

**MINUTES
Town of Blowing Rock
Board of Commissioners
January 12, 2010**

The Town of Blowing Rock Board of Commissioners met in regular session on Tuesday, January 12, 2010 at 7:00 p.m. in the Town Hall Council Chambers located at 1036 Main Street, Blowing Rock. Present were Mayor J.B. Lawrence, Commissioners Albert Yount, Phillip Pickett, Tommy Klutz, Doug Matheson and Jim Steele. Others present were Town Manager Scott Hildebran, Town Attorney Allen Moseley, Town Engineer Doug Chapman, Police Chief Eric Brown, Public Works Director Mike Wilcox, Assistant Public Works Director Matt Blackburn, Planning Director Kevin Rothrock, Building Inspector Jesse Horner, Finance Director Nicole Norman, Parks & Recreation Director Jennifer Brown, Emergency Services Director Kent Graham, and Town Clerk Sharon Greene.

CALL TO ORDER

Mayor Lawrence called the meeting to order at 7:00 p.m. and welcomed everyone to the meeting.

Mayor Lawrence deviated from the agenda and moved to Item #1 under New Business:

**1. Police Lieutenant Retirement Resolution – Awarding Badge & Gun
(Resolution #2010-01)**

Mayor Lawrence called Police Lieutenant Swanson forward to receive a service plaque for his retirement after 28+ years of service to the Town. Mr. Lawrence extended his appreciation to Mr. Swanson for the wonderful job he had done.

Police Chief Eric Brown then presented Mr. Swanson with his service firearm and badge and thanked him for the outstanding job he had done during his tenure with the Town.

Resolution #2010-01 – Exhibit A

APPROVAL OF MINUTES

A motion was made by Commissioner Pickett to approve minutes for the December 8, 2009 meeting. The motion was seconded by Commissioner Steele. Unanimously approved.

Commissioner Yount asked Mayor Lawrence to address Town Code Section 2-33 **Reference to Robert's Rules of Order** due to some misconception regarding recent action taken by Council.

PRESENTATION- Blowing Rock Rotary Robbins Pool Donation

Due to the absence of a Rotary Club representative, Mayor Lawrence moved forward to the next agenda item.

PUBLIC HEARING

1. Rezoning of Steve Thomas Property (Robbins House) – 132 Park Avenue

Planning Director Kevin Rothrock presented Council with a request from Ms. Jane Deavors to rezone Mr. Steve Thomas' property located at 132 Park Avenue from O-I, Office-Institutional to CB, Central Business.

Land Use Code Section 16-136 states that the O-I zoning district is designed to accommodate a narrow range of commercial and institutional activities such as: one and two-family residences, multi-family residences, bed and breakfasts, libraries, offices, art galleries, churches, day cares, and schools.

According to Mr. Rothrock, the full range of permissible uses must be considered when deciding on the zoning change. Mr. Rothrock further explained a rezoning based on a condition of one particular use being allowed exclusively or the creation of mutual city/applicant agreements in a rezoning decision is considered *contract zoning* and is illegal in North Carolina.

Pursuant to NC General Statutes, both the Planning Board and Governing Board must consider the positions of the Comprehensive Plan when either providing a recommendation on a rezoning or making a final decision on a zoning change. Council then must adopt a written statement on whether or not the rezoning is consistent with the policies of the Comprehensive Plan and the rationale for the Board's decision. The adopted written statement supporting the zoning decision does not have to be consistent with the Comprehensive Plan, but must explain the rationale for the Council's position.

During the November 19, 2009 meeting, the Planning Board recommended approval of the rezoning from O-I to CB. The Planning Board also gave the following support statement:

“Despite policy statement 1-C-1 of the Comprehensive Plan discouraging enlarging the business district, other factors weigh in to assist new business growth including policies 1-C-2, 1-C-3, 1-C-4, 1-C-6, and 1-D-3, which are in support of a zoning change.”

Mr. Rothrock advised that all adjacent property owners as well as those required by General Statutes were mailed a public notice, a notice was also advertised in the *Blowing Rocket*, and the property was posted accordingly.

Mr. Rothrock stated a protest petition was received on December 8, 2009 and in order to qualify as a protest petition, it had to be signed by the owners of 5% of a 100-foot

wide buffer surrounding the subject property. Mr. Rothrock mentioned the petition qualified in two ways: a) 27% of the area within the 100-foot buffer, and b) 56% (5/9) of the number of properties within the buffer are owned by protest filing citizens.

According to Mr. Rothrock, when a protest petition is filed, NC General Statute 160A-385 requires a favorable supermajority vote of 3/4 of the members of Council to approve a rezoning. In the case of Blowing Rock Town Council, a three-fourths majority requires 4 out of 5 members. Based on the protest petition, at least 4 out of 5 votes are required to approve the rezoning of the Thomas property from O-I to CB.

