



TOWN OF BLACK MOUNTAIN

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

Date: March 9, 2020 Time: 6:00 p.m.

AMENDED

Regular Session Agenda

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Town Clerk at 419-9310, or by email at townclerk@townofblackmountain.org

(828) 419-9300 / TDD (800) 735-2962

1. CALL TO ORDER

- Welcome
- Pledge of Allegiance
- Invocation – *Pastor Caleb Davis, Homers Chapel*
- Announcements – *Mayor Don Collins*

2. PROCLAMATIONS, AWARDS & RECOGNITION

A. Proclamation – *Carlos L. Showers*

B. Proclamation - *Black Mountain Beautification Committee*

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 STAFF, BOARDS, COMMISSIONS & AGENCIES

A. Public Works Annual Water Report – *Jamey Matthews, 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

March 9, 2020

Motion: *To adopt the minutes of February 6, 2020 (Agenda Session), February 10, 2020 (Regular Session), and February 10, 2020 (Closed Session).*

B. Budget Amendment for Attorney Fees

#FY20-14

Motion: *To approve Budget Amendment #FY20-14 as submitted increasing expense account 1000-4100-040 (Professional Services) by \$25,000 and increasing the revenue account 1000-3905-900 (Fund Balance Appropriated) by \$25,000.*

Consent Motion: *To approve consent items A-B as presented.*

6. CITIZEN COMMENTS

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

7. UNFINISHED BUSINESS

A. 2020 Sanitation Contract

B. NC Highway 9 Sidewalk Construction Contract Approval

Motion: *To award contract for NC Highway 9 sidewalk construction to Southern Appalachian Grading and Excavating, Inc. in the amount of \$125,240.*

8. ORGANIZATIONAL MEETING

A. Appointment of Alderman for the Town of Black Mountain to an unexpired term ending 2020

Motion: *To appoint _____ as Alderman to the Town of Black Mountain Board of Aldermen.*

Oath of Office of Appointed Alderman – Don Collins, Mayor

B. Appointments of representatives and alternates to represent the Town of Black Mountain on boards/committees of outside agencies.

1. Black Mountain- Swannanoa Chamber of Commerce Executive Board:

*There is one **Member** appointment to be filled for the Black Mountain- Swannanoa Chamber of Commerce Executive Board.*

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA
March 9, 2020

Motion: To appoint _____ to serve as **member** of the
Black Mountain Swannanoa Chamber of Commerce Executive Board.

2. Asheville Regional Housing Consortium:

There is one Alternate to be filled for the Asheville Regional Housing Consortium.

Motion: To appoint _____ to serve as **alternate member**
of the Asheville Regional Housing Consortium.

3. Friends of the Fonta Flora State Trail Executive Board:

Motion: To appoint _____ to serve as **member** of the
Friends of the Fonta Flora State Trail Executive Board.

9. NEW BUSINESS

A. Compliance with NC G.S. Chapter 160D- Attorney Ron Sneed

B. Resolution to Provide Matching Funds for Ninth Street Bridge Replacement **#R-20-03**

Motion: To approve Resolution #R-20-03 committing to matching funds, if
awarded, in the amount of in the amount of \$91,400, which is twenty-percent (20%)
of the total request of the grant application for 2020 STBG to provide funding for
construction for the Ninth Street Bridge Replacement

10. 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.

11. COMMUNICATION FROM STAFF

A. Town Attorney – Ron Sneed

B. Town Manager – Josh Harrold

12. COMMUNICATION FROM MAYOR AND BOARD OF ALDERMEN

13. ADJOURNMENT



Josh Harrold
Town Manager



Proclamation

Black Mountain Beautification Committee Day March 22, 2020

WHEREAS, the Black Mountain Beautification Committee was established 20 years ago by the Economic Development Committee of the Black Mountain Swannanoa Chamber of Commerce; and

WHEREAS, the Committee took as its mission statement that *The people of Black Mountain possess a cherished tradition of honoring the natural beauty of the surrounding mountains all the while seeking to reflect that beauty on the streets and in the lives of its citizens*; and

WHEREAS, this non-profit organization focuses on maintaining and nurturing the town gardens and green areas and establishing more natural gardens in designated open areas; and

WHEREAS, in 2005 the Committee established the Black Mountain Garden Show and Sale thus bringing in hundreds of guests from all parts of the south who experience the spirit of Black Mountain; and

WHEREAS, in 2013 the Committee worked extensively with the Town Square Committee to create this park as a focal point of Black Mountain; and

WHEREAS, in 2016 the Committee worked to bring about a consistent look in the planters and benches in the historic section of Black Mountain; and

WHEREAS, the Town of Black Mountain and the Black Mountain Beautification Committee have worked hand in hand for these 20 years with mutual support and respect to provide a hospitable, welcoming, and scenic mountain community for the benefits of citizens and visitors alike

NOW, THEREFORE, I, Don Collins, Mayor of the Town of Black Mountain, do hereby proclaim Sunday, March 22, 2020 in the Town of Black Mountain as

The Black Mountain Beautification Committee Day

SIGNED this 9th day of March 2020.

Attest:

Don Collins, Mayor

Angela Reece, Town Clerk

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: March 9, 2020

SUBJECT: Budget Amendment for Attorney Fees #FY20-14

AGENDA INFORMATION

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

BRIEF SUMMARY: Legal fees in FY20 are considerably higher than budgeted amounts, due in large part, to the Town contracting with Roberts and Stevens, Attorneys at Law for assistance in human resources related issues.

MOTION FOR CONSIDERATION: To approve Budget Amendment #FY20-14 as submitted increasing expense account 1000-4100-040 (Professional Services) by \$25,000 and increasing the revenue account 1000-3905-900 (Fund Balance Appropriated) by \$25,000.

FUNDING SOURCE: Fund Balance from the General Fund.

ATTACHMENTS: N/A.

MANAGER'S COMMENTS AND RECOMMENDATIONS: Adopt as presented.

Budget Amendment # 2020-14
Fiscal Year 2019-2020

Dept.	Account #	Account Name	Debit	Credit	Comments
	1000-4100-040	Prof Serv	25,000		Increase in
	1000-3905-900	Fund Balance Approp		25,000	Legal Fees

Totals:	25,000	25,000
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BD #

Entered By:

Journal #

Fiscal Yr

Approved By:

Date

Date

G.S. Chapter 160D Checklist of Changes to Local Ordinances, Policies, and Practices

This checklist outlines provisions in the new Chapter 160D of the North Carolina General Statutes (hereinafter G.S.) as well as related statutory changes that will be incorporated into Chapter 160D. The changes to the statutes affect the language of local ordinances, the options for local decision processes, and the administrative practices related to development regulations.

This checklist is one piece of a larger set of resources and training materials, including an explanatory book, *Chapter 160D: A New Land Use Law for North Carolina*. Each item on this checklist is described more thoroughly in those additional resources. Section headers in this checklist note the corresponding chapter and section of the Chapter 160D book [in brackets]. Check nc160D.sog.unc.edu for additional resources and training.

The checklist has specific notations, which are accompanied by specific icons, as follows:

- ☐ Denotes **legislative changes** for which local governments *must* take action (statutory citations are in parentheses)
- ☐ Denotes **permissive legislative changes** for which local governments *may* take action
- Denotes **notable legislative changes** that do not require local action but of which local governments must *be aware*

*For items noted with an asterisk, local governments do not have authority for the change until January 1, 2021, unless legislation authorizes earlier effectiveness. Noted changes may be incorporated into ordinances and policies, but they must not be effective until 2021. All other changes may be adopted and effective immediately.

I. Terminology and Citations [Chapter 1, Section III]

- ☐ **Must** update any references to provisions in G.S. Chapter 160A or 153A to indicate relevant provisions in Chapter 160D. (See appendixes B and C in the Chapter 160D book.)
- ☐ **Must** align ordinance terminology with Chapter 160D terminology for *conditional zoning* and *special use permits*; must delete use of the terms *conditional use permit*, *special exception*, *conditional use district zoning*, and *special use district zoning*. (See G.S. 160D-102.)
- ☐ **Must** ensure that ordinance definitions for the following terms are not inconsistent with definitions provided in state law and regulation: *building*, *dwelling*, *dwelling unit*, *bedroom*, and *sleeping unit*. (S.L. 2019-111, § 1.17.)
- ☐ **May** align ordinance terminology with Chapter 160D terminology, including for the following terms: *administrative decision*, *administrative hearing*, *determination*, *developer*, *development*, *development approval*, *development regulation*, *dwelling*, *evidentiary hearing*, *legislative*

decision, legislative hearing, planning and development regulation jurisdiction, and quasi-judicial decision. (G.S. 160D-102.)

II. Geographic Jurisdiction [Chapter 2, Section I]

- ☐ *For extension of extraterritorial jurisdiction (ETJ), a municipality **must** provide mailed notice thirty days prior to ETJ hearing; municipality **may** hold one hearing (with single mailed notice) regarding ETJ and initial zoning amendment. (G.S. 160D-202(d).)
- ☐ Municipality **may** hold hearings in anticipation of change in jurisdiction. (G.S. 160D-204.)
- ☐ *For a parcel in two jurisdictions, the owner and the jurisdictions **may** agree for development regulations from one jurisdiction to apply to the entire parcel. (G.S. 160D-203.)
- ☐ *In ETJ, the county **may** elect to exercise development regulations that the municipality is not exercising. (G.S. 160D-202(b).)

III. Boards [Chapter 2, Section II]

A. In General

- ☐ **Must** adopt broadened conflict-of-interest standards for governing and advisory boards. (G.S. 160D-109.)
- ☐ **Must** keep minutes of proceedings of each board. (G.S. 160D-308.)
- ☐ **Must** have each board member take an oath of office before starting his or her duties. (G.S. 160D-309.)
- ☐ **Must** update ETJ population estimate, at least with each decennial census (also calculation for proportional representation is simplified and process for appointment is clarified). (G.S. 160D-307.)
- ☐ **Must** provide proportional representation for ETJ on preservation commission if any districts or landmarks are designated in the ETJ. (G.S. 160D-307.)
- ☐ **May** have detailed rules of procedure for each board; **may** be adopted by governing board; if not, then **may** be adopted by individual board; if adopted, **must** maintain board rules of procedure (by clerk or other officer as set by ordinance) and **must** post board rules of procedure to website, if the jurisdiction has a website. (G.S. 160D-308.)
- ☐ **May** establish reasonable procedures to solicit, review, and make appointments; governing board typically makes appointments but may delegate that appointment-making authority. (G.S. 160D-310.)
- ☐ **May** establish additional advisory boards related to development regulations. (G.S. 160D-306.)

B. Planning Board

- ☐ **May** assign to planning board the coordination of citizen engagement for planning. (G.S. 160D-301.)
- ☐ **May** assign planning board to serve as preliminary forum for review and comment on quasi-judicial decisions, provided that no part of the preliminary forum or recommendation may be used as a basis for the deciding board. (G.S. 160D-301.)

C. Board of Adjustment

- ☐ **May** assign board of adjustment to hear and decide matters under any development regulation, not just zoning. (G.S. 160D-302.)
- ☐ **May** assign duties of housing appeals board to board of adjustment. (G.S. 160D-305.)

