



TOWN OF BLACK MOUNTAIN

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

Date: **June 21, 2023** Time: **8:30 a.m.**

Special Call Meeting Agenda

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

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*Should you need other assistance or accommodation for this meeting, please contact
Town Clerk Savannah Parrish at 419-9310, or by email at town.clerk@tobm.org
(828) 419-9300 / TDD (800) 735-2962*

1. CALL TO ORDER

In accordance with the Code of Ethics adopted by the Council, all council members have a duty to conduct the affairs of the governing board in an open and public manner free of conflicts of interest. Is there any item on the agenda the outcome of which will have a direct, substantial, and readily identifiable financial impact for any Council member, his or her family or close business associates? Does any council member have a financial interest in any public contract coming before this Council today? There being none all Board members have a duty and obligation to vote.

2. BUSINESS

- A.** Discussion of Mountain Life Development LLC and Black Mountain Center for Research and Technology LLC request to receive water service.
- B.** Overview of ordinances and attorney recommendations.

3. COMMUNICATION FROM MAYOR AND TOWN COUNCIL

4. ADJOURNMENT



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June 19, 2023

BY EMAIL

Mayor Sobol and the Honorable Members
of the Town of Black Mountain Town Council
c/o Josh Harrold, Town Manager
160 Midland Avenue
Black Mountain, NC 28711

Re: June 21, 2023 Town Council Meeting

Mayor Sobol and the Honorable Members of Town Council:

We represent Black Mountain Center for Research and Technology, LLC ("BMCRT") and Mountain Life Development, LLC ("Mountain Life," and together, the "Owners") regarding their properties located in Buncombe County, North Carolina outside the corporate limits of the Town of Black Mountain (the "Town") with the PINs 060940908700000, 06097018500000, and 06095152600000 (collectively, the "Property"). The Property is part of the site known as the Black Mountain Commerce Park.

We thank the Town for scheduling a special meeting for June 21, 2023, at 8:30 a.m., to address the Owners' request for Town Council to ratify the Town's commitment to provide water service to the Property while it remains outside of the Town's corporate limits. The purpose of this letter is to supplement our April 18, 2023 letter with additional background information for Council's consideration in advance of that special meeting.

The Property was once the subject of a public-private economic development project known by the code name "MedLaunch" made public in late 2016. Project partners included the Economic Development Coalition for Asheville-Buncombe County, the Land of Sky Regional Council, Buncombe County, the North Carolina Department of Transportation, the Appalachian Regional Commission, the Golden Leaf Foundation, the Economic Development Partnership of North Carolina, the United States Economic Development Administration (EDA), and the Town of Black Mountain.

The Town of Black Mountain was not among the initial group of project partners. Early plans for the development of the Property provided for water to be supplied by the City of Asheville. In 2016, during the planning and negotiations for this public-private partnership, the existing project partners suggested that BMCRT consider allowing the Town of Black Mountain to join the project as a co-lead applicant for public grants and subsequently to supply water to the Project once constructed. BMCRT was amenable to the Town's inclusion in the partnership given the significant financial benefits that would result to the Town from the subsidized expansion of its municipal water system. However, BMCRT

consistently made clear that the Town's provision of water to the Property would have to be contingent on its agreement not to annex the Property into the Town's corporate limits. The Town, acting through its Town Manager at the time, Matt Settlemyer, agreed to that condition. As part of that agreement, BMCRT, through its representatives Jerry and Dana Bobilya, agreed to pay for the engineering costs of the necessary water and sewer extensions that would become Town property, and also to cover a shortfall in EDA funding for the project infrastructure. The Bobilyas will be present at the June 21 Council meeting and can address any questions. Mr. Jesse Gardner, Senior Project Engineer for Civil Design Concepts, PA, was the engineer who designed the water infrastructure on the Town's behalf and was involved in those discussions. Mr. Gardner also will be present for the June 21 Council meeting and can answer questions about the agreement.

This agreement was reached in 2016 while the project was being kept confidential, as is standard with nearly all economic development projects of this type. The Town Manager, Matt Settlemyer, was the only person associated with the Town who was privy to confidential discussions among the project partners, and therefore Mr. Settlemyer was the only person able to make this agreement on the Town's behalf before the project was made public. As reflected in the attached Asheville Citizen-Times article, the project (to be occupied by Avadim Health) eventually was announced publicly in September 2016 by Governor Pat McCrory during a media-attended event at the Property. After the project was made public, Mr. Settlemyer informed Town Council members of the details of the agreement he reached with BMCRT regarding the provision of water service. Former mayor Larry Harris, who served on Town Council at the time, can confirm that Council was apprised of and in support of the agreement that Mr. Settlemyer reached with BMCRT. Mr. Harris joined the monthly project partner meetings following the public announcement and later spearheaded the Town's separate agreement with the City of Asheville for additional water supply. Mr. Harris also intends to attend the June 21 Council meeting and is willing to address any questions.

