

Town of Black Creek

Regular Board Meeting
November 8, 2011

Date: November 8, 2011

Place: Black Creek Meeting Room

Time: 7:30 P.M.

Present: Mayor Moore, Commissioner Lucas, Franks, Godwin, Smith, Dawson

Quorum Present: Yes

Mayor Moore calls regular board meeting to order at 7:30 p.m. We are going to jump around on the agenda; we have some 4-H members here, would you like to do the pledge of allegiance to the flag? Response: Yes:

Commissioner Smith: 4-H Group/Presentation: The town board and the Heritage Day Committee would like to welcome you folks, and thank you for cleaning up during Heritage Day. Commissioner Dawson extends a thank you to the group. We have certificates for the 4-H group. I would like to recognize the leaders. Certificates issued to 4-H Group. Commissioner Smith thanked group and leaders for coming to the board meeting.

Mayor Moore: The first thing on agenda is to approve the October 11, 2011 and the Special Called meeting for October 25, 2011. Motion to approve by Roland Godwin, 2nd by Commissioner Smith, approved unanimously.

Approve the Bills for October: Motion to pay by Commissioner Lucas, 2nd Commissioner Franks, and motion carried unanimously.

Old Business

Mayor Moore: We have some old business for the golf cart ordinance; Mr. Slade Rand is here to give us some information on the golf cart ordinance. I think we have tabled it 2 times.

Mr. Slade Rand/Lawyer for Town: Golf Cart Ordinance: I am here tonight to answer questions you have about the golf cart ordinance law, I understand from Ms. Aycock that some concerns about liability issues that arise from the language in the draft or model ordinance has come up. I am going to address that right now because that seems to be a major concern. I don't know why that disclaimer language is in the ordinance; I put it in there because every ordinance I have ever seen has it in there. I have tried to find out from other lawyers who do local government work if they have different opinions than mine. My opinion is that the state law that authorizes the use of golf carts on public state roads in a city or town doesn't come without some baggage, in other words, the state is permitting local governments if they so choose to

permit golf cart operations on roads with speed limits of 35 miles per hour or less and on your own roads that are not maintained by the state. That is what that entire act does and so I think the history comes up because you got vacation communities at the coast and the mountains where people ride golf carts, and you all have seen this when you go to the coast, river or mountains you will see a lot more people riding in golf carts. What the state did was pass local acts which would permit golf cart operations in these towns. The use of the golf carts grew; I think more towns wanted to do the same thing. You have some citizens that have made requests to Black Creek to be able to ride golf carts. So the state passed a law a couple of years ago that said you could do this if you wanted to do this. There are restrictions that do apply; the speed limit that the state has put into place. There is no registration process like there is for cars or motorcycles, so you do not have a license tag on the back of the golf cart. I don't think there are any risks or liabilities to speak of, if there is a risk it is in the inspection process. Some of you might have heard of cases where usually this would take part in a larger place like Charlotte or Raleigh where they have a large staff that does inspections. We inspect this property and it's suitable for etc. If something happens to the property or it is not in condition like a rotten flooring on the 2nd floor and a person gets hurt and they are looking for someone to sue they will find clever ways to sue people to get money, so they will go after the people with deep pockets and a lot of time that will be local government. But in this case the local government is not sanctioning the use of golf carts like automobiles; the local government is not saying we sanction the use of automobiles we insure that the driving of automobiles is going to be safe. There are laws that require you to wear seatbelts and other safety measures that are put into place over the years through federal standards and state standards. Golf carts are not anything like that. I don't think this law imposes any duty on you in permitting this thorough an ordinance to have a rigorous inspection program or to be overly diligent in the way you police this. This goes to law enforcement concerns that riding the golf cart is a lot more dangerous than riding in car if you get into an accident. The chances of getting into an accident are not that great, but if you do they are much worse than if you are riding in a car going 30 mph with a seat belt than riding in a golf cart going 15 mph and a car runs into you; the injuries are going to be catastrophic. So there is a lot more dangers riding in a golf cart than riding in a car in today's world. So that is the consideration I think, I don't think you are responsible for making it safer. They have to obey the laws of the road, they got to have a permit that the town issues, they got to have a driver license. You can monitor that here if you have someone who has a history of abuse with a golf cart or under age, you can stop this. You do not have to issue them a permit. There are some risks associated; I think the risks are who you allow to operate these golf carts, not with the town, or the people who might get into an accident with them. But these ordinances have been passed by quite a few towns; I think some of you who have these concerns have looked at other locations and I have tried to find where a town has been held liable. I can't find any, not in North Carolina or the eastern part of the states. I have goggled, I would like to think I have good research skills, my friends who are lawyers that represent local governments and I have included my old firm and they are not aware of any liabilities issues either. There may be some in other states, but NC is more conservative. I don't mean that in a political sense, NC is more so in the way the state law applies liabilities to something like this. We are not like California for example where they have liabilities for everything. I just don't see a risk here, if that is a concern of yours. The risk I see is the operations of the golf cart on public road, this