IV. Land Use Administration [Chapter 2, Section III]

A. In General

- ☐ **Must** incorporate new staff conflict-of-interest standards into ordinance or policy. (G.S. 160D-109.)
- ☐ **Must** maintain in paper or digital format current and prior zoning maps for public inspection. (G.S. 160D-105.)
- ☐ **Must** maintain in paper or digital format any state or federal agency maps incorporated by reference into the zoning map. (G.S. 160D-105.)
- ☐ **May** enact ordinances, procedures, and fee schedules relating to administration and enforcement of development regulations. (G.S. 160D-402(b).)
- ☐ **May** charge reasonable fees for support, administration, and implementation of development regulation; **must** use any such fees for that purpose, not for other purposes. (G.S. 160D-402(d).)

B. Enforcement

- ☐ **Must** issue notices of violation (NOVs) in conformance with statutory procedures (must deliver to permittee and landowner if different; may deliver to occupant or person undertaking the activity; delivery by hand, email, or first-class mail; may be posted onsite; administrator to certify NOV for the file.) (G.S. 160D-404(a).)
- ☐ If inspecting, **must** enter the premises during reasonable hours and upon presenting credentials; **must** have consent of premises owner or an administrative search warrant to inspect areas not open to the public. (G.S. 160D-403(e).)
- ☐ For revocation of development approval, **must** follow the same process as was used for the approval. (G.S. 160D-403(f).)
- ☐ **May** perform inspections for other development approvals to ensure compliance with state law, local law, and the terms of the approval; **must** perform (or contract for) inspections for building permits. (G.S. 160D-1113; -403(e).)

- **May** perform inspections for general code compliance and enforcement (inspections unrelated to a development approval). (G.S. 160D-402(b).)
- **May** require a certificate of compliance or occupancy to confirm that permitted work complies with applicable laws and terms of the permit; still **must** require certificate of occupancy for work requiring a building permit. (G.S. 160D-403(g).)
- **May** issue stop-work orders for illegal or dangerous work or activity, whether related to a permit or not. (G.S. 160D-404(b).)
- **May** continue to use general enforcement methods, including civil penalties, fines, court-ordered actions, and criminal prosecution. (G.S. 160D-404(c).)
- △ Be aware that a local government must bring a court action in advance of the applicable five- and seven-year statutes of limitation. (G.S. 1-51 and -49; established prior to Chapter 160D.)

V. Substance of Zoning Ordinance [Chapter 3, Section I]

- **Must** maintain current and prior zoning maps for public inspection (local government clerk or other office may be the responsible office); **may** adopt and maintain in paper or digital format. (G.S. 160D-105.)
- **Must** eliminate conditional-use-district zoning; existing conditional-use-district zoning converts to conditional district on January 1, 2021. (G.S. 160D-703; S.L. 2019-111, § 2.9(b).)
- ***May** incorporate maps officially adopted by state or federal agencies (such as flood-insurance rate maps (FIRMs)) into the zoning map; **may** incorporate *the most recent officially adopted version* of such maps so that there is no need for ordinance amendment for subsequent map updates; **must** maintain current effective map for public inspection; **may** maintain in paper or digital format. (G.S. 160D-105.)
- ***May** require certain dedications and performance guarantees for zoning approvals to the same extent as for subdivision approvals. (G.S. 160D-702.)
- **May** use form-based codes. (G.S. 160D-703(a)(3).)
- **May** allow administrative minor modification of conditional zoning, special use permits, and other development approvals; if allowed, **must** define “minor modification” by ordinance, **must** not include modification of use or density, and major modifications **must** follow standard approval process. (G.S. 160D-403(d), -703(b), -705(c).)
- **May** apply zoning standards jurisdiction-wide, not just on a zoning-district-by-zoning-district basis. (G.S. 160D-703(d).)
- ***May** regulate development over navigable waters, including floating homes. (G.S. 160D-702(a).)

VI. Substance of Other Development Ordinances [Chapter 3, Section II]

- ☐ **Must** conform subdivision performance guarantee requirements with statutory standards. (S.L. 2019-79 (S.B. 313), to be incorporated into G.S. Chapter 160D.)
- ☐ **Must** conform subdivision procedures for expedited review of certain minor subdivisions. (G.S. 160D-802, established prior to G.S. Chapter 160D.)
- ☐ **Must** exempt farm use on bona fide farm in ETJ from city zoning to the same extent it would be exempt from county zoning; Chapter 160D clarifies that other municipal development regulations may still apply. (G.S. 160D-903(c).)
- ☐ **Must** not exclude manufactured homes based on the age of the home. (G.S. 160D-910.)
- ☐ ***Must** follow standardized process for housing-code enforcement to determine owner's abandonment of intent to repair and need for demolition. (G.S. 160D-1203(6).)
- ☐ **May** adopt moratoria for development regulations (subject to limitation on residential uses); moratoria do not affect rights established by permit choice rule. (G.S. 160D-107.)

A. Historic Preservation

- ☐ **Must** follow standard quasi-judicial procedures for preservation certificates of appropriateness. (G.S. 160D-947(c).)
- ☐ **Must** frame preservation district provisions as "standards" rather than "guidelines." (G.S. 160D-947(c).)
- ☐ ***May** choose for appeals of preservation commission decisions to go directly to superior court rather than to board of adjustment. (G.S. 160D-947(e).)

B. Development Agreements

- ☐ **Must** process a development agreement as a legislative decision. (G.S. 160D-105.)
- ☐ **Must** have a local government as a party to a development agreement (a water and sewer authority may enter an agreement as a party, but not independently). (G.S. 160D-1001(b).)
- ☐ **May** consider a development agreement concurrently with a rezoning, subdivision, or site plan; **may** consider a development agreement in conjunction with a conditional zoning that incorporates the development agreement. (G.S. 160D-1001(d).)
- ☐ ***May** address fewer topics in development agreement content (list of mandated topics is shortened). (G.S. 160D-1006.)
- ☐ **May** mutually agree with a developer for the developer to provide public improvements beyond what could have been required, provided such conditions are included in the development agreement. (G.S. 160D-1006(d).)
- ☐ **May** include penalties for breach of a development agreement in the agreement or in the ordinance setting the procedures for development agreements; either party may bring legal action seeking an injunction to enforce a development agreement. (G.S. 160D-1008.)

VII. Comprehensive Plan [Chapter 4, Section I]

- ☐ **Must** adopt a comprehensive plan by July 1, 2022, to maintain zoning (no need to re-adopt a reasonably recent plan). (G.S. 160D-501(a).)
- ☐ **Must** adopt a plan or a plan update following the procedures used for a legislative decision. (G.S. 160D-501(c).)
- ☐ **Must** reasonably maintain a plan. (G.S. 160D-501(a).)
- ☐ **May** coordinate a comprehensive plan with other required plans, such as Coastal Area Management Act (CAMA) plans. (G.S. 160D-501(a).)
- ☐ **May** coordinate with other local governments, state agencies, or regional agencies on planning processes. (G.S. 160D-503(a).)

VIII. Legislative Decisions [Chapter 4, Section II]

A. Notice

- ☐ **Must** follow applicable procedures for legislative decisions under any development regulation authorized under Chapter 160D, not just zoning; **must** adopt any development regulation by ordinance, not by resolution. (G.S. 160D-601.)
- ☐ For zoning-map amendments, **must** provide notice not only to immediate neighbors but also to properties separated from the subject property by street, railroad, or other transportation corridor. (G.S. 160D-602.)
- ☐ For zoning-map amendments, **must** provide posted notice during the time period running from twenty-five days prior to the hearing until ten days prior to the hearing. (G.S. 160D-602(c).)
- ☐ For extension of ETJ, **may** use single mailed notice for ETJ and zoning-map amendment pursuant to statutory procedures. (G.S. 160D-202.)
- ☐ For zoning-map amendments, **may** require applicant to notify neighbors and hold a community meeting and **may** require report on the neighborhood communication as part of the application materials. (G.S. 160D-602(e).)

B. Planning Board Comment

- ☐ **Must** refer zoning amendments to the planning board for review and comment; **must** not have governing board handle planning board duty to review and comment on zoning amendments. (G.S. 160D-604(c), (e).)
- ☐ **Must** have planning board consider any plan adopted according to G.S. 160D-501 when making a comment on plan consistency. (G.S. 160D-604(d).)
- ☐ **May** refer development regulation amendments (other than zoning) to the planning board for review and comment. (G.S. 160D-604(c).)

C. Plan Consistency

- ☐ When adopting an amendment to the zoning ordinance, **must** adopt a brief statement describing whether the action is consistent or inconsistent with approved plans. (G.S. 160D-605(a).) (**This eliminates the 2017 requirement that statements take one of three particular forms.*)
- ☐ **May** adopt plan-consistency statement when acting upon the zoning amendment or as a separate motion. (G.S. 160D-605(a).)
- ☐ ***May** meet the requirement for plan consistency even without formal adoption of a written statement if the minutes of the governing board meeting reflect that the board was fully aware of and considered the plan. (G.S. 160D-605(a).)
- ☐ **May** concurrently consider a comprehensive plan amendment and a zoning amendment; must not require a separate application or fee for plan amendment. (G.S. 160D-605(a).)
- ☐ **Must** note on the applicable future land use map when a zoning-map amendment is approved that is not consistent with the map; the future land use map is deemed amended when an inconsistent rezoning is approved. (G.S. 160D-605(a).) (*This clarifies that a rezoning inconsistent with a plan does not amend the text of the plan, but it does amend the future land use map.*)
- ☐ ***For** a future land use map that is deemed amended, if it is a CAMA plan, then such amendment is not effective until it goes through the CAMA plan-amendment process. (G.S. 160D-501.)
- ☐ **Must** adopt a statement of reasonableness for zoning-map amendments; for such statements, **may** consider factors noted in the statutes; ***may** adopt a statement of reasonableness for zoning-text amendments. (G.S. 160D-605(b).)
- ☐ **May** consider and approve a statement of reasonableness and a plan-consistency statement as a single, combined statement. (G.S. 160D-605(c).)

D. Voting

- ☐ ***Must** permit adoption of a legislative decision for development regulation on first reading by simple majority; no need for two-thirds majority on first reading, as was required for cities under prior law. (G.S. 160A-75; S.L. 2019-111, § 2.5(n).)

E. Certain Legislative Decisions

- ☐ **Must** prohibit third-party down-zonings; **may** process local government-initiated down-zonings (S.L. 2019-111, Pt. I.)
- ☐ **Must** obtain applicant's/landowner's written consent to conditions related to a conditional-zoning approval to ensure enforceability. (S.L. 2019-111, Pt. I.)
- ☐ **May** use purely legislative conditional zoning and/or quasi-judicial special use permitting; **must** not use combined legislative and quasi-judicial process, such as conditional-use-district zoning. (G.S. 160D-102.)

- With applicant's written consent, **may** agree to conditional-zoning conditions that go beyond the basic zoning authority to address additional fees, design requirements, and other development considerations. (S.L. 2019-111, Pt. I.)
- **May** allow administrative minor modification of conditional zoning, special use permits, and other development approvals; if allowed, **must** define "minor modification" by ordinance, **must** not include modification of use or density, and major modifications **must** follow standard approval process. (G.S. 160D-403(d), -703(b), -705(c).)