BMCRT sought to formalize its agreement with the Town following the project's public announcement but never received any indication from the Town that a written agreement was necessary. As promised, BMCRT paid \$172,420 towards the design and engineering of the water and sewer extensions that are now incorporated into the municipal systems and paid \$52,580.00 to cover the local government matching component of the EDA grant. Those payments were made to the Land of Sky in October and November 2016.

The Avadim development did not move forward as planned due to financial issues that eventually led to its filing for Chapter 11 bankruptcy protection. Nonetheless, BMCRT intends to develop the Property for another purpose, and seeks now to formalize the water supply agreement with the Town under which it already has performed its end of the bargain.

Our understanding is that the Town Staff does not dispute the existence and terms of the agreement with BMCRT, but now knows of no routine mechanism under which it can guarantee or provide water service for the Property absent annexation or other action by Council. BMCRT believes that this issue is best addressed by Town Council ratifying the unwritten agreement it previously reached with BMCRT under the Town's authority to enter public enterprise improvement contracts pursuant to N.C. Gen. Stat. § 160A-320. If Council is agreeable to this approach, we certainly are amenable to working with Town staff on a

written agreement for presentation to Council at a later meeting. If Council believes that there is another procedure that is more appropriate under the circumstances, BMCRT is willing to consider it. After all, BMCRT's only present interest is to ensure that it receives water service when needed from the infrastructure that was installed as a result of its financial contribution.

We thank Town Council in advance for its time and consideration of this issue. We look forward to seeing you on June 21.

Very Truly Yours,

MORNINGSTAR LAW GROUP



Jeffrey L. Roether

Enclosure

cc: Ron Sneed, Esq.
William J. Brian, Jr.

Citizen Times

LOCAL

Avadim to add 551 jobs in Buncombe with new headquarters

The Asheville life-science company's expansion includes a \$25.4M capital investment.

Mike Cronin, mcronin@citizen-times.com

Published 12:56 p.m. ET Sept. 21, 2016 | Updated 2:24 p.m. ET Sept. 23, 2016

In the middle of a field outside Black Mountain, Gov. Pat McCrory announced Avadim Technologies would add 551 jobs in Buncombe County while investing \$25.4 million in capital over the next five years.

The Asheville life-science company will begin construction of its new corporate headquarters within about a year in Black Mountain Commerce Park, which is soon to be built at the site of Wednesday's announcement. The facility could open as soon as 2018, said David Fann, Avadim's president.

McCrory called the jobs announcement one of the biggest over the past decade in North Carolina, while Buncombe County officials said they could think of none larger in the Asheville area.

Average annual compensation for the jobs will be about \$51,000, according to McCrory's office. Those positions will include sales and marketing personnel, customer-service representatives and information-technology specialists.

Under its brand Theraworx, Avadim makes skin products for uses in the medical, sports and military fields, said Josh Montgomery, company vice president of operations. Those include foams, sprays and pre-treated cloths, some of which provide resistance to infection.

Athletes might use the products for muscle recovery, and members of the military use one product to bathe while in the field, Montgomery said.

"This represents a synergy for companies like (Avadim) and entrepreneurship in Asheville," McCrory said in an interview after the event.

“Avadim’s expansion could mean that Asheville and Buncombe County could become a hub for this type of industry,” McCrory said. “Others will begin looking at Asheville as a place to come.”

During his remarks, Buncombe County commissioners Chairman David Gantt thanked Avadim Chairman and CEO Stephen Woody for deciding to build the company headquarters locally.

“Steve had a choice, and he chose us,” Gantt said, as he turned to Woody, where he sat in a front-row seat.

The headquarters will include space for offices, research and development, manufacturing and distribution.

Gantt wondered aloud about the heights Avadim could achieve. Skin is the body’s largest organ, he told the gathering.

“We’ve got a lot of it, and everyone’s got it,” Gantt said.

In an interview after the event, Woody exhibited confidence about Avadim’s future.

“We’re going to be a \$1 billion company,” he said.

Avadim employs about 100 people. Inc. magazine listed Avadim as No. 234 on its 500 fastest-growing U.S. companies in 2016.

Ben Teague, executive director of the Economic Development Coalition for Asheville-Buncombe County, said he and his colleagues had been negotiating with Woody and the Avadim team since December.

Avadim received a \$4.9 million North Carolina Job Development Investment Grant, said Kim Genardo, spokeswoman for the state Department of Commerce.

But that money is contingent on the company creating all 551 jobs over 12 years, Genardo said.

State audits verify the creation of the jobs, “and the employer is reimbursed from the state and personal income tax withholdings of the new job,” she said. “If the job is not created, the company would not be reimbursed.”

The Buncombe County incentive to Avadim, if it creates those jobs and satisfies other metrics, is \$881,960, said Tim Lampkin, the EDC’s director of business retention and

expansion. That will be paid over five years, he said.

Ironically, Woody “tried to throw this away,” he said in the interview.

People had told him about the Theraworx technology three times over a four- or five-year period, he said.

Yet, he doubted the veracity of what they were saying about its properties.

“So, we tested it in 2006 just to prove it didn’t work,” Woody said.

But it did.

“We’re so blessed,” he said.

Dewey Andrew, retired and former owner of Smoky Mountain Distributors, was among Avadim’s original investors.

