

**MINUTES**  
**BEECH MOUNTAIN TOWN COUNCIL**  
**Regular Meeting – October 9, 2018**

**CALL TO ORDER** – Mayor Renee Castiglione called the meeting of the Beech Mountain Town Council to order at 3:14 p.m. for Tuesday, October 9, 2018 in the Town Hall Council Chambers located at 403 Beech Mountain Parkway, Beech Mountain, North Carolina 28604. Other Council Members present were Barry Kaufman, Carl Marquardt, Weidner Abernethy, and Wendel Sauer. A quorum was present. Town Attorney Stacy C. Eggers, IV was present. Staff members present included Town Manager Tim Holloman, Finance Officer Steve Smith, Town Clerk Tamara Mercer, Interim Town Clerk Katherine Johnson, Director of Infrastructure Robert Heaton, Planning Director Preston Yates, Special Projects Director Riley Hatch, Fire Chief Robert Pudney, Utilities Superintendent Daniel Davis, Parks and Recreation Director Sean Royall, Tax/ Utilities Administrator Rebecca Ward, Inspections John Merritt, and Police Officer Matt Bonestell.

1. **Adoption of Amended Agenda** – Mayor Castiglione noted that the closed session meeting minutes from August 14, 2018 would be addressed in closed session. Councilman Sauer motioned to approve the amended agenda. Vice Mayor Kaufman seconded the motion.

The vote carried unanimously, 5-0.

2. **Closed Session** – At 3:16 p.m., Mayor Castiglione requested to recess until 4:00 p.m.
3. **Mayor Castiglione called to order the regular meeting at 4:00 p.m. for the Invocation**  
–Town Manager Tim Holloman presented the invocation prayer.
4. **Pledge of Allegiance** – Mayor Castiglione led the Pledge of Allegiance to the Flag.
5. **Consent Agenda** –

Mayor Castiglione opened the floor for Council to act on the consent agenda. Vice Mayor Kaufman requested to move the Buckeye Facility Rental Fee off the consent agenda to New Business in order to address questions regarding the item, to which Councilman Sauer motioned to approve the consent agenda with the aforementioned amendment and the motion was seconded by Councilman Abernethy. The consent agenda included:

- a. August 14, 2018 Closed Session meeting minutes

- b. September 11, 2018 Regular meeting minutes
- c. October 1, 2018 Special meeting minutes
- d. Tax Release & Refund

## 6. **Public Comment-**

Mr. Jimmie Accardi of 402 Beech Mountain Parkway, noted that the parking lot offered as over-flow, across the street from Town Hall has a shared dirt road with Councilman Marquardt which is good for the over-flow traffic, but Mr. Accardi cautioned that there are pedestrians and children crossing there and he suggested signage should be considered as a traffic calming method at the path for pedestrians' safety.

At this time Councilman Abernethy announced that seven Watauga County businesses had received awards for promoting tourism and business in the Watauga County investment community.

## 7. **Public Hearing- Parcel Identification Number RO1950-01-3310-000- to rezone a portion of a 23.1-acre property located on Slopes Road, from Low Density Residential (R-1) zoning district to Multi-family High Density Residential (R-3A) zoning district of approximately 3.5 to 4 acres.**

Town Planner, Preston Yates reviewed the request for the rezoning of a portion of the approximately 23 acres located on Slopes Road, adjacent to the slopes of Ski Beech Resort along the westerly side. The request is to rezone the partially developed property from the Low Density Residential (R-1) zoning district to Multi-family High Density Residential (R-3A) zoning district. The purpose of the rezoning request is to allow for construction of residential townhomes. The property is located completely within the Pond Creek watershed WS-II overlay district.