IX. Quasi-Judicial Decisions [Chapter 4, Section III]

A. Procedures

- **Must** follow statutory procedures for all quasi-judicial development decisions, including variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. (G.S. 160D-102(28).)
- **Must** hold an evidentiary hearing to gather competent, material, and substantial evidence to establish the facts of the case; the evidentiary hearing **must** have testimony under oath; **must** establish written findings of fact and conclusions of law. (G.S. 160D-406.)
- Board chair **must** rule at the evidentiary hearing on objections to inclusion or exclusion of administrative material; such ruling **may** be appealed to the full board. (G.S. 160D-406(d).)
- **Must** allow parties with standing to participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments; **may** allow non-parties to present competent, material, and substantial evidence that is not repetitive. (G.S. 160D-406(d).)
- **May** continue an evidentiary hearing without additional notice if the time, date, and place of the continued hearing is announced at a duly noticed hearing that has been convened; if quorum is not present at a meeting, the evidentiary hearing is automatically continued to the next regular meeting of the board with no notice. (G.S. 160D-406(b).)
- **May** distribute meeting packet to board members in advance of the evidentiary hearing; if this is done, then **must** distribute the same materials to the applicant and landowner at the same time; **must** present such administrative materials at the hearing and make them part of the hearing record. (G.S. 160D-406(c).)
- **May** have the planning board serve as a preliminary forum for review in quasi-judicial decisions; if this is done, the planning board must not conduct a formal evidentiary hearing but must conduct an informal preliminary discussion of the application; the forum and recommendation must not be used as the basis for the decision by the board—the decision must still be based on evidence presented at the evidentiary hearing. (G.S. 160D-301.)
- **May** require recordation of special use permits with the register of deeds. (G.S. 160D-705(c).)
- △ **Be aware** that the definition of *close family relationship* as used for conflicts of interest includes spouse, parent, child, brother, sister, grandparent, or grandchild (including step, half, and in-law relationships). (G.S. 160D-109(f).)

- △ **Be aware** that even if there is no objection before the board, opinion testimony from a lay witness shall not be considered competent evidence for technical matters such as property value and traffic impacts. (S.L. 2019-111, § 1.9.)

B. Certain Quasi-Judicial Decisions

- ☐ **Must** not impose conditions on special use permits that the local government does not otherwise have statutory authority to impose. (S.L. 2019-111, Pt. I.)
- ☐ **Must** obtain applicant's/landowner's written consent to conditions related to a special use permit to ensure enforceability. (S.L. 2019-111, Pt. I.)
- ☐ **Must** set a thirty-day period to file an appeal of any administrative determination under a development regulation; **must** presume that if notice of determination is sent by mail, it is received on the third business day after it is sent. (G.S. 160D-405(c).)
- ☐ ***May** adjust variance standards to provide for reasonable accommodation under the federal Fair Housing Act. (G.S. 160D-705(c).)
- ☐ **May** use purely legislative conditional zoning and/or quasi-judicial special use permitting; **must** not use combined legislative and quasi-judicial process, such as conditional-use-district zoning. (G.S. 160D-102.)
- ☐ **May** allow administrative minor modification of conditional zoning, special use permits, and other development approvals; if allowed, **must** define "minor modification" by ordinance, **must** not include modification of use or density, and major modifications **must** follow standard approval process. (G.S. 160D-403(d), -703(b), -705(c).)

X. Administrative Decisions [Chapter 4, Section IV]

A. Development Approvals

- ☐ **Must** provide development approvals in writing; **may** provide in print or electronic form; if electronic form is used, then it **must** be protected from further editing. (G.S. 160D-403(a).)
- ☐ **Must** provide that applications for development approvals must be made by a person with a property interest in the property or a contract to purchase the property. (G.S. 160D-403(a).)
- ☐ **Must** provide that development approvals run with the land. (G.S. 160D-104.)
- ☐ For revocation of development approval, **must** follow the same process as was used for the approval. (G.S. 160D-403(f).)
- ☐ **May** require community notice or informational meetings as part of the decision-making process for administrative development approvals (quasi-judicial and legislative decisions already had notice and hearing requirements). (G.S. 160D-403(h).)
- ☐ **May** set expiration of development approvals if work is not substantially commenced; default rule is twelve months, unless altered by state or local rule. (G.S. 160D-403(c).) **Be aware** that legislation will clarify the provisions on duration of development approvals. (G.S. 160D-403(c); S.L. 2019-111, § 1.3.)

- **May** set expiration of development approvals if work is discontinued; default rule is twelve months, unless altered by state or local rule. (G.S. 160D-403(c).)
- **May** authorize administrative staff to approve minor modifications of development approvals and conditional-zoning approvals; if this is done, then **must** define “minor modifications” by ordinance and **must** not include modification of permitted use or density of development; major modifications **must** go through full applicable approval process. (G.S. 160D-403(d); -703(b); -705(c).)

B. Determinations

- **Must** provide written notice of determination by personal delivery, electronic mail, or first-class mail to the property owner and party seeking determination, if different from the owner. (G.S. 160D-403(b).)
- **May** designate an official to make determinations for a particular development regulation. (G.S. 160D-403(b).)
- **May** require owner to post notice of determination on the site for ten days; if such is not required, then owner has option to post on the site to establish constructive notice. (G.S. 160D-403(b).)

C. Appeals of Administrative Decisions

- **Must** allow administrative decisions of any development regulations (not just zoning) to be appealed to the board of adjustment, unless provided otherwise by statute or ordinance. (Appeals relating to erosion and sedimentation control, stormwater control, or building-code and housing-code violations are not made to the board of adjustment unless specified by local ordinance.) (G.S. 160D-405.)
- **Must** set a thirty-day period to file an appeal of any administrative determination under a development regulation; must presume that if notice of determination is sent by mail, it is received on the third business day after it is sent. (G.S. 160D-405(c).)
- **Must** require the official who made the decision (or his or her successor if the official is no longer employed) to appear as a witness in the appeal. (G.S. 160D-406.)
- **Must** pause enforcement actions, including fines, during the appeal. (G.S. 160D-405.)
- **May** assign the duty of hearing appeals to another board; if this is done, such board must follow quasi-judicial procedures. (G.S. 160D-405.)
- **May** designate that appeals be filed with the local government clerk *or* another official. (G.S. 160D-405.)

XI. Vested Rights and Permit Choice [Chapter 5, Section I]

A. Vested Rights

- ☐ **Must** recognize that building permits are valid for six months, as under prior law. (G.S. 160D-108(d)(1).)
- ☐ **Must** recognize the default rule that development approvals are valid for twelve months, unless adjusted by statute or local rule. (G.S. 160D-108(d)(2).)
- ☐ **Must** identify site-specific vesting plans (formerly site-specific development plans) with vesting for two to five years, as under prior law, except for specified exceptions. (G.S. 160D-108(d)(3); -108(f).)
- ☐ **Must** recognize multi-phase developments—long-term projects of at least 25 acres—with vesting up to seven years, except for specified exceptions (160D-108(d)(4); -108(f).) (The previously authorized phased-development plan is obsolete and should be deleted from ordinance.)
- ☐ **May** provide for administrative determination of vested rights and for appeal to the board of adjustment. (G.S. 160D-108(c), -405.)
- ☐ **Be aware** that a person claiming vested rights may bring an original civil action in court, skipping administrative determination and board of adjustment consideration. (G.S. 160D-405(c).)
- ☐ **Be aware** that vested rights run with the land, except for state-permitted outdoor advertising permits that run with the owner of the permit. (G.S. 160D-108(g); S.L. 2019-111, Pt. I.)

B. Permit Choice

- ☐ **Must** not make an applicant wait for final action on the proposed change before proceeding if the applicant elected determination under prior rules. (G.S. 160D-108(b).)
- ☐ **Be aware** that if a local development regulation changes after an application is submitted, the applicant may choose the version of the rule that applies; but **may** require the applicant to comply with new rules if the applicant delays the application for six months. (G.S. 160D-108(b); S.L. 2019-111, Pt. I.)
- ☐ **Be aware** that an application for one development permit triggers permit choice for permits under any development regulation; such permit choice is valid for eighteen months after approval of the initial application. (S.L. 2019-111, Pt. I.)

XII. Judicial Review [Chapter 5, Section II]

A. Declaratory Judgments

- △ **Be aware** that an individual may bring a declaratory judgment action to challenge legislative zoning decisions, vested rights claims, and challenges to land use authority related to administrative decisions, subject to specified procedures. (G.S. 160D-1401.)
- △ **Be aware** that other civil actions may be authorized—Chapter 160D does not limit availability of other actions. (G.S. 160D-1404.)

B. Appeals of Quasi-Judicial Decisions

- ***Must** update ordinance to address appeals of certificates of appropriateness for historic landmarks and historic districts; default rule is that such appeals go straight to court; local government may opt for such appeals to go to the board of adjustment, as under prior statutes. (G.S. 160D-947.)
- **Must** provide that appeals of certificates of appropriateness must be filed within thirty days after the decision is effective or written notice is provided, the same as for appeals of other quasi-judicial decisions. (G.S. 160D-947; -1405.)
- △ **Be aware** that on appeal a party may request a stay of the approval or enforcement action. (G.S. 160D-1402(e).)
- △ **Be aware** that a local government may seek a stay in favor of itself (to prevent development under an approval). (G.S. 160D-1402(e).)
- △ **Be aware** that if, in the absence of a stay, an applicant proceeds with development, the person does so at his or her own risk. (G.S. 160D-1402(l).)
- △ **Be aware** that on appeal, the superior court now must allow for supplementing the record on questions of standing, conflicts of interest, constitutional violations, or actions in excess of statutory authority. (S.L. 2019-111, § 1.9.)
- △ **Be aware** that even if there is no objection before the board, opinion testimony from a lay witness shall not be considered competent evidence for technical matters such as property value and traffic impacts. (S.L. 2019-111, § 1.9.)
- △ **Be aware** of specific judicial instructions for decisions of appeals of quasi-judicial decisions. (S.L. 2019-111, § 1.9.)

C. Subdivision Decisions

- **May** establish a rule that administrative subdivision decisions are appealed to the board of adjustment. (G.S. 160D-1405.)
- △ **Be aware** that appeals of administrative subdivision decisions may be appealed directly to superior court. (G.S. 160D-1403.)
- △ **Be aware** that quasi-judicial subdivision decisions are appealed to superior court in the nature of certiorari. (G.S. 160D-1402.)

D. Attorneys' Fees

- △ **Be aware** that a court *shall* award attorneys' fees if the court finds that a city or county violated a statute or case law setting forth unambiguous limits on its authority. (G.S. 6-21.7; S.L. 2019-111, Pt. I.)
- △ **Be aware** that a court *shall* award attorneys' fees if the court finds that a local government took action inconsistent with, or in violation of, the permit choice and vested rights statutes. (G.S. 6-21.7; S.L. 2019-111, Pt. I.)
- △ **Be aware** that a court may award attorneys' fees in other matters of local government litigation. (G.S. 6-21.7; S.L. 2019-111, Pt. I.)

E. Additional Judicial Rules

- △ **Be aware** that a court may join a civil action challenging an ordinance with an appeal in the nature of certiorari. (G.S. 160D-1402(m).)
- △ **Be aware** that a local government **must** not assert the defense of estoppel to enforce conditions to which an applicant did not consent in writing. (S.L. 2019-111, Pt. I.)
- △ **Be aware** that an action is not rendered moot if the party loses the relevant property interest as a result of the local government action being appealed, subject to applicable case law limits. (S.L. 2019-111, Pt. I.)

