

MINUTES
BEECH MOUNTAIN TOWN COUNCIL
Regular Meeting – October 12, 2010

I. CALL TO ORDER

Mayor Rick Owen called the regular meeting of the Beech Mountain Town Council to order at 2:05 p.m., Tuesday October 12, 2010 in the Town Hall Council Chambers. Other Council Members present were Paul Piquet, Rick Miller, Alan Holcombe and Cindy Keller. Town Attorney Stacy C. Eggers, IV was present. Staff members present were Town Manager Randy Feierabend; Town Clerk Jennifer Broderick, Finance Officer Nancy Johnson, Fire Chief Robert Pudney, Town Planner James Scott and Parks and Recreation Director Eric Jelinski. There were a number of interested parties in the audience.

II. Invocation – John Troxler presented the invocation.

III. Pledge of Allegiance – All present joined in the Pledge of Allegiance to the flag.

IV. Adoption of Agenda – Mayor Owen stated there was one addition to the agenda. The amended agenda would include § VIII. New Business g. Radio Read Meter Financing – Vote. Attorney Egger's pointed out that Council would only be able to vote on this matter if the vote was unanimous otherwise the matter would have to be postponed to a following meeting. Mayor Owen stated that the agenda would stand as amended.

V. Approval of the Minutes – September 14, 2010 Regular Meeting – Vice Mayor Piquet stated that the date under § I. Call To Order needed to be corrected and that § II. Invocation needed to include John Troxler's name. Mayor Owen stated that §VII. New Business i. Request for Tourism Development Authority Director should reflect that the Town approached the state to increase the occupancy tax from 3% to 6%. Councilman Miller motioned to approve the minutes as amended. Councilman Holcombe seconded the motion and the vote passed unanimously.

VI. Public Comment – Frank Steele of 107 Christie Way felt like the public was being ignored by the Town with regards to the issue of dealing with Mountain Electric and the clear cutting that was occurring on the mountain. Mr. Steele stated that Mountain Electric should have to remove the whole tree instead of leaving butchered remains. Mayor Owen informed Mr. Steele that Attorney Eggers had prepared a legal opinion that addressed this issue. During closed session Council planned on reviewing this information. Mayor Owen directed Mr. Steele to speak with Manager Feierabend tomorrow.

Lee O'Neal of 220 Birchwood stated that he was working on putting together a Hill Climb. The Hill Climb is a 2 day event. Registration takes place on Friday followed by the race on Saturday and Sunday. Roads would be closed on Saturday and Sunday for the race with the exception of roads being opened for 15 minutes of every hour and 1 hour for lunch. The group holding the event provides control, safety and has insurance. Eagles Nest had 45 cars at their Hill Climb event. Members of the Hill Climb would like to get together with the community to send out business information on brochures for this event. Mr. O'Neal felt that this event would economically

support the Town. The proposed date of the event is the weekend before Memorial Day. Mr. O'Neal stated he was addressing Council so that they could start thinking about the event.

VII. Public Hearing

- a. Radio Read Meter Financing** – Councilman Holcombe motioned to open the Public Hearing for the Radio Read Meter Financing. Vice Mayor Piquet seconded the motion and the vote passed unanimously. Finance Officer Nancy Johnson provided an overview of the financing project. The application to the State for the revolving loan was complete and staff expects to hear back from the State by the end of the month. The loan would be in the amount of \$950,000. Mayor Owen stated that this loan was being used to replace all of the Town's water meters on the mountain with radio read meters. Mayor Owen asked if there was any public comment in reference to the project's financing. Hearing no comment Councilman Holcombe motioned to close the Public Hearing. Councilman Miller seconded the motion and the vote passed unanimously.