Mr. Yates noted that the property owners are Slopes Owners Association and the applicant is the developer, Mr. Brett Krueger. Mr. Yates stated that Staff recommends Conditional District (CD) (R-3A) or a Special Use District (R-3A- PUD). Originally, Mr. Krueger, the applicant, was requesting a 36-32 townhouse unit which is not allowed currently, but the request was modified to 32 units. He said the second step by the developer is to go before Technical review which reviews the technical standards for vehicle parking, such as how many spaces are required, vehicle access, water, sewer and utilities. The applicant is proposing 32 units in the concept plan.

Mr. Yates said the Conditional District specifics or PUD would need to be brought before the Board of Adjustment, (BOA) and that this approval is for the general concept, not specifics or for the technical aspects.

Vice Mayor Kaufman inquired into the water capacity and parking for a multi-family development, and he questioned giving a blanket rezoning approval. Mr. Yates said he believed the Town Council would determine if the proposed request is a design that is an appropriate general concept for the community and the authority regarding the specifics of the plan, would be brought before the Board of Adjustment as to its compliance with the town ordinances.

Mr. Yates added that details of the plan must adhere to the guidelines as to the parking space requirements etc., they must comply with the Town Ordinance and the specific details go before the Board of Adjustment.

Vice Mayor Kaufman questioned Mr. Robert Heaton, Director of Infrastructure, as to the water impacts to the town water supply. Mr. Heaton agreed with Vice Mayor Kaufman that the water use was of concern and we would further examine those technical issues for supplying water to that subject site. Mr. Heaton said the booster pump station at that locale needs infrastructure. The sewer is available currently, but the water lines are not. In response to Vice Mayor Kaufman's question regarding fire and emergency services, Mr. Heaton responded that the road and the turnaround needs to be assessed. It is narrow at the bottom of the road where the winter club resort is located.

Mr. Yates explained the procedure the applicant would follow for receiving approval. He said if the applicant received an approval from Town Council, they would then need to submit technical engineered drawings that meets PUD, the requirements for access of ingress and egress, parking spaces, etc., by Staff review, after comments and input by Staff, and if it complies; then the applicant presents this to the Board of Adjustment. In the Quasi-judicial hearing, the applicant presents the evidence proving the requirements of the code have been met. The technical review process is next by Staff. The full proposal is to the Board of Adjustment, which is approved or denied based on the evidence as presented in the hearing.

Vice Mayor Kaufman was concerned with Town Council having final control, to which Attorney Eggers, IV clarified the procedures for allowing Town Council to use a mechanism for zoning specific projects in specific zoning districts, wherein Town Council takes control over all technical aspects of a project. Attorney Eggers noted that that mechanism is generally disfavored by the School of Government as it may also combine the quasi-judicial role with the legislative role which may increase the possibility for improper communications. As that procedure is not recommended by the School of Government, he noted the Town Council does have control over approval or denial at the concept stage.

Vice Mayor Kaufman restated his concerns with the roads, water and infrastructure. Councilman Marquardt noted that was the purview of the Board of Adjustment to address it, to which Councilman Abernethy added he did not wish to hinder the project as there has not been modern housing built in 30-plus years. The facility would add to the community for vacationing and tourism. Mayor Castiglione added that in the process, she would trust that police, water resources and all aspects of the technical review by Staff would include their comments. Mr. Yates agreed and noted that any other reservations would be included in the Board of Adjustment process and fire emergency service would be addressed.

Mr. Brett Krueger, the applicant, and representative for Slopes Owners Association, said the parking would be assigned per condo as they do not have any public areas. The project is for 32 units and with 2 parking spaces per unit, it would be 64 parking spaces. Mr. Kruger said there are 12 one-bedroom units and 12 two-bedroom units. Councilman Sauer asked for clarification, Mr. Kruger said that there would be one-bedroom efficiency units and then two-bedroom units, and he said the majority project details would be addressed by the engineers for compliance with the code.

Mayor Castiglione called for a motion to hold the public hearing and Councilman Abernethy moved to hold the public hearing.

The motion was seconded by Councilman Marquardt.

The motion carried 5-0, unanimously.