2020 Board Appointments

As of March 9, 2020

AGENCY	Meeting Days/Time	NEW APPOINTMENTS
Black Mountain Center for the Arts	3 rd Tuesdays, 5:30 pm	Member- Josh Harrold Alternate- Maggie Tuttle
Black Mountain-Swannanoa Chamber of Commerce Executive Board	2 nd Thursdays, 5:30 pm	Member- VACANT Alternate- Tim Raines
Land of Sky Regional Council Board of Directors	4 th Wednesdays, 12:30 pm	Member- Larry B. Harris Alternate- Maggie Tuttle
French Broad River MPO Board of Directors	3 rd Thursdays, 12:00	Member- Ryan Stone Alternate- Larry B. Harris (Also appointed to Rural Transit for 2 years)
French Broad River MPO Technical Coordinating Committee (TCC)	3 rd Thursdays, 11:00 am	Member- Jessica Trotman Alternate- Josh Harrold
Metropolitan Sewer District (MSD) Board of Directors	TBA	Member- Bob Watts (appointed 2018 for 3 years)
Asheville Regional Housing Consortium	TBA	Member- Jessica Trotman Alternate- VACANT
Vice Mayor		Appointed 12/11/2017- Maggie Tuttle

**BYLAWS
of
FRIENDS OF FONTA FLORA STATE TRAIL, INC.**

ARTICLE I – NAME AND ADDRESS

Section 1. Name. The name of this Corporation is FRIENDS OF FONTA FLORA STATE TRAIL, INC. (hereinafter called the “Corporation”)

Section 2. Address. The mailing address of the Corporation is PO Box 698, Marion, NC 28752. The principal office location shall be determined by the Board of Directors.

ARTICLE II – PURPOSE AND MISSION

Section 1. Purpose. The purposes of the Corporation are exclusively charitable and educational and are set forth in the Articles of Incorporation

Section 2. Mission. The mission of the Corporation is to bring together communities and volunteers to build, maintain, and promote the Fonta Flora State Trail connecting Buncombe, McDowell, and Burke counties for the enjoyment and education of people.

ARTICLE III – MEMBERS

Section 1. Members. The Board of Directors may, from time to time, establish, continue, alter or repeal categories of membership based on various criteria, including but not limited to financial contributions and volunteer time to advance the mission of the Corporation.

Section 2. Voting Members. The Corporation shall not have any voting members.

Section 3. Donations. The Board of Directors may establish levels of financial contribution required for membership.

Section 4. Meetings. A meeting of the members shall be held annually in April. Other meetings of the members of the Corporation may be called at any time by the President or at least three members of the Board of Directors. Notice of all meetings shall be sent to all members setting the date, time, place and purpose of the meeting, no fewer than thirty (30) days prior to such meeting.

ARTICLE IV – BOARD OF DIRECTORS

Section 1. General Powers. The Board of Directors shall control and manage the affairs, business and property of the Corporation, and all powers of this Corporation, including setting the strategic direction of the Corporation and ensuring effective financial management, and the power to adopt bylaws and to amend and alter the same, are vested in the Board of Directors, except as otherwise required by law, by the Articles of Incorporation, or by these Bylaws.

- a. Management of Business: The Board by resolution may delegate to officers of the Corporation, the Executive Director, the Executive Committee, other committees of members or committees comprised partly of members, such powers as it deems fit,

subject to the provisions of these Bylaws.

b. Contracts and Services: Unless authorized by resolution of the Board of Directors or by these Bylaws, no Director, officer, employee or agent shall have any power or authority to bind the Corporation by any contract or obligation, or to pledge its credit, or render it obligated or liable for any purpose or any amount.

c. General supervision over corporate affairs: The Board of Directors throughout the year shall receive and review reports from the President, Treasurer and Executive Director showing (i) the projects and programs initiated and implemented by the Corporation; (ii) statements of financial position showing all assets, liabilities and equity of the Corporation; and (iii) statements of income and expenses showing the amount of funds applied, appropriated or expended during the year and the purposes for which such expenditures have been made, and shall take any appropriate actions with respect to such reports.

Section 2. Board Composition. The Board of Directors shall be composed of fifteen regular (15) Directors. Five (5) seats will be reserved for equal representation from each of the three counties along the length of the Fonta Flora State Trail including; Burke County, McDowell County and Buncombe County.

a. Burke County. Representation will include a member of the Burke County Commission, a Council member from the City of Morganton and a member from the Town of Glenn Alpine Board of Alderman. In addition, there shall be Director who represents a trail advocacy organization located within Burke County as well as a Director who represents Burke County in the area of economic development, tourism or commerce.

b. McDowell County. Representation will include a member of the McDowell County Commission, a Council member from the City of Marion and a member from the Town of Old Fort Board of Alderman. In addition, there shall be a Director who represents the McDowell Trails Association as well as a Director who represents McDowell County in the area of economic development, tourism or commerce.

c. Buncombe County. Representation will include a member of the Buncombe County Commission, a Council member from the City of Asheville and a member from the Town of Black Mountain Board of Alderman. In addition, there shall be Director who represents a trail advocacy organization located within Buncombe County as well as a Director who represents Buncombe County in the area of economic development, tourism or commerce.

There shall also be four (4) designated voting Directors one from each of the following organizations; Friends of Lake James State Park, Inc., Foothills Conservancy of North Carolina Inc., the YMCA of Western North Carolina, and Mission Hospital.

The Board of Directors shall determine, and may change from time to time, the number of members of the Board of Directors, which shall consist of no less than five Directors.

In addition, upon expiration of his or her term (but not removal or resignation), the President may continue to serve as a voting member of the Board of Directors for up to one year beginning immediately upon expiration of his or her term (the “Immediate Past President”).

Section 3. Ex Officio Board Members. The Board may elect professional trail leaders, parks and recreation officials, or others who provide exceptional service to the Corporation as Ex Officio Board Members by a two-thirds vote of Board members. These ex-officio board members may serve as many years as the Board chooses and perform duties as may be described by the Board of Directors. They shall have no voting power, and shall report to the Board of Directors.

Section 4. Director(s) Emeriti. From time to time the Board of Directors may recognize previous Board members for their exemplary service to the achievement of the Corporation’s mission and goals by designating the deserving individual(s) as the Corporation’s Director Emeritus. The Board will accept nominations outlining the nature and extent of the prior member’s service. Two-thirds approval of the current board members is required for awarding the designation of Director Emeritus.

Section 5. Election. Directors shall be elected by a majority vote of those present at a meeting at which there is a quorum and where notice of the meeting has specified the election of Directors as an agenda item.

Section 6. Term. Directors shall serve terms of three years. The terms of Directors shall be staggered so that approximately one-third are elected each year. No Director, other than an Immediate Past President pursuant to Article IV, Section 2, or a Director elected to fill a vacancy who also serves as an officer of the Corporation pursuant to Article IV, Section 6, may serve more than two successive terms (six years); provided, however, that if a former Director spends at least one year off the Board after two successive terms, he or she may again be elected and serve up to the maximum of two successive terms.

Section 7. Attendance. A Director is expected to attend all meetings of the Board of Directors and of the committee(s) on which such Director serves, if any. If a Director misses three or more Board (or committee) meetings in a twelve-month period, the President shall notify such Director to remind him/her of this obligation to attend Board meetings and that further absences may result in removal from the Board.

Section 8. Vacancies. In case of any vacancy on the Board of Directors prior to the end of the absent Director’s term, a person may be elected by the Board to serve for the remainder of the term of the vacated Board seat. A person elected to fill a vacated Board seat shall serve as Director for the unexpired term plus one consecutive three-year term. If during such period the replacement Director is also elected to serve as an officer of the Corporation, he or she shall also serve an additional consecutive three-year term. After serving all of the above consecutive three-year terms to which he or she is entitled, the replacement Director will not be eligible for re-election until one year has elapsed off the Board.

Section 9. Resignation. Any Director may resign at any time by giving written notice of such resignation to the President.

Section 10. Removal. Any Director may be removed by a two-thirds of the Board of Directors (excluding the Director sought to be removed). A Director may be removed for failure to attend three or more Board (or committee, if any) meetings in a twelve-month period, for non-performance of duties, or for other cause deemed sufficient by the Board. The Board of Directors may elect a new Director to fill the unexpired term of any Director who resigns or is removed, in accordance with Article IV, Section 6, above.

Section 11. Compensation. Directors shall not receive any compensation for their services on the Board, and shall not receive any earnings or pecuniary profit from the operations of the Corporation, except that a Director may be reimbursed for his or her expenses actually and reasonably incurred on behalf of the Corporation, except with respect to unapproved conflicts of interest by such Director, pursuant to Article XI, section 4, below.

Section 12. Standard of Care. A Director shall perform the duties of a Director in good faith, diligently and in the best interest of the Corporation.

ARTICLE V – OFFICERS AND EMPLOYEES

Section 1. Titles. The officers of the Corporation shall be a President, Vice President, Secretary, Treasurer, and such other officers as the Board of Directors may from time to time elect. No officer may hold more than one officer position simultaneously.

Section 2. Qualifications. The officers shall be members of the Board of Directors, and their term of office shall not in any event extend beyond such date as they for any reason cease to be members of the Board.

Section 3. Election and Term. All officers shall be elected by the Board of Directors annually no later than December of each year when the election of new board members occurs. New officers will take their positions on January 1 of the following year. Each officer elected shall hold office for one year or until his or her successor is elected and qualified, except in the case of earlier incapacity, death, resignation or removal.

Section 4. Resignation. An officer may resign at any time by written notice delivered to the President or Secretary.

Section 5. Removal. Any officer or agent elected or appointed by the Board of Directors may be removed by the Board by two-thirds vote by the Board of Directors.

Section 6. Vacancies or Absence in Offices. A vacancy in any office may be filled by the Board of Directors. An officer elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office.

Section 7. President. The President shall be the chief executive officer of the Corporation and, subject to the control of the Board of Directors, shall supervise and control the management of the Corporation in accordance with these Bylaws. The President shall be responsible for making sure that the affairs of the Corporation are conducted in accordance with the Articles of Incorporation, these Bylaws, and the policies of the Board of Directors. The President shall preside at all meetings of the members and of the Board of Directors at which he is present. The President shall have the general powers and duties usually vested in

the office of president of a corporation, including the appointment of committees and their chairs as may be deemed appropriate or as the Board of Directors may authorize or as may be otherwise required. The President shall be *ex officio* voting member of all committees. The President shall sign, with any other proper officer as necessary, any deeds, mortgages, bonds, contracts or other instruments which the Board of Directors has authorized to be executed on behalf of the Corporation, except where required or permitted by law to be otherwise signed and executed, and except where the signing and execution thereof shall be delegated by the Board of Directors to some other officer or agent.

Section 8. Vice President. In the event of the inability, absence or refusal of the President to act, the Vice President shall perform the duties of President, and when so acting shall have all the powers of and be subject to all restrictions upon the President. The Vice President shall have such other powers and perform such other duties as may be assigned by the President or the Board of Directors.