VIII. New Business –

- a. Resolution of Appreciation for Peggy Coscia –Rick Owen** – Mayor Owen stated that Margaret 'Peggy' Coscia was unable to be present at the meeting. The resolution was to honor the service of Mrs. Coscia to the community. John Troxler from the Chamber of Commerce spoke stating that there will be a retirement party for Mrs. Coscia on the 18th of this month at 6:00 p.m. at the Beech Mountain Club Recreation Center. Mr. Troxler extended an invitation to anyone who wished to attend. Mr. Troxler stated that Karen Brett, Debbie Troxler, Reba Greene, Debbie Canady, Fred Pfohl and Susan Knepeka were working on the event. Mr. Troxler stated that Mrs. Coscia was an amazing woman; divulging that on a regular basis Mrs. Coscia wakes up at 5:30 a.m. going directly to her dialysis treatment and then showing up for work at the Chamber of Commerce. Councilwoman Keller felt that in addition to acknowledging her paid duties the resolution should state that Mrs. Coscia had donated countless hours of her own time towards the betterment and fun of the mountain. Councilwoman Keller also wanted the name to be stated as Margaret 'Peggy' Coscia. Councilman Miller motioned to pass the resolution with the amendments. Vice Mayor Piquet seconded the motion and the vote passed unanimously.
- b. Fire Safety Inspection Program – Roberty Pudney** – Fire Chief Robert Pudney stated that the Town is required by North Carolina General Statutes GS-160A-424 as well as Town Ordinance Title XV Chapter 150.027 Fire Inspection Schedules to perform fire safety inspections in most public access properties within the corporate limits of the Town. Mr. Pudney stated that because of the uniqueness of the Town these inspections could be better handled locally. Mr. Pudney proposed public meetings for the businesses in the community specifically geared towards the retail, condominiums and renting and lodging programs in order to explain the program and how it would work. Mr. Pudney stated that current firefighters as well as future firefighters would be trained to complete these inspections. Mayor Owen stated that it sounded like Mr. Pudney had a sound plan put together to both educate the public as well begin these mandated inspections in the spring. Councilman Holcombe suggested that these inspections would

be good for time share condominiums as well and asked if Mr. Pudney had given any thought to these types of units that are not specifically classified as rental properties. Mr. Pudney stated that he would meet with the Town Attorney to make sure all standards were being met; explaining that in certain types of buildings the code limits access to the common areas, exit and egress areas. In these situations no access can be gained to the interior of the units. Councilwoman Keller asked about homeowners of single family homes who wanted their dwellings inspected. Mr. Pudney stated that on request he would be more than happy to complete a fire safety inspection. Mr. Pudney further informed Council that as the Town Code and State Code stand the Fire Department does not have the right to enter the property for one and two family dwellings without invitation.

Mr. Pudney reported on the fire that had occurred at Rascal's Barbeque Restaurant. The event began at approximately 1:00 a.m. on Saturday morning. Both the cause of origin and the investigation into the fire are complete. The fire was determined as accidental due to the improper use of cutting torches during the renovation process. Mr. Pudney stated that workers were cutting a big steel cooker that was too large to remove in one piece. On Friday afternoon while workers were cutting up the steel cooker with the use of torches something occurred causing a small fire to start within the wall after everyone had gone home. Fifty percent of the building had been damaged by fire. Mr. Pudney stated that he was very happy to report that there were no injuries. Both the Police Department and Dispatch performed extremely well. Building Code Inspector Stan Hanna will be determining if the building is salvageable or needs to be torn down.