is not a town with a lot of traffic, and in smaller towns you do not have as much risk. You are better able to assess this because you live here. I can't tell you what that is like because I am not here every day, the chief could tell you more than I can. You can make that call, and if I think if you are concerned with the safety issues then that is what you need to consider if you want to pass this ordinance. I think this ordinance is about as good of ordinance you can get to cover most of the contingencies that you might be worried about. I said I was here to answer questions, but I think I have talked too long. Chief Fortson: I got a question for you. There is a lot of people riding golf carts that want to know if they can ride a 4 wheeler or a scooter. They feel like if you can ride that golf cart, but you can't ride a scooter or 4-wheeler they are being singled out. Rand: Because state law does not allow them to do it. That is the answer. The state law does not permit that, the scooter, non-license vehicle issue; the state law requires a vehicle to be licensed to operate on the state highways. Golf carts are the exception to that; I know of another exception, the bicycle that you can operate on the state roads. A motorized vehicle has to be licensed through the state to operate on roads with the exception of a golf cart and only if the local government allows the golf cart to be on the town's road. So the answer to the question is if someone ask you that you need to tell them to take that up with the legislation, you do not have the authority to permit this, and this is not a local issue. Chief Fortson: You know how people are; if some people see him out there riding that golf cart then why can't ride my 4 wheeler or my scooter. Rand: Maybe chief if you would answer the question not as tartly as I did by saying you need to complain to the state; I personally think that is the right answer to give someone. I don't think the board has the authority to permit 4 wheelers or scooters, because they can't. There is no law that permits the operations of motorized vehicle unless they are registered. There is some farm vehicles that are exempt.

Commissioner Smith: So under no circumstances if we would pass this ordinance the town would not be liable for any kind of injuries resulting from an accident? Rand: I am never going to make a 100% guaranteed too you, never. In my opinion the risk is pretty negligible, less than 1%. I can't think any basis for liability, I thought about it. Ms. Aycock and I have gone back and forth on emails, she ask me to think about it again, and I have and I have looked at different theories of liabilities, even if there was there is immunities local government have that a business does not have that protect you. I just don't see that being an issue. You can always insure for it if you are worried about it. Commissioner Smith: I don't think insurance the offset of insurance will cover it. Rand: If you don't have insurance for it you will not be hit for liability. Commissioner Smith: What was it you said about inspection, what was the problem? Rand: That is the risk I see. That is still less than 1%. Commissioner Smith: Would the town be better off to let someone else do the inspection and then if we don't do that and you have to go somewhere else to get it inspected will that put the liability off on us? Rand: You can do that but I recommend you keep some control over inspection just because you will see a golf cart riding on the road you might not let it pass inspection. You are in control of who rides the golf cart. If you let's someone else inspect it that person is liable, I don't think the town is accountable for a mechanical flaw that could arise later. You are just checking out the golf cart to see if it looks ok to you. It is not an inspection designed like a state inspection you get on your car. But that is the one area where I see a small risk. If it bothers me, and if I was setting in your chair and it bothered me to a certain degree I would say no; I would not do it. I think the risk is pretty negligible. Commissioner Smith: As our attorney would you