Section 9. Secretary. The Secretary shall attend the meetings of the members and of the Board of Directors and shall record in the record book of the Corporation the proceedings of the members and Directors at their respective meetings. The Secretary shall notify the directors of their respective meetings in accordance with these Bylaws and shall perform such other duties as are usually incident of the office of secretary of a corporation or as the Board of Directors shall from time to time prescribe.

Section 10. Treasurer. The Treasurer shall have the custody of all funds of the Corporation and shall deposit the same in the name of the Corporation in such bank or financial institutions as the Directors may choose; collect all dues and other income; sign all checks, drafts, notes, and orders for the payment of money, and shall pay out and dispose of the same under the direction of the Board of Directors (unless signed by the President or a designated project director). The Treasurer shall also keep books and accounts open to any director of the Corporation and shall be prepared to give financial reports as the Board of Directors may require. SIGNATURES PRES TREASURER and EX DIR

Section 11. Employees. The Corporation may have an Executive Director and other staff positions that are approved by the Board. The duties, compensation and other employment considerations of the Executive Director shall be determined by the Board. The duties, compensation and other employment considerations of other staff shall be determined by the Executive Director with the advice and consent of the Board.

ARTICLE VI – MEETINGS OF BOARD OF DIRECTORS

Section 1. Regular, special, and annual meetings. The Board of Directors shall meet at least four times each year and other times as necessary to transact the business of the Corporation. Regular and special meetings of the Board may be called by, or at the request of, the President or any two Directors. The Board shall hold an annual meeting each year, which shall be considered one of the four yearly meetings of the Board of Directors. The Board may provide for the holding of other regular meetings of the Board and fix the time and place thereof.

Section 2. Place of meetings. The Board of Directors may hold meetings and provide for the records of the Corporation to be kept at such place or places within the State of North Carolina as the Board may from time to time determine. Meetings may also be held by means of

teleconference, provided that each Board member present at such meeting can hear all of the proceedings and can be heard by all of the other Directors.

Section 3. Order of Business. At all meetings of the Board, the President, or in his or her absence, the Vice President, shall preside. The rules contained in Roberts Rules of Order, as amended and revised from time to time, shall govern the meetings as applicable and when not inconsistent with the Bylaws.

Section 4. Notice of Meeting. Notice of the time, date and place of each meeting of the Board of Directors shall be given by the Secretary or other person assigned by the President at least seven days prior to the time of the meeting by any usual means of communications unless there is an emergency.

Section 5. Quorum. Except where otherwise provided herein, a majority of the Directors in office immediately before a meeting begins shall constitute a quorum for the transaction of business at any meeting of the Board, including Directors participating by telephone connection. The Directors at the meeting where a quorum has been present may continue to do business until adjournment, notwithstanding the withdrawal of enough Directors to leave less than a quorum. In the absence of a quorum at the opening of any meeting, the meeting may be adjourned by vote of a majority of the Directors present voting on the motion to adjourn, but no other business may be transacted until and unless a quorum is met.

Section 6. Voting. Only persons serving as Directors of the Corporation shall be entitled to vote upon any matter concerning its affairs. Each Director shall be entitled to one vote on each matter submitted to a vote of the Board of Directors. A majority vote of the Directors shall be required for any decision or action of the Board of Directors, in the absence of some different requirement of law or the Articles of Incorporation or these Bylaws.

Section 7. Action Without Meeting. Any action by the Board of Directors may be taken without a meeting if consent to the proposed action is given by two-thirds of the Directors in writing and signed, and delivered personally, by mail, overnight courier, email, tele facsimile or other electronic means, and filed with the minutes.

Section 8. Dissent. A Director who is present at a meeting at which action on any corporate matter is taken shall be presumed to have assented to such action unless (a) he or she objects at the beginning of the meeting (or promptly upon arrival) to holding the meeting or transacting business at the meeting, (b) his or her dissent or abstention from the action taken is entered in the minutes of the meeting; or (c) he or she files written notice of such dissent or abstention with the presiding officer of the meeting before its adjournment or with the Corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

ARTICLE VII – COMMITTEES

Section 1. Executive Committee. There shall be an Executive Committee which shall consist of the elected officers of the Corporation plus one additional Director appointed by the Board. All other members of the Board of Directors may attend meetings of the Executive

Committee without power to vote. The President shall serve as the chairperson of the Executive Committee. The Executive Committee may meet at stated times or on notice by the President. Any significant action taken at such meetings shall be reported at the next scheduled meeting of the Board, except that, if the next scheduled meeting of the Board is more than four (4) weeks after the Executive Committee meeting, the report shall be made as soon as reasonably possible after the Executive Committee meeting and within the four (4) week period. The Executive Committee may transact business at a meeting or by telephone conference call, provided that each Committee member participating by telephone can hear all of the proceedings and can be heard by all of the other members, and such Committee members may vote by voice, email, tele facsimile or other electronic means. A quorum of the Executive Committee shall be the majority of members of the Executive Committee in office present at a meeting or participating by telephone conference. The approval of a majority of the members of the Executive Committee, if a quorum is present and participating, shall be the act of the committee. During intervals between meetings of the full Board of Directors, the Executive Committee shall have and may exercise all the powers of the Board that may be lawfully delegated, except that it may not have the authority of the Board as to the following matters:—

- a. The dissolution, merger or consolidation of the Corporation; or the sale, lease or exchange of a substantial amount of the property of the Corporation.
- b. The filling of vacancies in the Board of Directors or for committees authorized to act for the Board of Directors.
- c. The amendment or repeal of the Bylaws, or the Articles of Incorporation, or the adoption of new Bylaws.
- d. The amendment or repeal of any resolution of the Board unless such resolution by its terms shall be so amendable or repealable.
- e. Hiring or terminating the appointment or employment of the Executive Director.
- f. Any action having substantially the effect of any of the foregoing.

Section 2. Board Development and Nominating Committee. This committee shall consist of a minimum of three members of the Board appointed by the President. The committee shall be responsible for:

- a. a continuing review of the composition of the Board with respect to representation of various constituencies within the Corporation's membership, diversity, needs of the Corporation and other factors;
- b. nomination and ranking of a slate of candidates for Director as specified in Article IV, Section 3;
- c. nomination of a slate of candidates for officers;
- d. development and implementation of an orientation program for new Directors and continuing education for all Directors;
- e. (e) recommendation and implementation of programs for emeriti Directors, and Advisory Council and other similar initiatives of the Corporation.

Section 3. Standing Committees. The President, with the approval of the Board of Directors, may appoint standing committees, each of which shall include at least one Director. These

committees do not have and may not exercise the authority of the Board of Directors in the management of the Corporation. Such committees have responsibilities to report or make recommendations to the Board, but are not authorized to act for the full Board. Except as otherwise provided by Board resolution, the President of the Corporation shall appoint the members and the chairperson of the committees. Members of any such committee shall serve at the pleasure of the President or under such terms as the Board may prescribe. The chairperson of the committee will call committee meetings and will report on committee proceedings at each regular meeting of the Board of Directors and of the Executive Committee. The President and, if appointed, the Executive Director shall be ex-officio members of all committees.

Section 4. Special Ad Hoc Committees. The President, at his or her discretion, may appoint other temporary, *ad hoc* committees as needed, and which shall include at least one Director. Special committees function with all the limitations and controls that apply to standing committees

Section 5. Vacancies and Additions. Vacancies in and additions to the membership of any committee may be filled in the same manner as the incumbent members were appointed.

Section 6. Quorum and Action of Committees. Unless otherwise provided in the resolution designating a committee, a majority of the members on a committee shall constitute a quorum, and the act of a majority of the members present at a meeting or participating by telephone conference, if a quorum is present and participating, shall be the act of the committee. A committee may also take action by two-thirds written consent in the same manner as the Board of Directors.

ARTICLE VIII – ADVISORY COUNCIL

Section 2. Advisory Council. The Board of Directors may authorize the President, in consultation with the Executive Committee, to appoint members of an Advisory Council. The term of service for a member of the Advisory Council shall be three years from appointment and may be renewable by decision of the President, in consultation with the Executive Committee. Members of the Advisory Council shall be expected to represent the Corporation publicly, assist in building its public recognition and prestige, and provide recommendations to the Board thereof. Members of the Advisory Council shall have no voting power, except internally for internal Advisory Council actions and recommendations. Members of the Advisory Council will be invited to Corporation public functions, but their attendance is not obligated.

ARTICLE IX – BUDGET AND FISCAL MANAGEMENT

Section 1. Fiscal Year. The fiscal year for all business transactions of the Corporation shall be the calendar year.

Section 2. Budget. A budget for each fiscal year shall be prepared at the direction of and in consultation with the President and Treasurer and any other Board Members or Committees to which the President has assigned such duties. The budget shall be submitted for the approval of the Board of Directors no later than December of each year for the following

fiscal year. The budget may be amended by the Board of Directors from time to time throughout each fiscal year as circumstances may require.

Section 3. Depository. The Board of Directors, or its delegated officers or committees are authorized to establish such accounts with banks, trust companies and other financial institutions as the Board or its designee may deem appropriate.

Section 4. Disbursements. Disbursements shall be made only in accordance with specific authorization or a general budget approved by the Board of Directors and on such terms as may be established by the Board.

Section 5. Endowment Funds. The Board of Directors may approve the establishment and maintenance of endowment funds with a financial or investment institution; the income from such endowment funds shall be used for carrying out the purposes of the Corporation. The growth in the corpus and income may be spent, but the original “historic value” of the corpus of each fund shall be preserved in perpetuity for the generation of income except upon an order of a court of law to the contrary, or as otherwise directed by a third party that provides the funds for such endowment, provided that the Corporation’s status as a non-profit corporation under Section 501(c)3 of the Internal Revenue Code and its Regulations is preserved, and provided further that the requirements for endowment funds set forth under North Carolina law are strictly observed.

Section 6. Loans. When so authorized by the Board of Directors, any officer or agent of the Corporation may effect loans and advances to the Corporation, secured by mortgage or pledge of the Corporation’s property or otherwise, and may do every act and thing necessary or proper in connection therewith. Such authority may be general or confined to specific instances.

ARTICLE X – GENERAL PROVISIONS

Section 1. Corporate Seal. The seal of the Corporation shall be circular and shall bear the name of the Corporation and the words “corporate seal”. The Secretary shall be custodian of the seal.

Section 2. Waiver of Notice. Whenever any notice is required to be given to any Director under the provisions of the North Carolina Non-Profit Corporation Act or under the provisions of the Articles of Incorporation or Bylaws of this Corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated herein, shall be equivalent to the giving of such notice.

Section 3. Corporate Records. The Corporation shall keep at the corporate office or at such other place as the Board of Directors may order, minutes of all meetings of the Board, its Executive Committee, and all other committees of the Board, with the time and place of holding, whether regular or special, the notice thereof given, the names of those present at the meetings, and the proceedings thereof.

Section 4. Conflict of Interest. All Directors shall avoid all conflicts of interest and the appearance of impropriety. If a Director has a direct or indirect conflict of interest regarding a matter before the Board of Directors or any committee thereof, or a conflict of

responsibility with regard to any matter involving the Corporation and any other business or personal interest, the Director shall fully disclose such conflict prior to any discussion or vote on such matter, shall not be present for discussion of the matter or engage any discussion of the matter unless in each case invited by the President with no objection by any other Board member, and shall in no event vote on the matter. Nothing herein contained shall be construed to prohibit the rest of the members of the Board from approving such matter upon sufficient vote and upon full disclosure if deemed by the Board to be fair and reasonable to the Corporation. Nothing herein contained shall be construed to preclude any Director from serving this Corporation in any other capacity and receiving reasonable compensation for such services.

