is very broad and unsafe for pedestrians as is. Ms. Trotman stated pedestrians are often times in the crosswalk as cars proceed onto the street before they are in sight distance. Alderman Larry B. Harris recalled a south bound pattern being unsafe due to speed. Ms. Trotman stated a north bound pattern would naturally reduce speed and allow for safer parallel parking citing no need for acceleration to maneuver the vehicle into the space. She stated one recommendation was also to increase the size of parking spaces. Alderman Harris stated he recalled every reason for a north bound pattern was related to safety by the engineers. Vice Mayor Maggie Tuttle recalled prior discussions with the engineer and stated she supports the idea of a test run for a north bound pattern. Alderman Harris recalled the initial request by the business owners for accommodation and stated he feels the Board has been receptive to their concerns but said it appears having a south bound traffic flow is unsafe according to the traffic engineers. Alderman Harris suggested leaving it as is. Ms. Trotman added having a one way pattern would allow the travel lane to almost double which would accommodate delivery trucks throughout the day without them blocking the street or causing oncoming traffic to travel into the opposite lanes to get around. Ms. Trotman stated this was one of the primary concerns of the businesses on Cherry Street. Alderman Harris posed the idea of temporarily proceeding with signage and barricade type impediments to mimic narrowing the pedestrian crossing at the top in lieu of proceeding with construction. Vice Mayor Tuttle stated she supports the idea of trying it out and clarified the street striping pattern would be the same regardless.

The Board directed staff to proceed with street striping and temporary signage and impediments to mimic a one way north traffic pattern on Cherry Street.

8. NEW BUSINESS

A. Award Contract(s) for Snow Removal Services

Manager Harrold stated staff solicited requests for proposals for snow removal services recalling in the past needing additional assistance to remove snow in the highest elevations in town. Manager Harrold stated he recommends awarding the contract to B.H. Granning Landscapes, Inc. and stated

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they currently hold over 20 contracts with various entities including Duke Energy and NC DOT. Manager Harrold stated the hourly rate will increase by \$30.00 but reiterated they would only be called in for a large snow event to assist staff.

Alderman Larry B. Harris moved to award the contract(s) for snow removal services for Municipal Parking, and Municipal Roadways to B.H. Granning Landscapes, Inc.as presented.
The motion was approved by a vote of 5-0.

B. The Settings Water System

Attorney Sneed recalled a prior resolution in 2013 agreeing to take over The Settings water system once it was complete and constructed to town standards stating he has prepared a contract, MOU, and grant of easement documents for consideration by the Board. Attorney Sneed stated basically anything in the ground would belong to the town and anything above ground would remain the responsibility of The Settings HOA. Attorney Sneed stated above ground items such as tanks, pumps, valves would be items that the town would be reimbursed for if they were in need of repairs and clarified the MOU would clarify operations and responsibilities of each party.

Alderman Larry B. Harris moved to approve Resolution #R-19-19 for transfer of The Settings waterlines to the Town of Black Mountain as presented.
The motion was approved by a vote of 5-0.

Vice Mayor Maggie Tuttle moved to approve the Memorandum of Understanding between the Town of Black Mountain and The Settings HOA (Water System) as presented.
The motion was approved by a vote of 5-0.

C. Lake Tomahawk Sediment Management Proposal Phase I – Wildlands Engineering

Manager Harrold stated this proposal pertains to the north side of the lake where Tomahawk Branch pours into Lake Tomahawk. Manager Harrold recalled flooding in 2018 stating some of the embankment around the pedestrian bridge has washed away and said the extent of that damage is unknown at this time. Manager Harrold stated the original design was intended for heavy floodwaters to enter through a culvert and deposit sediment into the forebay at the pedestrian bridge before entering into the lake but said the flooding events have compromised the design and washed out the embankment which is allowing sediment to flow directly into the lake. Manager Harrold stated the engineering of the contract is \$32,700 to \$36,700 and includes a design to eliminate the current culvert pipe and box by replacing them with a rock weir arch and streambank restoration along that section heading toward Laurel Circle Drive. Manager Harrold stated the construction estimate for that portion of work would be approximately \$37,000 which brings the total to around \$73,400. Manager Harrold stated this does not include any work to the abutment of the pedestrian bridge but said he has contacted the construction

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company who is currently performing bridge repairs to other bridge structures in town and said he received a quote to complete the abutment work on the pedestrian bridge for approximately \$30,000 which is not in this packet. Manager Harrold stated staff would be most likely to receive grant funding to pay for a sediment management plan in the future by having this work completed. Manager Harrold stated this works toward removing the Swannanoa River from the 303D list which is a designation of an impaired waterway due to sediment. Manager Harrold also stated repairs would negate sediment coming into the lake and recalled the significant cost of dredging a few years ago.