- c. ***Cross Bow Ordinance – Jay Hefner*** – Manager Feierabend stated that there had been concern that from time to time that hunting was occurring within Town limits. State hunting laws prevent the Town from dealing with hunting as a prohibition. Police Chief Jay Hefner worked with both the Police Attorneys at Smith and Rogers and Strickland and Attorney Eggers to create a solution. The solution at hand provides the Town with a safety law which would prohibit the discharge of bows and arrows within Town limits as a public safety item. Councilman Miller stated that on Upper Grouse Ridge there had been an incident where a deer did get shot with a bow and arrow. Councilman Miller asked if this ordinance would take care of this type of situation should it occur again. Manager Feierabend stated yes. Councilwoman Keller asked if the \$500 fine was just functioning as a fine and whether or not property damages would still be recoverable. Attorney Eggers confirmed that this was correct. Councilman Holcombe asked if this would preclude the Town having an urban hunt. Attorney Eggers stated that the Town would still be able to move forward with an urban hunt if allowed by resolution. Councilman Holcombe asked if this ordinance would prevent the Parks and Recreation Department from having this type of activity. Attorney Eggers stated that this ordinance would prevent the Recreation Department from having such an activity. Vice Mayor Piquet asked if Recreation Director Eric Jelinski had any programs planned that would use bows and arrows. Mr. Jelinski stated no. Mayor Owen stated that Council could add a provision in the future should the Recreation Department decide that they wanted to have this type of activity. Councilwoman Keller verified that this covered the entire Town. Attorney Eggers stated yes. Vice Mayor Piquet motioned to approve the Cross

Bow Ordinance. Councilman Holcombe seconded the motion and the vote passed unanimously.

- d. Extension of Development Permit Resolution – James Scott* – Town Planner James Scott stated that this resolution pertains to a law that was originally passed in 2009 by the North Carolina General Assembly. Effectively this law placed a freeze on the expiration of building permits which applied to single dwellings as well as subdivisions. This year the North Carolina General Assembly has decided to extend the freeze and expiration of building permits for another year. However with this extension municipalities were given the ability to opt out. Mr. Scott stated that the intent of this resolution was for the Town to opt out. Mr. Scott stated this would allow the Town to gain some control over projects that were begun some years ago and still not complete. Councilman Miller inquired about hardships that arise for builders wondering who would make the final decision on whether a project would be allowed to continue. Mr. Scott stated that the process for subdivisions would be brought before the Planning Board if a preliminary plat had been completed. Councilman Miller asked about single family homes. Manager Feierabend stated that it would include any building permit that was pulled but building had never started. Attorney Eggers stated that the current ordinance dictates that an inspection must be called for 6 months from the last inspection otherwise the permit would be deemed expired unless there is a 6 month extension by the Town Manager for good cause. Councilman Miller stated he is thinking about single family homes that have been started but because of the economy financing may be a hardship for the builder. Manager Feierabend stated that as long as the building is dried in within 2 years that this resolution would not affect these projects. Councilman Miller just wanted to make sure that a person that is building a single family home was not going to be hurt by this resolution. Mayor Owen stated that Mr. Scott had stated that this was not the intent. Mr. Scott stated that resolution would allow staff to use the Town's ordinances that were already in place making this no more strict or tough than what is already in place. Vice Mayor Piquet reiterated that the Town Manager still holds the power to provide a 6 month extension due to hardship. Mayor Owen stated that ultimately the Council would just be choosing to stick to the Town's ordinances that were already in place. Councilman Miller motioned to pass the resolution. Councilman Holcombe seconded the motion and the vote passed unanimously.
- e. Code of Ethics Resolution – Randy Feierabend* – Mayor Owen stated that all elected officials have been required to go to ethics training by the State. An additional part of the Legislation passed by the General Assembly required that governing boards also adopt a resolution containing a code of ethics. Attorney Eggers stated that State law deems that by January 1, 2011 all municipalities must have a code of ethics in place. Attorney Eggers stated that what is prepared before them is a sample resolution that has been provided by the League of Municipalities. Section 6 has several areas where Council needs to determine what they want to do. After discussion Councilman Holcombe motioned to pass the resolution with the defendant being allowed to participate in the debate, vote and that majority rule would be determined by 3/4ths vote. Councilwoman Keller seconded the motion and the vote passed unanimously.