recommend us doing that? Rand: If you want to do it and you think this is what the town wants and you want and as a legal matter, yes. I kind of told you what I would do, but I don't think I would feel comfortable with if I was setting up there I think this is the right policy decision. I don't have to answer to the citizens and I don't think I should be telling the board what to do. I would recommend passing the ordinance in its current form. Commissioner Godwin: Could you do it on a 6 months trial basis? Rand: You can always rescind it. Commissioner Godwin: But if you do it on a 6 months trial then you would have the option to do away with it or continue it. Rand: I don't see why you couldn't. I haven't thought of it before, but I don't see why you could not do it. Chief Fortson: You have to have a public hearing before you can pass it. Mayor Moore: If we decide to do it tonight we would have to have a public hearing and then vote on it after the public hearing to actually pass it. Rand: You can have an amendment that it is effective for 6 months. Commissioner Godwin: What I am saying if at the end of 6 months you do not redo it the ordinance will die. That gives you a trial period to see if it is going to work or not. That is just opinion. Commissioner Smith: My number one concern is the town's liability; I guess I was elected and it comes to the best benefit for the town and look after their best interest. I don't want to do nothing or agree to something and subject the town to some kind of lawsuit, and you cannot stand there and tell me you are 100% sure that it will not happen. What is it worth, I don't know. As far as you know in North Carolina and the United States you cannot find where there has not been a town liable? Rand: I am not aware of one and I have looked. That doesn't mean I haven't missed something. Commissioner Smith: How long has something like this been going on? Rand: In NC probably 10 years. It not very long in the grand scheme of things, there is not a long history of it here. Commissioner Smith: It may not be long enough for problems to arise. Rand: That is true to a degree, you are still looking at, and you try to project what if, time is not long for this law. What if a golf cart careens off and someone get killed will the town be liable under those circumstances, my answer is no. That would be true for any kind of inspection regime that you had. Whether you inspected the golf cart or didn't. I don't see it happening here, the risk would be something you had not thought of. We lawyers are good at creating new theories, but this would be a tough one. If even under normal legal thinking if you are a local government you have some immunity that most folks do not have and I think that would negate any liability risk you have. So that risk is really small. Mayor Moore: What do you want to do? Does someone want to set a date for a public hearing? Commissioner Godwin: You can set a date for a public hearing, which does not mean you have to adopt it. You get input from the community. I think if we are going to do anything we need to do that. Commissioner Franks: Yes, let's do the public hearing first. Mayor Moore: Someone needs to make a motion to have a public hearing? Commissioner Franks made motion to set a public hearing about the golf cart ordinance, 2nd Commissioner Lucas, 4 for public hearing 1 against, Commissioner Smith against. Mayor Moore: The public hearing will be the next meeting?

New Business

Petway, Mills, and Pearson: Audit Results: In the audit reports there is independent audit report, I am just going to hit the highlights. It is an unqualified opinion which is the same opinion you have received in prior years and that means the financial statements were fairly stated as presented to us in conformity in generally accepted