Alderman Larry B. Harris moved to approve the proposal from Wildlands Engineering for Phase I – Lake Tomahawk Sediment Management as presented and to authorize the Town Manager to execute the contract. The motion was approved by a vote of 5-0.

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 Adopt Phase II Stormwater Ordinance

#O-19-21

Alderman Larry B. Harris moved to open the public hearing for Ordinance #O-19-21 for amendments to Stormwater Phase II. The motion was approved by a vote of 5-0.

Planning Director Jessica Trotman stated as an MS4 Phase II municipality, the Town is required to have a post-construction stormwater ordinance and said these rules and regulations are largely established by the Environmental Protection Agency and passed to the states. The proposed changes strengthen the ordinance to enhance water quality protection while also making them easier to read, manage and enforce. These changes have been reviewed by an engineer and the NC Department of Water Quality's Phase II coordinator.

Summary of Material Changes

- Projects which disturb 5,000 square feet of land will require a stormwater permit under the phase II ordinance (currently it is 12,000 square feet). This will result in more projects requiring stormwater permits.
- Pre-construction meetings with staff are not required (currently they are options)
- Pre-construction run-off must be met by phase, not by end of project. This will close a loop hole which phased projects currently benefit from.
- The requirements for SCMs are increased to handle more dramatic storms, moving from a one-year storm to a 25 year storm as calculated by NOAA.
- Adds new language regarding calculation of stormwater requirements as required by session law from 2018.
- Applies the most stringent "high density" requirements to both low and high density projects, increasing stream buffer protection.

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Director Trotman prepared a handout which is made part of and include in these minutes. The handout details options for dealing with stormwater runoff with considerations made for storm size and area disturbed.

Board members discussed additional construction costs and asked staff to provide additional information before the ordinance is considered. Attorney Sneed stated the current standard is not adequate to comply with the State's required MS4 permitting. Attorney Sneed stated the changes being recommended by the Planning Director have been created to increase treatment standards at the source of the runoff and added there will be some additional construction costs added. Attorney Sneed stated if a minimum stormwater runoff standard is not met, then the Town could face fines at \$25,000 per day until it comes into compliance.

Jesse Gardner of *Black Mountain and Planning Board* addressed the Board of Aldermen inquiring why this issue was not given to the planning board to decide upon first. Mr. Gardner stated he is a civil engineer by trade and feels the planning board is capable of making this decision. Attorney Sneed stated the Board would need to enact an ordinance before stormwater consideration could be decided by the Planning Board as state statutes and town ordinance are clear on the matter. Alderman Larry Harris inquired if the Board could ask for Planning Board input. Attorney Sneed stated the Board could solicit informal information from the planning board with regards to stormwater, but stated stormwater review is not among the items listed in NCGS160A-361 (requires certified engineers).

***Vice Mayor Maggie Tuttle moved to close the public hearing.
The motion was approved by a vote of 5-0***

***Alderman Larry Harris moved to table the decision pending further information.
The motion was approved by a vote of 5-0***

B. Public Hearing for Stormwater Illicit Discharge and Connection #O-19-22

***Alderman Larry B. Harris moved to open the public hearing for Ordinance #O-19-22 for amendments to illicit discharge.
The motion was approved by a vote of 5-0.***

Planning Director Jessica Trotman stated the proposed sections were previously included in the Phase II ordinance and staff has extracted them into a standalone ordinance for improved organization, readability and enforcement. Director Trotman stated the only material change is adding a "straight-piping" of untreated waste water into a receiving surface water is prohibited. Director Trotman reminded the Board the allowable items by the ordinance are established by the state and represent water determined to be uncontaminated for discharged into the stormwater system. Alderman Carlos Showers inquired if this applies to drainage of swimming pools or washing machines and Director Trotman clarified that no chlorinated water should be discharged into the groundwater without treatment. There was no further discussion by the Board.

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There were no citizen comments.

***Alderman Carlos Showers moved to close the public hearing.
The motion was approved by a vote of 5-0***

***Alderman Larry B. Harris moved to approve Ordinance #O-19-22 as presented.
The motion was approved by a vote of 5-0***

10. COMMUNICATION FROM STAFF

- A. Town Attorney – None at this time.
- B. Town Manager - Manager Harrold gave a brief report on Planning Board actions recalling rezoning properties on Flat Creek from SR-2 to TR-4 stating the board held a workshop and residents attending were in favor of the move.