Section 5. Prohibited Activities Notwithstanding any other provisions of these Bylaws, no member, officer, employee, director, or representative of this Corporation shall take any action or carry on any activity by or on behalf of the Corporation not permitted to be taken or carried on by an organization exempt under Section 501(c)(3) of the Internal Revenue Code and its Regulations, as they now exist or may hereafter be amended, or by an organization contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code and Regulations, as they now exist or as they may hereafter be amended.

ARTICLE XI – AMENDMENTS

These Bylaws may be amended at a meeting of the Board of Directors of the Corporation by a vote of two-thirds of the Board Members present or represented by written proxy, provided that notice of the proposed amendment shall have been given to each member at least ten days prior to said meeting.

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION**

Meeting Date: March 9, 2020

SUBJECT: Resolution to Provide Additional Matching Funds for Bridge Replacement Ninth Street

AGENDA INFORMATION

Agenda Location: New Business
Item Number: 9B
Department: Planning
Contact: Josh Harrold, Town Manager
Presenter: Josh Harrold, Town Manager

BRIEF SUMMARY: The Town is applying for additional funding through the current STBG call for projects from the MPO to fully fund bridge replacement of the Ninth Street Bridge. The application requires a resolution indicating the Town will provide matching funds if awarded. The total request for additional funding is \$457,000 (80%) with the Town responsible for \$91,400 (20%).

MOTION FOR CONSIDERATION: To approve Resolution #R-20-03 committing to matching funds, if awarded, in the amount of \$91,400, which is twenty-percent (20%) of the total request of the grant application for 2020 STBG to provide funding for construction for the Ninth Street Bridge Replacement.

FUNDING SOURCE: General Fund and grants as available

ATTACHMENTS: Resolution #R-20-03 to Provide Matching Funds

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

RESOLUTION #R-20-03

**RESOLUTION TO PROVIDE MATCHING FUNDS FOR
NINTH STREET BRIDGE REPLACEMENT**

WHEREAS, the Board of Alderman for the Town of Black Mountain intends to apply for 2020 STBG grant in the amount of \$457,000 which is to provide funding for construction and replacement of the bridge on Ninth Street; and

WHEREAS, as a condition of such grant is that the local jurisdiction provide matching fund in the amount \$91,400, which is twenty-percent of the total request of the grant application; and;

WHEREAS, the Board of Alderman wishes to assure the availability of such matching funds in needed for the success of the project; and

NOW, THEREFORE, BE IT RESOLVED, BY THE BOARD OF ALDERMAN OF THE TOWN OF BLACK MOUNTAIN, NORTH CAROLINA THAT the Board of Alderman will appropriate from general revenues, its fund balance, contributed funds received from supporting agencies and organizations, or in any combination thereof, the amount required to satisfy the matching funds requirement condition of the grant.

I move the adoption of the foregoing resolution:

Alderman

READ, APPROVED AND ADOPTED, by a vote of ____ to ____ this 9th day of March, 2020.

Don Collins, Mayor

ATTEST:

Angela Reece, Assistant to Manager/Town Clerk

Josh Harrold, Town Manager

**Minutes Follow
This Section**



TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
AGENDA WORKSHOP MEETING MINUTES
February 6, 2020

THE BLACK MOUNTAIN BOARD OF ALDERMEN held an agenda workshop on Thursday, February 6, 2020 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, February 10, 2020 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- absent
Vice Mayor Maggie Tuttle
Alderman Ryan Stone
Alderman Larry Harris
Alderman Tim Raines

The following staff members were present:

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

The Board reviewed the items that were proposed for the February 10, 2020 regular session meeting and REMOVED Item 8B, Ordinance Amending Section 47-12, Specified Places Prohibited and 47-13, Penalty and Enforcement of Article IV. – Stopping, Standing, and Parking of the Town of Black Mountain Code of Ordinances #O-20-03 and ADDED New Item (will become Item 8C) Board of Aldermen Appointment (Procedural Discussion) to the agenda.

Vice Mayor Maggie Tuttle opened the meeting. Assistant Town Manager, Dean Luebbe presented the proposed agenda to the Board of Aldermen. The Board will observe a moment of silence to honor Alderman Carlos Showers who passed away on January 27, 2020. Alderman Showers was elected in 2009, reelected in 2013, and appointed to an unexpired term in 2017 and was the second African American to serve as Alderman in the Town of Black Mountain. The Board will also observe a moment of silence for County Commissioner Mike Fryar who passed away on February 2, 2020. Commissioner Fryar was elected in 2012 and represented District 2.

Assistant Manager Luebbe discussed **Item 5B**, Audit Accounts Contract Amendment for Mauldin

Black Mountain Board of Aldermen
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& Jenkins stating in completing the FY19 audit for the Town of Black Mountain, Maudlin & Jenkins discovered a misstatement in the FY18 audit, involving depreciation on a fire truck. Mr. Luebbe stated the amount of the misstatement was \$84,763 and was deemed to be material by the audit firm. He reminded the Board the Town is responsible for the accuracy of the financial statements and said this will not affect the agreed upon contract amount for the next 2 years. Mr. Luebbe stated he and Manager Harrold attempted to negotiate a lesser fee but said the Audit firm was unreceptive.

Assistant Manager Luebbe discussed **Item 5C**, Budget Amendment for Golf Course Snack Shop Water Damage Repairs stating water damage was discovered at the 19th Hole Snack Shop in the late summer of 2019 which affected the ladies lounge interior (the lower portion of the building) and sections of the deck. Mr. Luebbe stated portions of the exterior of the lower level also need to be replaced, and said the job is complicated because of the location of the electrical panel. Mr. Luebbe stated CRC Rebuilders submitted an estimate which the Town finds acceptable.

Assistant Manager Luebbe discussed **Item 5D**, Budget Amendment for Additional Funding for the Comprehensive Plan Update stating due to the large turnout at the initial public meeting staff has realized more public input would be necessary for success of the plan. Mr. Luebbe stated the Planning Department has been unable to hire a part time building inspector and said the funding would come from budgeted funds for this position.

Attorney Ron Sneed discussed **Item 7B**, NC Highway 9 Sidewalk Construction Contract Approval stating he has spoken with Sikes Regan and Attorney Mike Begley who have proposed selling their foot bridge below Cheshire to the Town and utilizing the funds to pay for the construction of the sidewalk in brick. Board members directed Attorney Sneed to negotiate further and propose stamping the concrete to look like brick in lieu of purchasing the bridge. Alderman Larry B. Harris reiterated the Board's preference for treating everyone equal and not doing for one what you may not do for another.

Attorney Ron Sneed discussed **Item 8C (will become Item 8B on Amended Agenda)**, Library Board Appointment stating the Library Board is an appointed advisory board of the Board of Aldermen to oversee maintenance of the Town owned, County Operated library building. Attorney Sneed stated appointments are for life and said the previous chair (Robert Woodward) has moved out of state. Attorney Sneed stated the Board usually does not allow dual appointments to advisory boards but asked for an exception in this case due to Mr. Ron Collins having a valuable skill set to contribute.

Attorney Ron Sneed discussed **Item 7B**, Ordinance Amending Section 47-12, Specified Places Prohibited and 47-13, Penalty and Enforcement of Article IV. – Stopping, Standing, and Parking stating the ordinance was written to include 2 hour parking prohibitions along Cherry Street. Attorney Sneed stated he anticipated parking prohibitions and included a two hour limit within the ordinance. Alderman Larry B. Harris stated he wanted notification sent to the business owners before this item is considered.

***Alderman Larry B. Harris moved to remove this item from consideration.
The motion passed by a vote of 4-0.***

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Planning Director Jessica Trotman discussed **Item 9A**, Public Hearing of Intent to Close a Right of Way on Ruby Avenue stating Richard “Kenny” Capps and Ora Lee Kerlee have filed a petition to close a portion of a right-of-way between Ruby Avenue and Old State 10 Road and said the properties that abut the right-of-way are 212 Ruby Avenue and 213 Old State 10 Road. Director Trotman stated the requested closure is approximately 75 feet in the length and 14 feet wide and said the right-of-way is not identified in any adopted plans nor is part of a proposed greenway or roadway system. She said the right-of-way is not part of a stormwater system nor is it in any drainage area. The Planning Board recommended the closure with a vote of 5-0 at the November 18, 2019 meeting.

Planning Director Jessica Trotman discussed **Item 9B**, Public Hearing to Rezone Portions of Flat Creek Road and Montreat Road from Suburban Residential (SR-2) to Town Residential (TR-4) Zoning Ordinance #Z-O-20-01 stating the Planning Board evaluated a large area of Flat Creek and Montreat Road to be rezoned to better meet the conditions that are currently present. Director Trotman stated the Planning Board held a community meeting with owners in the proposed area and said there was wide support for the TR-4 zoning district. The Planning Board received the application at their December 16, 2020 meeting and voted 5 to 0 to recommend the rezoning to the Board of Aldermen.

(The Z-O numbering system for Zoning Ordinances has been implemented in 2020 to better track zoning ordinances. It will be included within the index of the official minutes.)*

Planning Director Jessica Trotman discussed **Item 9C**, Public Hearing to Rezone 1068 Old US 70 Hwy from OI-6 (office and institutional) to HB-8 (highway business) Zoning Ordinance #Z-O-20-02 stating Walker Ferguson, the owner of 1068 Old US 70 Hwy, has requested that their property located at 1068 Old US 70 Hwy be rezoned from OI-6 (office and institutional) to HB-8 (highway business). Director Trotman stated the property sits at the corner of Old US 70 Hwy and Tabernacle road and abuts and is adjacent to other highway business zoned properties. She stated the property is .64 acres and rezoning would give the owner the opportunity to get one additional lot if they chose to subdivide. The Planning Board heard this request at their December 16, 2019 meeting and voted 4 to 1 to recommend the rezoning request to the Board of Aldermen.

Planning Director Jessica Trotman discussed **Item 9D**, Public Hearing to Rezone 1114 Montreat Road from SR-2 (suburban residential) to UR-8 (urban residential) Zoning Ordinance #Z-O-20-03 stating John Pomeroy and Micah Larimore (1114 Montreat Rd LLC), the owners of 1114 Montreat Road, have requested that their property located at 1114 Montreat Road be rezoned from SR-2 (suburban residential) to UR-8 (urban residential). Director Trotman stated the property abuts and is adjacent to other urban residential zoned properties and said the difference in uses between districts is comparable and while it would allow more density, the property is encumbered by sewer lines, a stream, floodway and floodplain. The Planning Board heard this request at their December 16, 2019 meeting and voted 5 to 0 to recommend the rezoning request to the Board of Aldermen.

Alderman Larry B. Harris addressed the Board regarding finalization of the One-Way traffic pattern on Cherry Street inquiring if anyone felt it was time to make this a permanent pattern. Discussions among board members with staff concluded that no further complaints have been

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made regarding the pattern. Both Police and Fire Chief's support the closure for safety. Alderman Larry B. Harris directed staff to approach NC DOT to inquire of a potential cost sharing to implement the bulb-out at the top of Cherry Street and State Street.