Andrew said after the event that he decided to fund Avadim after one of the company’s products halted his nocturnal leg cramps.

“It worked in 30 to 60 seconds,” he said.

Avadim is from Hebrew root, avad, which means, “to serve,” company President Fann said.

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Anna V. Stearns
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June 19, 2023

Town Council
Town of Black Mountain
160 Midland Avenue
Black Mountain, NC 28711

RE: Black Mountain Center for Research & Technology

Dear Mayor and Council Members:

Black Mountain Center for Research & Technology ("BMRCT") has requested a meeting with town council through its attorney, William J. Brian, Jr., of the Morning Star Law Group. This meeting was requested after representatives of BMRCT were informed that no agreement in writing was found supporting their assertion that an agreement was made not to annex BMRCT property. Such agreement was allegedly made at the time of the economic development agreement negotiations for incentives for infrastructure improvements to support the construction of an Avadim factory on property owned by BMRCT.

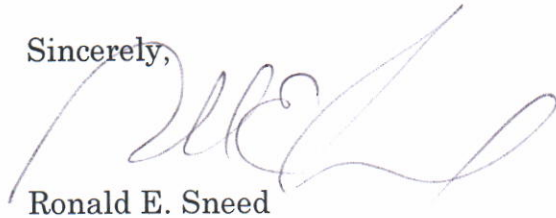
I understand that the purpose of the meeting is to convince the Town Council that such an agreement was reached, but was not reduced to writing, and the current town council should ratify such unwritten agreement pursuant to N.C.G.S. 160A-16.

However, even if there was such an attempted verbal agreement, there are two remaining hurdles. The first is that the Town has no authority to contract away its annexation authority or obligate itself to annex. The only authority the Town has to enter into any agreement to annex or to not annex property is set out in N.C.G.S. 160A-58.21, which authorizes such agreement between cities, but not between a city and a private entity. Without specific authority, or authority provided in a local act for a specific project, the Town could not enter into such agreement, nor can it enter into an agreement to annex or not to annex now. It can require an applicant for water service to request annexation in exchange for water service, but that does not create an obligation to actually annex the property.

Town of Council
June 19, 2023
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Even if the Town did have the authority to agree not to annex property at the time the economic development agreement was being negotiated, that Council could not obligate future councils to uphold that agreement, as annexation is a legislative action which is governmental and not proprietary.

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. E. Sneed', is written over the word 'Sincerely,'.

Ronald E. Sneed

- (a) *Water distribution lines.* Water distribution lines to serve proposed subdivisions within the town limits will be handled as follows:
- (1) The developer will submit plans for review and approval by the town, its engineer and the state department of environment and natural resources.
 - (2) Lines will be installed by the developer in accordance with the approved plans.
 - (3) The developer will be responsible for the operation and maintenance of such systems for a period of one year following the acceptance of the system by the town.
 - (4) The town will not accept or maintain any water system which does not contain a pressure of 30 psi base upon the existing main tank level.
 - (5) All water taps shall be made by the town, and the town shall collect all fees for the installation of all water taps. Any unauthorized tap made to the town water system shall result in the termination of services.
 - (6) The town may require the installation of increased line sizes if it is determined that such increase is necessary to serve adjacent property.
 - (7) The town will not assume ownership of or responsibility for any additional equipment deemed necessary by the town to provide adequate water pressure from the tap, but may elect to enter into written maintenance with the owner/developer for the maintenance of such equipment.
- (b) *Extension.* Extension of water lines within the service areas inside the town limits will be handled as follows:
- (1) The plans for the extension will be submitted for review and approval by the town, its engineer and the state department of environment and natural resources.
 - (2) The lines will be installed in accordance with the approved plans.
- (c) *Limitations of service.*
- (1) Water service will not be provided at any location where a minimum of 30 psi at the meter cannot be maintained under normal conditions. Property above the service line may be provided a tap according to the town's fees, but the property owner must provide any additional equipment that is deemed necessary by the town to provide adequate water pressure from the tap.
 - (2) Any natural or manmade obstruction that impedes the extension of water lines, such as creeks, rivers, railroads, interstates, etc., will not be crossed.
- (d) *Water service outside corporate limits of town.*
- (1) Requests for water service to a single-family residence where water service is available may be granted upon the approval of the public works director.
 - (2) Any developer or property owner wishing to make application for water service to property that is contiguous to the corporate limits of the town, excluding single-family residences under subsection (d)(1) of this section, must petition for voluntary annexation into the town limits before being considered for water service. The town has the option to accept or reject the annexation petition based on what is in the best interest of the town. If rejected for annexation by the town, the developer or property owner may request service under the terms outlined for noncontiguous property.

(3) Reserved.

(4) Before any area outside the town limits can be considered for water service, it must be determined by the public works director that the town's current 12-hour water pumping capacity meets or exceeds 1¼ times the water system's average daily usage.

(Code 1993, § 52.27; Ord. No. 0-82-2, 5-10-1982; Ord. No. 0-82-7, 6-14-1982; Ord. No. O-20-14, 12-14-2020)