11. COMMUNICATION FROM MAYOR AND BOARD OF ALDERMEN

Alderman Larry B. Harris congratulated and thanked the Fire Department on a successful event over the weekend celebrating 100 years of fire service to the town.

12. ADJOURNMENT

There being no further business, Mayor Don Collins adjourned the meeting at 7:38 p.m.

ATTEST:

Angela Reece, Assistant to Manger/Town Clerk

Don Collins, Mayor



Three pillars of data security

- **CONFIDENTIALITY:** the ability to hide, anonymize, or otherwise obfuscate information from those people unauthorized to view it.
- **INTEGRITY:** ensure that information isn't tampered with, either at rest or in motion.
- **AVAILABILITY:** For any system to serve its core purpose, it must be available when needed.

What is Ransomware?

The concept behind ransomware, a well-known form of malicious software, is quite simple: Lock and encrypt a victim's computer data, then demand a ransom to restore access. In many cases, the victim must pay the cybercriminal within a set amount of time or risk losing access forever.

What preventative technical controls are in place to protect data?

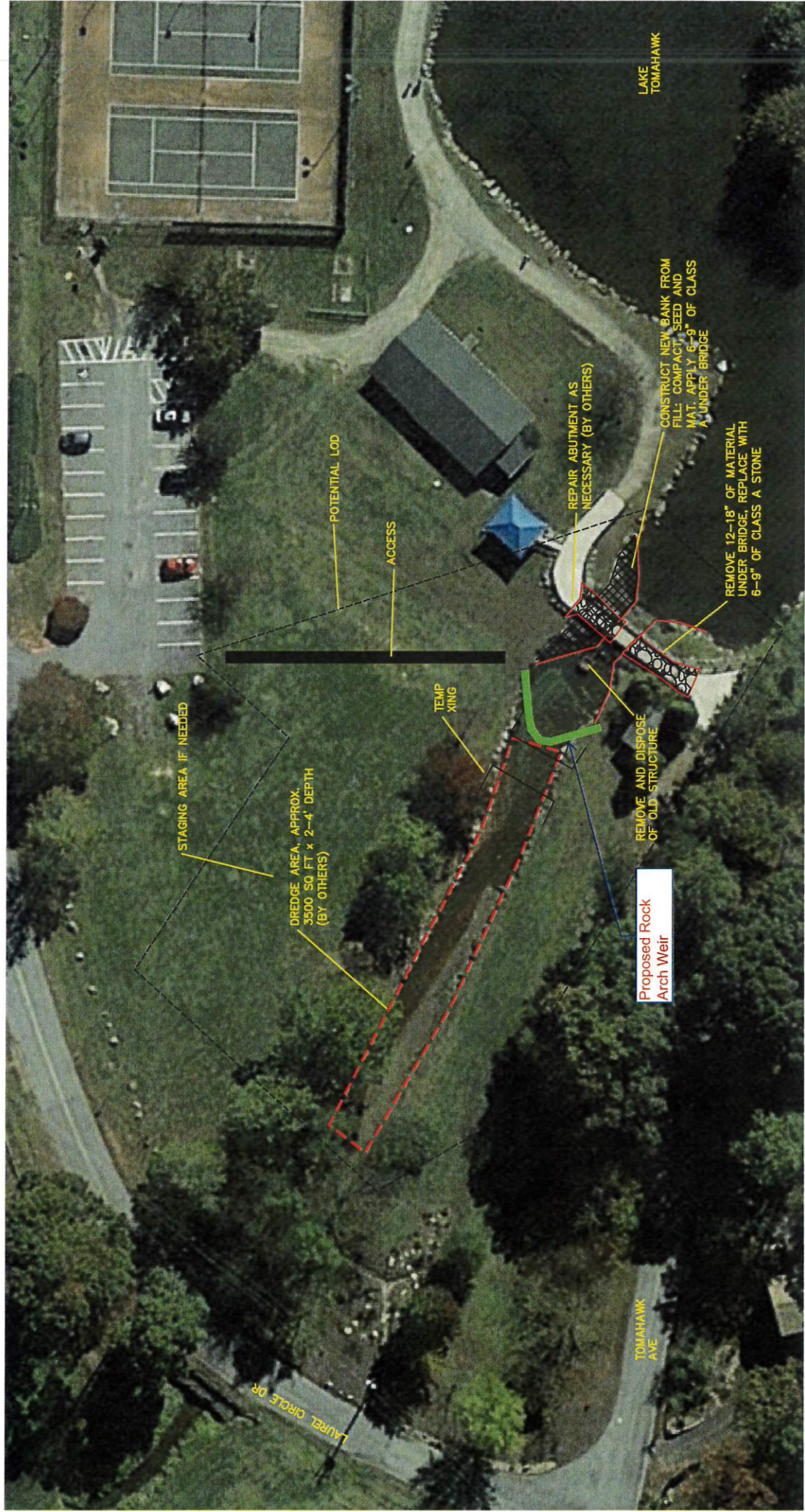
- Email filtering – 64% of all email sent to the town is rejected
- Anti-malware software runs on all town computers
- Backups are taken nightly. One copy is kept onsite and the other is sent offsite
- Networks are protected via firewalls, encryption and segmentation
- Advanced Data's team of 35 is working on the town's behalf