- f. Adoption of Code Book Ordinance – Randy Feierabend* – Mayor Owen stated the Town’s code book was codified in September 2009. Town Clerk Jennifer Broderick stated that by passing this ordinance Council would be accepting the code book as presented with the work that was completed by American Legal during the codification process. Attorney Eggers stated that it was a housekeeping matter that would allay future headaches. By enacting this ordinance anything that Council has acted upon that is not included in this code book would be deemed repealed. Councilman Miller motioned to approve the ordinance. Councilman Holcombe seconded the motion and the vote passed unanimously.
- g. Radio Read Meter Financing – Vote* – Councilwoman Keller motioned to approve the radio read meter financing. Councilman Miller seconded the motion and the vote passed unanimously.

IX. Old Business –

- a. Genesis – Susan Halliburton* – Susan Halliburton stated that Leslie Hayhurst, members of the Genesis Board as well as friends of Genesis were in attendance. Currently Genesis is in the process of removing their habitats. At the proposed new location Genesis has secured several bids for putting in the driveway. The width has gone from 14’ wide to 20’ wide. The modular building has been approved by Building Code Inspector Stan Hanna and Genesis has secured a bid to bring the building up the mountain subject to the necessary permits. Bids have also been secured for building the new habitats. Mrs. Halliburton stated that this was a three step process. One securing the site, two securing the bids and three raising the money. Mrs. Halliburton stated that Genesis could not begin raising money without a formal agreement for a secured site and asked Council for their support. Mayor Owen stated that he is interested in finding a solution but has some concern about the long term stability of Genesis. Mayor Owen stated that he was sorry to see James True leave and does recognize that Genesis is trying to form a strong base again quickly. Mayor Owen stated that Mrs. Halliburton has become very active in the last two months. The proposed long term lease has items in it such as exotic birds, reptiles and mammals that were not in the Town’s original lease with Genesis. In addition it appears that Genesis’s mission statement has changed. These are items that need to be strongly considered by the Town. Mrs. Halliburton stated that what Genesis is looking for is a subject to lease agreement so that they may begin working to raise money. Mrs. Halliburton stated that there has been a committee working on this rapid fire. The new habitats are going to be built within compliance of the Town’s ordinances. Mrs. Halliburton stated that she needed a subject to lease agreement so that their committee could begin performing to raise the needed funds. Mrs. Halliburton stated she was perplexed how the Town thought they were moving too fast. Leslie Hayhurst stated that she has been working through Genesis for 27 years doing animal rehab. Mrs. Hayhurst stated that Genesis is not going to cost the Town any more than it has in the past which has been nothing. Mrs. Hayhurst stated that in 1992 Genesis became classified as a 501(c)(3) organization making them tax exempt. Mrs. Hayhurst stated that letting this organization go would be bad for Beech Mountain. Mrs. Halliburton stated that Genesis needs a location and an answer now or she needs to look at obtaining another location so she can get the funding underway and that Genesis has