Commissioner Steele had questions regarding contiguous zoning and if the zoning on this property could legally be changed. Planning Director Rothrock stated the request could legally be granted.

Mayor Lawrence asked for comments from the audience regarding this issue. Mr. Jerry Starnes of 204 Hilltop Way stated that he objected to the zoning change because he wanted to see Blowing Rock's charm and character preserved and this property served as a buffer between the Central Business district and the neighborhood. He also pointed out that there were numerous locations on Main Street to accommodate the dress shop.

Mr. O. Wayne Green of Vilas stated he was the zoning officer for the town when the zoning map was created and at that time the business district was not to be enlarged. He also spoke briefly regarding tiered zoning and the need for buffers between the business district and neighborhoods. He pointed out the Comprehensive Plan said the Town was to support the retail business within the existing business district but it did not require supporting the business district being enlarged. He also suggested if Council chose not to support the Comprehensive Plan their reasoning should be properly documented in the minutes.

Ms. Regina Pelsmaeker of 426 Wallingford Street also mentioned there were several available places along Main Street for a retail business such as this. She felt that neighborhoods should be protected from the business district. She also addressed concerns she had with the types of businesses that could be allowed in the proposed location should the zoning be changed.

Mr. David Baskin represented Ms. Louise Caruso who owns several properties adjacent to the property. He stated that Ms. Caruso was also against the zoning change.

Ms. Louise Absher of 461 Wallingford Street also voiced her objection to the proposed zoning change and urged Council to deny the request.

Attorney John Turner, representative for Ms. Ann Smart owner of the property directly behind 132 Park Avenue, advised that Ms. Smart had purchased her home knowing that the property behind her was zoned O-I and would serve as a buffer between her home and the business district. He commented that Ms. Smart was not against the

dress shop; however, she was against the change in zoning of the property. He stated that he took issue with the findings of the Planning Board regarding the various policy statements. He asked that the request also be denied.

Ms. Nancy Santay, President of the Blowing Rock Chamber of Commerce, spoke on behalf of the Chamber and their Board of Directors. She advised that during their December Board Meeting they had unanimously voted in support of the zoning change. She also mentioned that Mayor Lawrence was present at the board meeting, but had abstained from voting on the issue. She stated the addition of the dress shop at this location would help to bridge North and South Main Street together and would draw traffic further down Main Street. The Chamber also felt the addition of the dress shop would not only enhance the shopping experience, but would also contribute to the health and vibrancy of the retail community. Ms. Santay mentioned the Chamber had received more than 40 letters from the retail community and residents alike in support of the zoning change and Council had been given copies of these letters.

Mr. Bill Hall, a representative of the Chamber's Economic Development Committee, stated the retail businesses were struggling and this was one of the reasons for the HyettPalma report. He advised the HyettPalma report recommended exactly what was trying to be accomplished at this meeting. He stated Conditional Use Permits could place sufficient protection for the neighborhood should a business other than the dress shop go into this location. He also advised as homes in the neighborhood changed ownership, apartments and offices could be built because the properties were zoned O-I and multi-family. He commented the proposed change would be in the best interest of Blowing Rock.

Mr. Mike Sink stated he and his wife had managed the Fig Leaf for the past 16 years and they welcomed other retail businesses to town. He also said that businesses on Main Street changed frequently which could happen in this particular situation. Mr. Sink mentioned several different location possibilities for this business.

Mr. Steve Thomas, owner of 132 Park Avenue, advised he had been working with his attorney to get a protective covenant on the property that would disallow liquor sales on the premises. He also mentioned the dress shop would make a nice addition to Blowing Rock. He suggested that Council postpone voting on this issue until he could continue to investigate the issue of prohibiting a bar on the property for as long as he owned it.

Mr. Sink pointed out that he was hearing that a bar would be offensive, but he did not feel that everyone necessarily felt the same.

With no further comments, Commissioner Pickett made a motion to close the public hearing, seconded by Commissioner Matheson. Unanimously approved.

Commissioner Pickett then made a motion to leave the zoning O-I and deny the request, seconded by Commissioner Klutz. Commissioner Pickett further stated he admired the Chamber for trying to help retail businesses find suitable locations in town,

but he could not go against all the residents that would be affected by this zoning change.

Commissioner Klutz felt the neighborhood had already reached a compromise when the property was zoned O-I. He spoke in support of the dress shop but not at this location.

Commissioner Yount conveyed that he had discussed this issue with Mr. Richard Ducker, of the UNC School of Government. Mr. Ducker had advised there was no way to leave the zoning as is and allow the dress shop. Conditional Use District Zoning was the only possibility and this was normally used in large cities and had to be approved by the NC General Assembly.