Vice Mayor Maggie Tuttle addressed the Board regarding procedures to appoint an Aldermen to fill the unexpired term left vacant by Alderman Showers and stated she feels some type of application process would be worth considering. Alderman Ryan Stone stated he supports the idea to promote transparency. Alderman Larry B. Harris stated he is not in favor of a requirement to fill out an application stating he feels it may make the process more restrictive. The Town Clerk presented various sample applications from other jurisdictions for reference as well as a sample document for consideration. Board members reminded the public that the decision ultimately falls within the Board of Aldermen's purview.

***Alderman Ryan Stone moved to add Board of Aldermen Appointment
(New Item 8C) to the agenda.
The motion passed by a vote of 4-0.***

There was no further discussion on the agenda.

There being no further discussion, on a motion by Alderman Larry B. Harris, with a vote of 4-0 Mayor Don Collins adjourned the meeting at 5:56 p.m.

ATTEST:

Angela Reece, Assistant to Manger/Town Clerk

Don Collins, Mayor



TOWN OF BLACK MOUNTAIN

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

Date: **February 10, 2020**

Time: **6:00 p.m.**

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*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 Tim Raines - absent

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
Jamey Matthews, Public Works Director

Mayor Don Collins welcomed everyone and led the Pledge of Allegiance. A moment of silence was observed in memoriam of Alderman Carlos L. Showers who passed away on January 27, 2020. Alderman Showers was elected in 2009, reelected in 2013, and appointed to an unexpired term in 2017 and was the second African American to serve as Alderman in the Town of Black Mountain. The Board also observed a moment of silence for County Commissioner Mike Fryar who passed away on February 2, 2020. Commissioner Fryar was elected in 2012 and represented District 2.

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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.

2. PROCLAMATION AND AWARD RECOGNITION

Mayor Collins stated the Charles H. Campbell Regional Leadership Award was named for four-time Council Chairman and long-time Brevard Mayor who himself received a national award for regional leadership in 1977. The award was dedicated in 1983 to annually honor an outstanding contributor to the betterment of Western North Carolina and the Land of Sky Region. Mayor Collins stated the Land of Sky Regional Council's Executive Committee awards it to another Council Member who has made a major long-term contribution to the Council and its governance and said this year the award was presented to LORSC Board Chair and Black Mountain Alderman, Larry Harris, for his dedication and leadership to Land of Sky Regional Council and Western North Carolina.

Mayor Collins advised the Town has received a Certificate of Achievement for Excellence in Financial Reporting for FY18 CAFR from the Government Finance Officers Association. A letter from the Governmental Finance Officers Association notified Assistant Manager/Finance Director Dean Luebke that the 2018 fiscal year end comprehensive annual financial report (CAFR) qualifies for GFOA's Certificate of Achievement for Excellence in Financial Reporting/ The Certificate of Achievement is the highest form of recognition in governmental accounting and financial reporting, and its attainment represents a significant accomplishment. The Board of Aldermen commended and praised Mr. Luebke for his efforts.

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.

4. COMMUNICATIONS FROM BOARDS, COMMISSIONS & AGENCIES

Shawn Freeman, Police Chief presented the Police Department Annual Report to the Board of Aldermen. The report is made part of and included in these minutes.

Dean Luebke, Assistant Town Manager/Finance Director presented the Finance Quarterly Report to the Board of Aldermen. The report is made part of and included in these minutes.

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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 January 1, 2020 (Special Call), January 9, 2020 (Agenda Session), January 13, 2020 (Regular Session) and January 13, 2020 (Closed Session).*

B. Audit Accounts Contract Amendment for Mauldin & Jenkins

Motion: *To approve the amended contract with Mauldin & Jenkins, increasing the audit fees for the FY19 audit by \$3,400.*

C. Budget Amendment for Golf Course Snack Shop Water Damage Repairs #FY20-12

Motion: *To approve Budget Amendment #FY20-12 as submitted. In the Golf Fund, this budget amendment will increase the expense account, 5092-6310-730 (Capital Outlay) by \$21,875 and the revenue account, 5092-3808-800 (Transfer from General Fund) for \$21,875.*

D. Budget Amendment for Additional funding for Comprehensive Plan #FY20-13

Motion: *To approve Budget Amendment #FY20-13 as submitted, increasing the line item 1010-5400-730 (Capital Outlay) by \$10,000 and decreasing the line item 1010-5400-021 (Part Time Salaries) by \$10,000.*

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

The motion was approved by a vote of 3-0.

6. CITIZEN COMMENTS

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

There were no citizen comments.

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7. UNFINISHED BUSINESS

A. 2020 Sanitation Contract

Town Manager, Josh Harrold presented the results of the RFP (Request for Proposal) to the Board of Aldermen stating the Town only received one proposal from Waste Pro Industries Inc. Manager Harrold stated he has met with surrounding municipalities and discussed sanitation services stating the Town of Black Mountain is the only municipality in Buncombe County who does not contract sanitation services out at this time. Manager Harrold presented a working spreadsheet depicting sanitation service costs for Fiscal Years of 2017, 2018, 2019 and 2020. Manager Harrold stated at the end of Fiscal Year 20 the Town is estimated to pay \$660,400 to Waste Pro for sanitation services. Manager Harrold stated Buncombe County Landfill tipping fees would be an additional \$132,000 to bring the total year end estimate to \$796,200 for FY20. Manager Harrold stated Buncombe County Landfill tipping fees have remained steady with no great increase but cautioned that yard waste fees will increase from \$20.00 per ton to \$30.00 per ton this coming fiscal year. Manager Harrold stated landfill tipping fees are currently \$43.70 per ton and transfer station tipping fees are \$47.75 per ton.

An excerpt of the spreadsheet for Annual Costs for Sanitation Services (Waste Pro) is below. The figures highlighted in yellow represent the dollar cost per household served. The town currently has 4,080 monthly stops and in Fiscal Year 20 the sanitation cost is \$12.90 per stop/per month.

		FY15	FY16	FY17	FY18	FY19	FY20 (estimated)
Personnel							
Contract Labor							
Garbage pickup		535,631	525,723	594,767	628,928	624,716	660,400
Tipping Fee		124,384	129,180	128,928	127,224	133,757	132,000
Fuel							
Insurance (WC and liab)							
Other		5,287	4,574	6,316	1,563	2,074	3,800
Debt Payments							
MR Trucks							
TOTAL		665,302	659,477	730,011	757,715	760,547	796,200
			-0.88%	9.66%	3.66%	0.37%	4.48%
				11.46	12.09	12.52	12.9
				4080	4080	4080	4080

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Manager Harrold stated the proposal from Waste Pro with the same level of service and tonnage will **increase sanitation services collection costs to \$1,073,650 in FY21**, which is a **25.84% increase**. The town has 4,080 sanitation stops per month and the cost per stop would increase from \$12.90 per stop to \$18.51 per stop. This does NOT include the landfill tipping fees.

Manager Harrold proposed an estimated budget to bring sanitation services in house. He stated the only unknown costs at this time are for the purchase and installation of an oil and water separator to wash out garbage trucks. Manager Harrold stated he estimates the annual maintenance costs on the oil and water separator to be approximately \$2,500. Trucks would be kept at the Public Works facility under a metal storage canopy outside as storage is limited inside due to vehicles and equipment stored there now. Manager Harrold stated the metal canopy would cost approximately \$15,000 to \$20,000.

The additional cost to purchase roll out carts for residents (1 trash and 1 recycling) would be approximately \$400,000.

	FY21	FY22	FY23	FY24	FY25	FY26	FY27	FY28	FY29	FY30
Personnel	330,000	346,500	363,825	382,016	401,117	421,173	442,232	464,343	487,560	511,938
Contract Labor	35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000
Garbage pickup										
Tipping Fee	133,320	134,653	136,000	137,360	138,733	140,121	141,522	142,937	144,366	145,810
Fuel	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000
Insurance (WC and li	20,000	21,000	22,050	23,153	24,310	25,526	26,802	28,142	29,549	31,027
Other	65,000	68,250	#####	75,246	79,007.91	82,958	87,106.22	91,462	96,034.60	100,836
Debt Payments	123,917	123,917	123,917	123,917	123,917	123,917	123,917	123,917	123,917	123,917
MR Trucks	30,000	36,000	43,200	51,840	62,208	74,650	89,580	107,495	128,995	154,793
TOTAL	762,237	790,320	820,654	853,531	889,293	928,344	971,158	1,018,296	1,070,422	1,128,321

Manager Harrold stated financing terms for garbage trucks are typically 2.5% interest with a 7 year term. Manager Harrold advised the Board according to his research trucks start wearing out around year 7. Mayor Collins stated the town could purchase garbage trucks with proceeds from the sale of the old Public Works facility. Alderman Larry B. Harris stated factoring in future costs is also necessary through capital improvement. Manager Harrold stated he and Assistant Manager Luebbe figured in percentages of increases for services and operating costs to determine the numbers. Mayor Collins inquired the need for six initial personnel and Manager Harrold stated he feels this number may be low. Mayor Collins inquired regarding the type of garbage trucks and Manager Harrold clarified the pricing is for rear loading garbage trucks. Mayor Collins stated this will eliminate the \$400,000 cost for providing roll out cans. Manager Harrold clarified the rear loading trucks are able to pick up roll off cans for persons already having them and said he did not want employees reaching into roll out cans to dig out trash or lifting heavy cans to avoid injury. Alderman Larry B. Harris stated this is a direction to consider for citizens who are able to utilize them. Mayor Collins asked what the annual savings would be over the next ten years and Manager Harrold stated the first year cost savings by bringing sanitation services in house would be approximately \$300,000. Manager Harrold stated the total

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cost is an estimate but said looking at the RFP Waste Pro Industries submitted the Town would catch up to the current cost proposal in year ten at \$1,072,149.00, which is less than the current year proposal.

Assistant Manager Dean Luebke stated more regulations may be necessary to reduce tonnage which will reduce costs. Alderman Larry B. Harris stated this will need to be examined further to determine best practices moving forward. Manager Harrold presented the sanitation survey data stating 515 citizens responded. Manager Harrold stated that 85% of responses indicated they could use a roll off can and 15% said they could not use a roll out can. Of the 15% who indicated they could not use a roll out, 50% cited the reason being terrain, 38% cited a health condition/age and 12% cited a disability.

A decision was not made and this item will be placed on a special meeting for further discussion. (A special meeting was subsequently called on February 26, 2020 at 5:00 p.m.)

B. NC Highway 9 Sidewalk Construction Contract Approval

Attorney Ron Sneed recalled previous discussions with Sikes Regan to obtain an easement to install sidewalk along the Cheshire Village area along NC Highway 9. Attorney Sneed stated the town sought bids for the work for concrete sidewalks and said Sikes has requested a brick sidewalk. The difference in pricing would be approximately \$65,000 plus higher future maintenance costs. Attorney Sneed stated the bids were not requested in this way and said by law the town is committed to accepting a bid or rejecting all bids and reissuing. Attorney Sneed stated the developer has submitted alternate proposals as previously discussed to sell the easement to the town, sell the foot bridge to the town and for the developer to use those proceeds to make up the difference in the low bid. Attorney Sneed stated he spoke with the low bidder regarding stamping concrete to look like brick was not advantageous and actually costs just as much as brick. Mayor Collins stated the town can proceed with the sidewalk just past this property until an agreement can be reached and said that “we can’t do for one what we cannot do for another”. Mayor Collins stated he wanted to be clear that the town may not do special favors.