accounting principles. This audit was conducted under government audit standards because you have received more than \$100,000 in funds from the federal government and the state government, and when that happens you have additional audit procedures that deal with compliance of laws and regulations as well as your internal controls over financial reporting. That audit opinion and that approach has a finding once I have gone through the numbers I will discuss. On page 20 is the general fund, the general fund had \$402,000 in cash, \$19,000 receivable for taxes and deferred revenue equal \$19,000 for the taxes because they are available for 2012. You will note in the fund balance there \$9,768 is restricted by the state's statute, which is your receivables that must be used for 2012. The Powell Bill brought another restriction of \$113,000, so your general fund balance is \$277,000 and that meets the states requirements of having 8% in your unreserved or unrestricted fund balance at the end of the year. On page 21 the general fund brought in \$364,000 and spent \$432,000 so there was a loss of \$67,000. There was a \$75,000 transfer from the water and sewer fund and that is consistent with the prior year. The prior year you transferred \$80,000, the reason you are making transfers is the cost of public safety, that one area tends to drive the need for additional cash in the general fund so you have to use some of your excess funds in the electric and water/sewer funds to support that because the general fund does not have enough revenue. So the change in the fund balance or the net income was \$7,475 in the general fund. On page 23, what is significant about this statement is there is no overages as far as the budget to actual is concerned meaning the funds were spent in accordance with your instructions and they were appropriated before the expenditures. Page 24 is the Proprietary funds, in the water and sewer fund there was \$3.4 million dollars in cash, \$46,000 in restricted cash, which is cash that is set aside for the purposes of the USDA funding that happens when you enter into a USDA loan they require you to set aside certain amount of cash to repay that loan. That is why it is on the books and it will always be until that loan is repaid. There was 3.8 million dollars in capital assets that property plant and equipment, \$103,000 in accounts payable and \$112,000 in customer deposits, that amount is payable back to your customers as they close their utility accounts. There was a total of \$676,000 in non current notes and compensated absences. So your total liabilities were some over \$1 million dollars in the utility fund. Ending net assets were \$6.7 million dollars, and the unrestricted amount was \$3.6 million dollars is what is available for appropriated in use for these funds so if you decide to have a larger capital project from the ones you currently have or you have long term improvements you would like to make. Whatever you want to do with that cash you may use. The Proprietary Funds Revenues you brought in \$2.2 million dollars in the water and sewer fund and the electric fund. You spent 1.8 million dollars. There is a big jump in your depreciation this year largely because you put more projects in place and that number will increase over time. You had \$169,000 in grants from the USDA and NC Rural Center; there were capital contributions meaning revenues set aside as you construct properties of \$238,000 and the \$75,000 transfer to the general fund. Your change in net assets was \$780,000. That gave you a change in ending net asset of \$6.7 million dollars. If you were to look on pages 47 and 48 this is the Electric Fund and you will notice this is your budget to actual as was amended throughout the year and there were no overages in these categories in the pages that follow in the Water and Sewer Funds there is no overages in these funds. Page 51 is the first capital project in the budget ordinance, it has just started so there are not a lot of expenditures, \$ 97, 000 was taken to the working process because it is an asset you are creating. Then look at page 53 your tax

collection % is 91%, pretty much in line with state averages and for vehicles is 92%. Your vehicles tax % is higher than I would have expected. So in that sense Wilson County is doing a good job for you. Then the last part of the report on page 57 there is a finding that deals with our audit procedures, the routine reconciliation in supporting ledgers were not performed accurately. This affected the capital improvement projects; the accounting is a bit more complicated for capital improvements than it is for routine items if you will. We also recorded an adjusted fixed asset accounts payable and utility receivables and I said the revenues and expenditures related to the capital projects. This is partially because of changes in standards, and some training might be needed in that area. But at the same time the capital projects are increasing the work load of the staff and you might be understaffed in the accounting department. You might really need an additional person or additional assistance in some way to handle some of the projects, because they do require a lot more record keeping. I am available for questions.

Mayor Moore: You have been auditing the town for several years. Pearson: Yes.

Mayor Moore: The town is in about as good financial condition it has ever been in, is this right? Pearson: It truly is, for the size of the town the cash is well above the state average. You have about 4 million in cash. 39 bank accounts and most of that is in investments. Your budgets are very conservative; you are able to keep property taxes low, your water and sewer rates and utility rates are very reasonable compared to other towns, and you are not having cash flow difficulties. I got a letter today with a similar size town; they are in desperate need of cash, and you are not in that situation. In that sense the town is very well managed. I do feel like the changes in the accounting environment the bookkeeping the routine reconciliation needs to be corrected.