Commissioner Steele addressed the Town Code and how it prevented loud noises from occurring outside the appropriated times. He stated while campaigning for his position on the Town Council he vowed to represent all areas of the community, such as the merchants, residents, etc. He also addressed the pros and cons of the proposed rezoning issue. Mr. Steele felt that in the foreseeable future, property owners would need to optimize the use of their property. He also mentioned that the Wallingford Street area would need to be revisited because he was not sure it should be treated any differently than Morris Street, Sunset Drive, etc.

Commissioner Matheson agreed that he was in support of the dress shop coming to Blowing Rock, but felt Park Avenue was not the appropriate location.

Mayor Lawrence called for a vote on Mr. Pickett's motion. The motion to deny the request was unanimously approved.

NEW BUSINESS

2. Budget Amendment – Ordinance #2010-01

Town Manager Hildebran presented Budget Amendment Ordinance #2010-01 for fiscal year 2009-2010 to Council for their consideration.

He gave a synopsis of the funds that were affected by the budget amendment and each section's purpose.

Commissioner Klutz made a motion to approve Budget Amendment #2010-01 as presented, seconded by Commissioner Matheson. Unanimously approved.

Ordinance #2010-01 - Exhibit B

3. Tax Refund #2009-01 and Tax Releases #2009-03 & 04

Pursuant to NC General Statute 105-381(b) Council was presented Tax Refund #2009-01 and Tax Releases #2009-03 & 04 for their consideration. Mr. Hildebran advised that Tax Collector Greene had reviewed the refund and release requests with Watauga/Caldwell County and concluded they met the statutory requirements.

The refund request was in the amount of \$53.41 to Joann Woollen. Release request # 2009-03 was from Appalachian State University for properties located in the Caldwell County section of Blowing Rock in the amount of \$7,907.41. Release request #2009-04 was in the amount of \$385.56 to Adam Hill, DDS.

A motion to approve Refund #2009-01 and Release #2009-03 and #2009-04 was made by Commissioner Pickett, seconded by Commissioner Yount. Unanimously approved.

Refund #2009-01 - Exhibit C, Release #2009-03 - Exhibit D, Release #2009-04 - Exhibit E

SPEAKERS FROM THE FLOOR

Ms. Lora Elder stated she was planning a bike event to commemorate the 75th anniversary of the Blue Ridge Parkway and would like to have Council's support. She advised that she had already discussed this event with the Blowing Rock TDA as well as the Watauga County TDA. The 75-mile bike ride would take place on August 29, 2010. She further stated Council would be informed as plans progressed.

Council was in unanimous support of the event.

O. Wayne Green addressed the procedure for the selection of a Mayor Pro-tem. Mr. Green stated he reviewed Sections 2-33 and 3-2 of the Town Code and there was no specific policy stating how a Mayor Pro-tem should be selected. Mr. Green gave several scenarios to Council and suggested they adopt a policy to be reflected in the Town Code. Council thanked Mr. Green for his comments.

DEPARTMENTAL REPORTS

Town Manager Hildebran extended his appreciation to all the departments who worked during the recent ice and snow storms. He emphasized a great deal of money had been spent in the last several weeks salting and scraping the roadways as well as overtime pay for employees, etc. Mr. Hildebran informed Council that he would be meeting with the State to see if the town was eligible for disaster relief funds to aid with these costs.

Commissioner Klutz voiced his desire for residents to be able to burn their brush at a designated time chosen by the Town. Mr. Hildebran stated this was prohibited by the State of North Carolina. EMS Director Kent Graham also mentioned there were EPA regulations that prohibited burning within the Town limits. Mr. Klutz reiterated once again that residents should be allowed to burn their brush. Mr. Hildebran stated there were various State and Federal rules against this.

Several other Council members had questions or suggestions regarding the clean-up of limbs. Mr. Hildebran advised he would have more information after meeting with the State and he would keep Council informed.

Commissioner Klutz requested that Mr. Hildebran ask the State about allowing residents to burn their brush. Mr. Hildebran agreed to make inquires about burning. Mr. Wayne Green suggested that Town Attorney Moseley research this issue because the EPA had a list of exemptions to this rule. Commissioner Klutz then requested that Mr. Moseley research the issue further. Mr. Moseley agreed.

ADJOURNMENT

With no further business to discuss, the meeting was adjourned at 8:26 p.m.

MAYOR _____
J.B. Lawrence

ATTEST _____
Sharon Greene, Town Clerk

ATTACHMENTS (January 12, 2010)
Resolution #2010-01 – Exhibit A
Budget Amendment Ord. #2010-01 – Exhibit B
Woollen Tax Refund #2009-01 – Exhibit C
ASU Tax Release #2009-03 – Exhibit D
Hill Tax Release #2009-04 – Exhibit E