been working on this for 2 years. Mayor Owen stated that Genesis has been working on relocating for 2 years but that the Town has not been working on this issue with Genesis for 2 years. There has not been serious work on anyone's part until this summer when the State came in. Genesis in the Town's mind has been moving to Eagles Nest. The Town was very supportive of Genesis moving to Eagles Nest and even offered to help with some of the financing. Mayor Owen stated that everyone thought that Genesis had a new home. Mayor Owen pointed out that Mrs. Halliburton spoke under the public comment period at the previous meeting and that no direction was given at that point to put a lease agreement together. Should Council decide to move forward with a lease agreement then Council will direct staff to have an agreement drawn up. Mayor Owen stated that all Council Members probably have a different idea of what the mission of Genesis is. Mayor Owen stated that he was not interested in having exotic animals permitted. Councilwoman Keller asked what a minimum lease agreement would be that Genesis would be able to accept. Mrs. Halliburton stated that putting the road in alone is \$30,000 and with that being stated that anything less than a 15 to 20 year lease with an option could not be considered. Vice Mayor Piquet stated that he has always supported Genesis. Vice Mayor Piquet stated that 3 to 4 months ago was the first time that this property was discussed. If this is going to be done then it is going to be done right. The Town wants it done right and Genesis wants it done right. Vice Mayor Piquet stated that proper negotiations could take 2 to 3 months. The Town has to have absolute oversight over how the property is developed. An architectural plan needs to be presented which shows the phases of development. Vice Mayor Piquet stated that money has always been an issue for Genesis and that there has never been enough money for Mrs. Hayhurst to do everything that she wishes to do. Mrs. Halliburton stated that the only thing that Genesis is asking for is a subject to lease agreement. Vice Mayor Piquet stated the Town could write up a good faith letter stating that the Town is willing to work with Genesis. Mrs. Halliburton stated that she needed the terms of the lease in place in order to raise the funds. Donors will not give money until Genesis has an agreement in place with Beech Mountain. Frank Steele of 107 Christie Way stated that it seemed that Council was already predisposed against Genesis except Councilwoman Keller. Mayor Owen asked that Mr. Steele not prejudge the Council. Council has dealt with Genesis issues year after year. Mayor Owen stated that it was Council's obligation to the community to explore all options. Councilman Holcombe asked for the Eagles Nest lease. Mrs. Halliburton stated that it was available on Genesis's website. Councilwoman Keller asked if there were items in the lease that Genesis would want added or changed. Councilman Holcombe requested Genesis provide this information in writing. Mayor Owen stated that Council is only able to lawfully come to a decision during a regular meeting. Mayor Owen encouraged all Council Members to look over the Eagles Nest lease as well as the Town's lease and send any information or questions to the Town Manager and/or Attorney Eggers. Mrs. Halliburton asked for a show of hands from Council to indicate who supported Genesis. All Council Members raised their hands showing that they all supported Genesis. Councilman Miller stated that Mrs. Halliburton was putting a lot of pressure on Council to move forward without providing Council the opportunity to discuss the matter. Councilman Miller stated that Genesis could not guarantee that they would have money 10 years down the road. Council has given money to Genesis in the past. Councilman Miller stated that Genesis was requesting the Town's taxpayers to pay to put in the water and sewer at this

property for free. Mayor Owen stated that Council will move forward on working on the lease directing Manager Feierabend and Attorney Eggers to begin working on the lease.

- b. Perry Park Pump House – Randy Feierabend** – Mayor Owen stated that staff had gathered information for the proposed storage unit. Manager Feierabend stated that the price would be \$6,200 for an 18' x 24' building. The building would be built to be compatible to the Town's existing structures. Vice Mayor Piquet motioned to approve the purchase of the utility building and the removal of the building currently at Perry Park. Mayor Owen seconded the motion. Councilman Miller wanted to know if the Town was still considering putting in restrooms at Perry Park. Manager Feierabend stated that there are some green alternatives versus running water and sewer. Councilman Miller reiterated that he would like to see some restrooms there. Mayor Owen called the vote and the vote passed unanimously.
- c. Tourism Development Authority – Open Discussion** – Mayor Owen stated that the Tourism Development Authority is doing away with funding one of the two Chamber of Commerce positions. President of the Chamber of Commerce Jim Brooks stated that it would be a lot more economical for the Tourism Development Authority to continue funding this position versus the Town adding another employee. Mayor Owen did not believe that the Town would be able to help fund this position until Council was able to discuss it at their upcoming budget meetings. John Troxler stated that the Tourism Development Authority is really dragging their feet on this especially since Peggy Coscia is going to be gone very soon. Mr. Troxler stated that he did go back to the Tourism Development Authority to request funding. Councilman Miller felt this was not Council's decision and that the Tourism Development Authority needed to come up with their own solution. Mr. Troxler stated that the Tourism Development Authority is holding applications until they establish whether or not they want a full time or part time position. Councilwoman Keller stated that there seems to be some sort of friction on how much of the Tourism Development Authority money goes towards funding the Recreation Center. Councilwoman Keller brought up the point that she has asked that Recreation Director Eric Jelinski review the rates charged at the facility, believing that they were too low. Councilwoman Keller felt that more money did need to be given to the Tourism Development Authority with the Recreation Center slowly being weaned off. Mr. Troxler stated that he just needed to know what was going to happen with this position soon. If this position went unfilled then the hours would need to be cut back at the Chamber of Commerce. Councilwoman Keller wondered if Council would consider having a special meeting to discuss both Genesis and the Tourism Development Authority. Mayor Owen stated that he could understand having a meeting for Genesis but not to discuss the Tourism Development Authority. The Tourism Development Authority and the Chamber needed to come up with their own solution. Mayor Owen stated that both he and Manager Feierabend would strongly encourage the Tourism Development Authority and Chamber to at least fund a part time position quickly.