What can be improved?

- The human element is the weakest link in a security plan. End-user training can be improved. (Train staff not to click on suspect links in emails.)
- Coordinated phishing campaigns
- Security policies should be updated for the staff handbook. Specifically Technology Acceptable Use, Passwords, and Email policies.
- Risk assessment should be performed
- Internet redundancy should be improved

Lake Tomahawk Sediment Management

8/23/2019



Post-construction Stormwater Ordinance Variables for Your Consideration

You can change one of these or both of these in any combination you see best fit.

Area Disturbed

There are two things that “trigger” a post-construction ordinance. Area disturbed or additional impervious surface. The only one modified in this draft is the area disturbed.

- Area disturbed in the current ordinance is 12,000 square feet.
- The area disturbed in the draft ordinance is 5,000 square feet.
- You may choose to consider other thresholds, such as 8,000 or 10,000.

In 2018 there were 49 new construction permits. Only seven were required to comply with the post-construction stormwater ordinance.

With the proposed 5,000 square feet change 12 more of them would have been required to comply with post-construction stormwater.

In 2019 to date there have been 54 new construction permits. There have been only five post-construction stormwater permits required. With the proposed 5,000 square feet rule, six more of them would have required to comply with post-construction stormwater.

Storm Size

- The storm size is currently a 1-year/24 hour storm.
- The storm size proposed is a 25-year/24 hour storm.
- You may choose to consider a different size storm.

For your reference:

- 1 year storm = 2.83"
- 2 year storm = 3.42"
- 5 year storm = 4.33"
- 10 year storm = 5.04"
- 25 year storm = 6.02"

Since January 1, 2018 to date there have been:

- 5, 1-year
- 4, 2-year storms or greater
- 3, 5 year storms or greater
- 3, 10 year storms or greater
- 4, 25 year storms

Black Mountain is an MS4 community. This an unfunded federal *mandate* which requires more than 40 specific activities, plans and programs to meet the conditions the National Pollution Discharge Elimination System permit.

The post-construction ordinance for your consideration tonight is only one element of the NPDES permit.

Polluted stormwater runoff is commonly transported through municipal separate storm sewer systems and then discharged, untreated, into local surface water.

There are generally two forms of substantial impacts of post-construction runoff. The first is caused by an increase in the type and quantity of pollutants in stormwater runoff. As runoff flows over areas altered by development, it picks up harmful sediment and chemicals such as oil and grease, pesticides, heavy metals, and nutrients. These pollutants often become suspended in runoff and are carried to receiving waters, such as streams and rivers.

The second kind of post-construction runoff impact occurs by increasing the quantity of water delivered to the streams and rivers during storms. Increased impervious surfaces (e.g., parking lots, driveways, and rooftops) interrupt the natural cycle of gradual percolation of water through vegetation and soil. Instead, water is collected from surfaces such as asphalt and concrete and routed to drainage systems where large volumes of runoff quickly flow to the nearest receiving water. The effects of this process include streambank scouring and downstream flooding.

The town spends significant staff time and tens of thousands of dollars each year working to improve stormwater conditions, by installing stormwater control measures on public property, stabilizing streambanks and management of Lake Tomahawk. Still, the stretch of the Swannanoa River receiving stormwater from the town is on the list of impaired waters.