Commissioner Smith: What is that in reference too? Pearson: At the end each month there are invoices that come in the month that follow; like in July 2011 you received invoices that were expenditures were for June 2011. They need to be booked back to June 2011. That was not consistently done. Part of that is a change in the Logics software, the way it has a prior year accounts payable. They have put that in there the last few years into the ledgers and made them active. Some things are not booking correctly. Ms. Aycock and I went through that yesterday and she is going to work on that and change the way that approach is going. Commissioner Smith: How much cash did you say we got? Pearson: About 4 million. Commissioner Smith: What was the increase over last year? Pearson: Total together is \$615,000. Commissioner Smith: When you audit you see all the bank statements, all the CD's, records, you have seen the money. You can assure us you have seen it. Pearson: That is right. We send to the bank about your bank balances, we reconcile the bank balances; we look at all the checks you have written after year end, we do samples. One thing we would like to see from the council because we were checking for approval where you approve bills. We would like to say what invoices you are paying. Commissioner Smith: There are the bills, so when we approve the bills we need a summary page. Pearson: That is right, that would help. We looked at all the invoices for fixed assets additions, all cash receipts for debt service payments. We saw pretty much everything there is to see. Commissioner Smith: What was our total debt? Pearson: Page 41 the total general fund is \$13,966 and the \$780,000 would give you about \$789,000. Commissioner Smith: Pretty much owed to the USDA and for the sewer project. Pearson: Yes, owed to the USDA. Not a lot of debt for a town this size with as much infrastructure. Commissioner Smith: You have seen the money and that is how much debt we got. Pearson: Yes, that is right. Typically the debt for a town this size is 5 million dollars.

Commissioner Smith: I think this is a testament to the people before us and people before me were pretty conservative on how the town was run and I hope the citizens appreciate it. Pearson: Truly the best way to run a town. Commissioner Lucas: I know all our departments are self sufficient expenditures versus revenue except the general fund and we transfer that from utility fund for \$75,000. Is it too high balance for transfers? Pearson: Whenever it is taking so much of your utility funds to support the general fund that they are incurring operating losses. You got large utility funds; you could transfer quite a bit. In all general funds what causes the largest expenditures is the police department and you run a very conservative police budget. Commissioner Lucas: Yea, they don't make any money. Pearson: Typically, I would say ½ million is going into the police department so you are way under that. It has become that small towns are really going to have to eliminate their police departments to cut cost. You have handled it well. Mayor Moore: Does anyone have any questions? Do I hear a motion to accept the 2010-11 budget? Motion to approve Commissioner Lucas, 2nd Commissioner Smith, motion carried unanimously.

Mayor Moore: Ron Sutton is supposed to be here but I don't see him. I guess he is not here. The next thing is for the resolution for NC School of Deaf. Is there any discussion on that? It is in our packet. Commissioner Smith: I went to the meeting last Tuesday, the economic council wanted to try and get all the support of all local communities like Black Creek, and Lucama and Saratoga to pass resolution to support to not close the school. They gave me the overall facts and if anyone wants a copy it tells the difference between the 3 schools and gives you the facts. I would recommend that the board would pass the resolution to support that effort not to close the school here in Wilson. Motion to adopt the resolution by Commissioner Smith, 2nd by Commissioner Franks, Motion carried unanimously.

Commissioners Business

Commissioner Lucas: On the raises I figured 2% across the board for full time employees. That comes to a total for the year \$5,760. If all is in agreement I make a motion to accept the 2% for full time employees only, 2nd Commissioner Dawson. Motion carried unanimously. The next thing is the community building. We need more tables over there. Chairs are ok. When you have large gatherings you use so many tables for food and so forth. We need additional tables. I make a motion to purchase 6 more 8' tables, 2nd Commissioner Godwin. Motion carried unanimously

Commissioner Franks: Greg did you have a safety meeting? Greg, Yes.

Commissioner Godwin: Pass

Commissioner Smith: Do we need to talk about the well since Ron is not here? Greg, Wait? I don't have any figures. I talked with him in the last few weeks. Smith: Is there any updates you want to talk about. Gates: They are doing slip lining now. Next will be replacing services. There is 171 sewer services that need to be replaced. Service replacement is going to be time consuming. Lucas: What location is it in? Gates: Castlewood Drive and Evansdale Road, and Norwood Subdivision. There will be manholes that will be rehabbed, the Church Street lift sewer and Cemetery sewer lift station. Where the section goes together you can see water but the pressure is too

great to seal. They will use a special kind of grout and then lined by epoxy. It is some good stuff. It will do a good job for us. Commissioner Smith: I think at one point we need to think about doing the test well drilling. We will wait for Ron. I don't have anything else.