X. Town Manager and Staff Reports –

Temporary Landscape Committee – Manager Feierabend informed Council that a temporary committee was being formed to oversee landscaping projects on the mountain, including the Streetscape Project. Members of the committee would be Rory Ellington, Susie Knepka, Fred Pfohl, Cindy Keller and other interested property owners. It is the committee's intention to report back to Council on their activities.

Mountain Electric Legal Opinion – Manager Feierabend stated that he had shared with Mr. Steele of 107 Christie Way that last year a legal opinion had been provided by the Town's previous attorney regarding the right of way trimming being completed by Mountain Electric. Manager Feierabend asked Attorney Eggers to revisit this legal opinion and also look further into what latitude the Town had for 'responsible pruning'. Attorney Eggers did provide a legal opinion which Council would review in closed session.

Renaming Pine Ridge and Grassy Gap – Manager Feierabend stated that that names of these roads are a bit confusing to the general public. Manager Feierabend suggested that the road be named Pine Ridge all the way to the bottom until it turns into Pinnacle Ridge on the way back up. Manager Feierabend wanted to study the situation to see how many homes would be affected by such a change. The post office does give a homeowner a year and a half to become compliant with any changes.

Water and Sewer Study – Manager Feierabend stated that Attorney Eggers has reviewed and approved Marion Rothrock's contract for the water and sewer study. Manager Feierabend stated that he was looking for Council's approval. Councilman Miller motioned to approve the contract. Councilman Holcombe seconded the motion and the vote passed unanimously.

Long Term Contracts for Radio Read Meter Project – Manager Feierabend stated that Attorney Eggers had reviewed and approved the contracts for both HD Supply and Iron Mountain. These contracts were to be put in place once the financing arrangements were finalized.

Employee Appreciation – Manager Feierabend stated that this would be held on Thursday, October 12, 2010 from 12:00 p.m. to 2:30 p.m. should any Council Member wish to join.

Mayor Owen stated that Council would take a short break at 4:08 p.m. Council returned from their break at 4:21 p.m.

XI. Closed Session – Pursuant to NC GS 143-318.11(a) (3) Attorney Client Matters and NC GS 143-318.11(a) (6) Personnel Matters – Vice Mayor Piquet motioned to go into closed session at 4:21 p.m. Councilman Miller seconded the motion and the vote passed unanimously. Vice Mayor Piquet motioned for Council to come out of closed session at 5:01 p.m. Councilman Miller seconded the motion and the vote passed unanimously.

XII. Other Business –

Tax Bill Software – Mayor Owen stated that there has not been a smooth transition with past due balances between the mailers and the Town’s software company. Therefore staff will be sending out the 2010 tax bills with a notification that if there are delinquent taxes a separate bill will be sent out reflecting the previous delinquent amount.

XIII. Adjourn – Vice Mayor Piquet motioned to adjourn the meeting at 5:08 p.m. Councilman Holcombe seconded the motion and the vote passed unanimously.

Minutes approved by Town Council on November 9, 2010.

Mayor

ATTEST:

Town Clerk