More stringent standards reduce quantity and improve quality of stormwater from smaller projects which cumulatively have significant impact on water quality. Under a local program the town has an opportunity to approve small scale projects with conditions that can improve stormwater control, which in the absence of, contributes to the burden of the town.

The post construction ordinance is based on the universal model written by the UNC School of Government and adopted within the North Carolina Administrative Code. Essentially, this means it incorporates all applicable needs in order to meet rules passed from EPA to the State to enforce. This also means it largely is comprised of minimum standards.

Though the ordinance is based wholly on the model, the town is empowered to increase standards. Because the town is a designated MS4.

In a literature review of environmental regulations conducted in 2013 by DENR, reducing area of disturbance to better suit the type of development experienced by a local government is a frequent method of environmental control. The review include 20 counties and municipalities. Rapid development and/or mountain terrain were also cited for the reasons of the increased standards. Buncombe County, which administers and enforces sedimentation and erosion control for Black Mountain requires plans accommodate a 25 year storm which exceeds state and federal rules, however fewer properties are subject to this because the area disturbed which requires the permit is one-acre or

greater. The City of Asheville requires stormwater plans accommodate a ten-year storm. Western North Carolina only represents 9% of all of the MS4's in the state and with the exception of Asheville, all are small communities. Therefore there is not significant information available about changing the area of land disturbed for the purpose of a stormwater permit.

Black Mountain does not experience significant diversity in the size of development. In calendar year 2018 there were 49 new construction permits, but only seven projects were subject to the post-construction ordinance. So far in 2019, there have been 54 new construction permits, and only five have been required to comply with post-construction stormwater.

In evaluating the ordinance, the question became, how we can align the standards with the size of disturbance closer to what is seen in practice? This is why the area of disturbance is reduced to 5,000 square feet.

Under the proposed 5,000 square feet in 2018 there would have been 12 more post-construction stormwater permits required, and 6 for 2019 to date.

It's also worth mentioning that the minimum lot size in UR-8, which comprises 27% of the entire area of the town has a minimum lot size of 5,000 square feet. Which is to say, 27% is not likely to be subject to the post-construction ordinance even under the proposed conditions.

Alternatively, you may consider thresholds of 8,000 or 10,000 square feet or continue with 12,000 square feet. In absence of a change in area disturbed requiring a post-construction stormwater permit, other potential solutions, regulatory and/or non-regulatory should be considered to improve the collective stormwater conditions created by the continued growth created through small scale development.

The other significant standards changed is the size storm, which is changed from a 1-year storm (2.83" in 24 hours) to a 25-year storm (6.02" in 24 hours). This means there is a 4% chance in any given year a storm of that intensity would occur.

This is admittedly a high standard, but better accommodates the types of events experienced in 2018.

If you feel the 25 year storm standard is too high, you can consider a 10-year storm (5.04"), which has a 10% chance occurring any given year, or a 2-year storm (3.42") which has a 50% chance.

However, for your reference, from January 1, 2018 to date, there have been 5 one-year events, 4 two-year, 3 five-year, 3 ten-year and 4 twenty-five year storms (NOAA).

And over the next 30-50 years, precipitation in this part of the country is anticipated to increase 5-10% particularly in the winter and spring months (NOAA).

Like most rules and regulations, there is a cost associated with compliance, both to those developing projects that meet the thresholds for permitting, as well as to the town.

Engineering plans for small scale stormwater plans can be between \$2,000 and \$3,000.

It's difficult to estimate construction costs for a project disturbing 5,000 square feet, because there are many variables, including the type of SCM selected, the low impact strategies utilized in the design

process which moderate construction costs. If no impact strategies are used, costs could be in the neighborhood of \$20,000-\$25,000.

If a project is one acre or greater is land disturbance, it requires erosion and sedimentation control be built to a 25 year store, prior to post construction, this can reduce construction costs for those with larger projects (who would be required by our current ordinance to have a stormwater permit) because the construction and post-construction storm sizes are the same.

Other improvements made in this ordinance which will improve stormwater conditions is requiring post-construction stormwater standards to be attained by phase instead of end of construction. Phased developments are typically larger subdivisions, which can take years to fully build out. It also requires the developer/contractor to meet with staff early in the design process. All projects subject to a stormwater permit are required to meet the increased standards previously applied to only high-density projects. The other is a required change from 2018 session law, regarding redevelopment calculations and vegetative buffers.

The remainder to the lengthy document has been improved for organization and clarity. The changes proposed in this draft have been reviewed by the MS4 Phase II coordinator for the state, who has supported the changes.