Motion: *To award contract for NC Highway 9 sidewalk construction to Southern Appalachian Grading and Excavating, Inc. in the amount of \$125,240.*

This item was not considered and will be placed on a special meeting for further discussion. (A special meeting was subsequently called on February 26, 2020 at 5:00 p.m.)

8. NEW BUSINESS

A. Resolution to Provide Additional Matching Funds for River Walk Greenway Phase II

#R-20-02

Manager Josh Harrold stated staff is seeking an additional \$1.2M to finish funding the River Walk Greenway expansion. Manager Harrold stated the total project cost is approximately \$6M

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and said the Town's match will be 20% (which is \$1.2M). If staff are successful in obtaining funding for the additional \$1.2M, the 20% match is \$240,000. Manager Harrold reminded citizens that the County has contributed \$400,000 for this project. Mayor Collins reminded citizens the project construction may not begin until all funding is in place.

Alderman Ryan Stone moved to approve Resolution #R-20-02 committing to matching funds, if awarded, in the amount of \$240,000, which is twenty-percent (20%) of the total request of the grant application for 2020 STBG to provide funding for construction for the River Walk Greenway Phase II. The motion was approved by a vote of 3-0.

B. Library Board (Building Maintenance) – (1) un-expiring term

Recommendation by Library Board Membership: **Ron Collins**

Attorney Sneed advised the Library Board is a building maintenance board with members being appointed permanently. Attorney Sneed sits on the Library Board and advise the Board of Aldermen the recommendation of their board is to appoint Ron Collins as member due to his skills and abilities. Attorney Sneed stated if it is presumed that this board operates under the same terms as all other advisory boards he would ask that the Board of Aldermen suspend their rule disallowing dual appointment as Ron Collins was also appointed to the Planning Board. Attorney Sneed stated the Library Board is not a policy making board and reiterated it is merely a maintenance committee.

Alderman Larry B. Harris moved to suspend the dual appointment prohibition and to appoint Ron Collins to fill an un-expiring term on the Black Mountain Library Board. The motion was approved by a vote of 3-0.

C. Board of Aldermen Appointment (*Procedural Discussion*)

Vice Mayor Maggie Tuttle recalled discussions at the agenda setting meeting stating she feels it would be a good idea to offer the public an opportunity to fill out an interest form for appointment to the Board of Aldermen to fill the unexpired term vacated due to Alderman Carlos Showers passing. Alderman Ryan Stone stated the Town's charter does not allow for the seat to be left vacant or to call for a special election. Alderman Stone stated in the spirit of transparency Vice Mayor Tuttle has come up with the interest form for individuals who are interested to seek appointment. Alderman Stone stated he hears concerns that this may set a precedent for future boards but said it is his understand that boards may choose the procedure they want as long as it's within the charter and state law. Attorney Sneed clarified this is a non-partisan board and stated the board is not adopting this form as procedure but allowing the public to express interest. Alderman Larry B. Harris clarified the interest form will not be a requirement. Alderman Ryan Stone stated he feels we are in a unique time where people are asking for more avenues of transparency and to make themselves known and feels this is another tool to move forward. Vice Mayor Tuttle stated former Citizen Academy graduates are another resource to pull from.

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Vice Mayor Maggie Tuttle moved to make notice available to citizens who wish their candidacy to be known and considered for appointment

The form was made available through the Town's website, social media outlets, news sources, and printed at Town Hall for parties interested in submitting candidacy requests.

***Vice Mayor Maggie Tuttle moved to approve a notice of interest form and to make it available to the public with an expiration date of February 24, 2020.
The motion was approved by a vote of 3-0.***

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 of Intent to Close ROW Ruby Avenue #R-20-01

Planning Director Jessica Trotman stated the properties that abut the right-of-way are 212 Ruby Avenue and 213 Old State 10 Road. The requested closure is approximately 75 feet in the length and 14 feet wide. The right-of-way is not identified in any adopted plans nor is part of a proposed greenway or roadway system. The right-of-way is not part of a stormwater system nor is it in any drainage area. The Planning Board recommended the closure with a vote of 5-0 at the November 18, 2019 meeting.

Alderman Ryan Stone moved to open the public hearing for Resolution #R-20-01 to Close Unopened, Platted Right-of-Way Parallel to Ruby Avenue. The motion was approved by a vote of 3-0.

There were no Board comments. There were no citizen comments.

Vice Mayor Maggie Tuttle moved to close the public hearing. The motion was approved by a vote of 3-0.

Alderman Larry B. Harris moved to approve Resolution #R-20-01 closing the unopened, platted right-of-way parallel to Ruby Avenue at presented. The motion was approved by a vote of 3-0.

B. Public Hearing for Rezoning Portions of Flat Creek Road and Montreat Road from Suburban Residential (SR-2) to Town Residential (TR-4) **Zoning Ordinance #Z-O-20-01**

Planning Director Jessica Trotman stated the Planning Board evaluated a large area of Flat Creek and Montreat Road to be rezoned to better meet the conditions that are currently present. Director Trotman stated if the parcels are rezoned then there will only be 8 remaining which are legally non-conforming. The Planning Board held a community meeting with owners in the proposed area

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and there was wide support for the TR-4 zoning district. The Planning Board received the application at their December 16, 2020 meeting and voted 5 to 0 to recommend the rezoning

Vice Mayor Maggie Tuttle moved to open the public hearing to rezone multiple parcels on Flat Creek and Montreat Road from SR-2 (suburban residential) to TR-4 (town residential). The motion was approved by a vote of 3-0.

There were no Board comments. There were no citizen comments.

Alderman Larry B. Harris moved to close the public hearing. The motion was approved by a vote of 3-0.

Vice Mayor Maggie Tuttle moved to adopt the Statement of Consistency as presented [or as amended]. The motion was approved by a vote of 3-0.

Vice Mayor Maggie Tuttle moved to adopt Zoning Ordinance #Z-O-20-01 to rezone multiple parcels on Flat Creek Road and Montreat Road from SR-2 (suburban residential) to TR-4 (town residential). The motion was approved by a vote of 3-0.

C. Public Hearing – Rezoning of 1068 Old US 70 Hwy. *Zoning Ordinance #Z-O-20-02*

Planning Director Jessica Trotman stated the property owner of 1068 Old US 70 Hwy, has requested that their property located at 1068 Old US 70 Hwy be rezoned from OI-6 (office and institutional) to HB-8 (highway business). The property sits at the corner of Old US 70 Hwy and Tabernacle road and abuts and is adjacent to other highway business zoned properties. The property is .64 acres and rezoning would give the owner the opportunity to get one additional lot if they chose to subdivide. The Planning Board heard this request at their December 16, 2019 meeting and voted 4 to 1 to recommend the rezoning request.

Vice Mayor Maggie Tuttle moved to open the public hearing to rezone 1068 Old US 70 Hwy from OI-6 (office and institutional) to HB-8 (highway business). The motion was approved by a vote of 3-0.

There were no Board comments.

Chris Pettick address the Board of Aldermen and expressing concerns for increased property values stating his property borders the parcels in question.

Vice Mayor Maggie Tuttle moved to close the public hearing. The motion was approved by a vote of 3-0.

Alderman Larry B. Harris moved to adopt the Statement of Consistency as presented [or as amended]. The motion was approved by a vote of 3-0.

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Alderman Larry B. Harris moved to adopt Zoning Ordinance #R-O-20-02 to rezone 1068 Old US 70 Hwy from OI-6 (office and institutional) to HB-8 (highway business). The motion was approved by a vote of 3-0.

D. Public Hearing Public Hearing to Rezone 1114 Montreat Road from SR-2 (suburban residential) to UR-8 (urban residential) *Zoning Ordinance #Z-O-20-03*

Planning Director Jessica Trotman stated John Pomeroy and Micah Larimore (1114 Montreat Rd LLC), the owners of 1114 Montreat Road, have requested that their property located at 1114 Montreat Road be rezoned from SR-2 (suburban residential) to UR-8 (urban residential). Director Trotman stated this is the former “Nana’s nursing home”. The property abuts and is adjacent to other urban residential zoned properties. The difference in uses between districts is comparable and while it would allow more density, the property is encumbered by sewer lines, a stream, floodway and floodplain. The Planning Board heard this request at their December 16, 2019 meeting and voted 5 to 0 to recommend the rezoning request.

Vice Mayor Maggie Tuttle moved to open the public hearing to rezone 1114 Montreat Road from SR-2 (suburban residential) to UR-8 (urban residential). The motion was approved by a vote of 3-0.

There were no Board comments. There were no citizen comments.

Vice Mayor Maggie Tuttle moved to close the public hearing. The motion was approved by a vote of 3-0.

Vice Mayor Maggie Tuttle moved to adopt the Statement of Consistency as presented. The motion was approved by a vote of 2-1 with Alderman Ryan Stone opposing.

Vice Mayor Maggie Tuttle moved to adopt Zoning Ordinance #Z-O-20-03 to rezone 1114 Montreat Road from SR-2 (suburban residential) to UR-8 (urban residential). The motion was approved by a vote of 2-1 with Alderman Ryan Stone opposing.

10. COMMUNICATION FROM STAFF

A. Town Attorney – None at this time.

Town Manager – Manager Harrold reminded the public of the second kickoff meeting for the Comprehensive Plan stating it will be held on Monday, February 27, 2020 at 6:00 p.m. at Meadowbrook Free Will Baptist Church on Blue Ridge Road. The public may view more information by visiting

<https://www.townofblackmountain.org/2533/Comprehensive-Plan-Update>

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Manager Harrold reminded the public that the town is soliciting public comment for the Blue Ridge Road Small Area Plan and encouraged citizens to visit the website or reach out to planning staff to comment. Manager Harrold also invited Board members to attend the Fonta Flora State Trail meeting next week in Morganton and encouraged to join the State Trail Board.

11. COMMUNICATION FROM MAYOR AND BOARD OF ALDERMEN

Alderman Larry B. Harris addressed the public regarding the Avadim Project presentation encouraging the public to attend the March meeting to hear the updates as it has been rescheduled. Alderman Harris also stated he is reaching out to NCDOT to invite them to give an update to the public regarding the I-40 Blue Ridge Road Interchange project and timeframe for Right-of-Way acquisition at the March meeting.

Alderman Ryan Stone encouraged citizens to participate in the voting process and reminded them of early voting beginning next week at the Library.

12. ADJOURNMENT

*Alderman Ryan Stone moved to enter into closed session to discuss personnel matters, as permitted in NCGS § 143.318.11(a)(6) at 7:56 p.m.
The motion was approved by a vote of 3-0.*

*Alderman Larry B. Harris moved to return to open session at 8:08 p.m.
The motion was approved by a vote of 3-0.*

*Alderman Larry B. Harris moved to increase Rob Austin's salary by \$3,705 annually due to promotion to Major/Assistant Police Chief.
The motion was approved by a vote of 3-0.*

There being no further discussion, on a motion by Larry B. Harris, with a vote of 3-0 Mayor Don Collins adjourned the meeting at 8:10 p.m.

ATTEST:

Angela Reece, Assistant to Manger/Town Clerk

Don Collins, Mayor