Commissioner Dawson: Pass

Department Heads

Fortson: Pass

Gates: Yes sir, in this year budget I put in to replace the air conditioner and heating in my office and the break room. I would like to do that. It was \$5000 appropriated, a couple of vendors have given me pricing, it will be \$4800. The reason we are replacing it is because we had 2 window units, one in my office and the break room. The office was built on one end of the metal building. We did not cut holes in the building; we put the air condition units in the buildings. The problem is it exhaust in the building. Now we have a \$6000 computer system and main scada system, all the water controls are in the office. Smith: What are you going to do? Gates: We are talking about putting a ductless heating air and conditioner, the condenser sets on the wall if you are familiar with that. You do not have to cut holes in the walls. There will be one for the break room and one for the office. That window unit in the break room now is close to 20 years old. It doesn't cool efficient now. Smith: We did budget it? Lucas: we need something to help with the computer equipment. Commissioner Godwin: I make a motion we go ahead, 2nd Commissioner Smith, Motion carried unanimously. Gates: Still dealing with Fema. Hopefully that will be finished this week. We talked with Fema today, I think everything is finished.

Minshew: Passed

Audience: Passed

Mayor Moore: We know there is going to be some changes on this board next month because we had an election today. I don't know how it turned out but I read something last week that someone had written that was distributed around town that I could hardly believe. What was written stated for the past six years the town has been regressing and fading into a state of non-existence. According to that statements some bright spots for the electrical system and the park is one of the things the writer has seem to take credit for. So I was thinking in the last six years we have added two major pieces of play ground equipment to the park, we have built some public restrooms, and we have built a nice picnic shelter, we built a gazebo, we built a water fountain, and we have paved the parking lot, planted 6 trees for shade for the kids and at the same time we have put a new roof on the community building, and replaced all the exterior doors and put a new floor down. We have added to our raw water supply by finishing the Well # 5 project and Frank Price Church water line which was about a \$700,000 project. Then we did an upgrade on our water treatment plant that doubled the capacity at a cost of 1 million dollars. We rebuilt water lines on Privette and Mercer Street and extended the water lines to Grace Community Church. We are now

in the process of a million dollar rehab of our sewer system that was badly needed. We also just purchased a sewer camera that will be a great aid in the future maintenance of the sewer system. Stantonsburg, Lucama and Black Creek joined together to install a state of the art security system at the substation for the three towns and we also rebuilt the power line on Mercer Street. We bought an \$80,000 backhoe for the town, and also purchased a garbage truck jointly with Lucama. We received a grant for a new police car complete with radio and lights, all our electrical meters are read by AMR, and the water meters are the next target. We purchased the building next door for the expansion of the town hall to elevate crowding and we have several other projects that are in the beginning stages. Many of the projects were funded by grants, that were around 1.3 million dollars and low cost loans that amount to around 1 million dollars. We did all these things and at a time when other cities and towns were and still laying off personnel and reducing services to balance their budgets, and we have managed to strengthen our financial standing to the point that the town according to the auditor is in the best financial condition it has ever been in. Now, I do not take credit for any of this. The credit belongs to the board for making wise decisions and the town employees for the hard work and dedication and of course we had some good luck. Now this does not sound like we are regressing to a state of non-existence to me, it sounds like good progress that most other small towns our size would be envious of. So, I want to commend the board and the employees for the progress that has been accomplished in the past six years. I would like to say it has been an honor for me to serve and work with all of you.

Commissioner Smith: I would like to say as Mayor you have done a great job. I have enjoyed serving on the board and it has been a pleasure, and I will second everything you have just said. A lot of time I think the people when you do infrastructure and you are doing work like that it is something you cannot see and it is not visible, but you can see, you don't realize where you can see it, and where you can see it is when you get your bill each month, and it is reasonable and does not have any increase. If you don't take care of what you have eventually it will take care of you. The things we have done we have done at today's prices instead of tomorrow prices, and it not any telling how high it will go. I want to tell you Thank you. Mayor Moore: I appreciate what you are saying. Smith: I understand being the son of a mayor, I understand what you went through. Commissioner Lucas: You did a fantastic job under the beginning circumstances and take nothing from you on what you have done, you did a fantastic job. Mayor Moore: I appreciate what you are saying.

Mayor Moore: Motion to adjourn.

Barbara Aycock, CMC
Clerk to the Board

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