Attorney Eggers clarified the public hearing procedure and advertising process and corrected the date of the public hearing as it was for October, after Mr. Yates confirmed the Planning Staff's timeline for advertising the public hearing; Councilman Sauer moved to open the public hearing.

The motion was seconded by Vice-Mayor Kaufman.

The motion carried 5-0, unanimously.

Mayor Castiglione opened the public hearing for those wishing to speak for or against the requested application.

Mr. Robert Barry of 100 Squirrel Way, believed Council should have more information regarding the project before it goes to the Board of Adjustment. He wondered what the development plans were going to be, etc. Mr. Holloman addressed Mr. Barry's concerns and explained and clarified the rezoning request procedure. He said, one reason the detailed engineering plans were not submitted as this was the concept review, and the developer has not invested in those engineered plans until they have the vote on this rezoning request, if the request were to be denied they do not wish to spend the money on those plans and he is not required to submit all those plans at this hearing.

Mayor Castiglione reiterated the procedure to which Mr. Yates added it may be a \$100,000 investment for architecture and engineered plans. Mr. Barry still wanted to see a basic plan, to which Mayor Castiglione referred to the submitted packet of information by the applicant which stated the size, location, what the buildings look like, etc. of the proposed multi-family townhouses. She pointed out they would not be individual single-family residences. The subject site as identified, must meet code.

Attorney Eggers reviewed the zoning districts and noted the review is to determine if it is compatible with the adjacent and surrounding property overview of the area and with the overall scheme. There was further question and answer period as citizens spoke out and Mr. Yates noted the location and said that the subject site is a portion of the acreage and is approximately three and half to four acres. In response to a question from the audience about the locale, Mr. Yates said it was alongside of the lift.

Ms. Therese Barry of 100 Squirrel Way asked how one would access the site, to which Mayor Castiglione said the project is a part of Slopes Association on Slopes Road therefore the road is not public, it would be a private road on private property.

In response to a question by Mr. Barry regarding feedback from the resort, Mr. Krueger said he spoke to Mr. Ryan Costin, representative for the resort.

Mr. Ryan Costin of 1007 Beech Mountain Parkway, who personally owns homes and a lot there, said he reviewed the plan and that he was in favor of the proposal.

In response to Vice Mayor Kaufman's question regarding the owners of record, Mr. Krueger identified the Grubb brothers and said they were Mr. Krueger's partners in the early 80s. Mr. Krueger further reviewed the history of the subject area.

All those given an opportunity to speak, Mayor Castiglione asked for a motion to close the public hearing.

Vice Mayor Kaufman moved to close the public hearing and the motion was seconded by Councilman Abernethy.

The motion carried 5-0, unanimously.

Councilman Marquardt moved to approve the rezoning of Parcel Identification Number (PID): RO1950-01-3310-000, to rezone a portion of a 23.1-acre property located on Slopes Road, from Low Density Residential (R-1) zoning district to Multi-family High Density Residential (R-3A) zoning district of approximately 3.5 to 4 acres, the subject site portion located on Slopes Road, adjacent to the slopes of Ski Beech Resort along the westerly side. The request is to rezone the partially developed property from the Low Density Residential (R-1) zoning district to Multi-family High Density Residential (R-3A) zoning district. The purpose of the rezoning request is to allow for construction of residential townhomes.

The motion was seconded by Councilman Abernethy.

The motion carried 5-0, unanimously.

## **8. New Business**

### **8.1 Occupancy Tax Overview Report: Rebecca Ward, Tax Administrator**

Ms. Rebecca Ward, Tax Administrator reviewed the Occupancy Tax Overview report and noted that the Town has contracted with an outsource company which tracks the occupancy tax reporting as to who did and who did not pay the tax. She said there were approximately 140 homes in the Town not paying occupancy tax but are renting their homes through Airbnb or VRBO or other on-line platforms, but not paying occupancy tax.

Under the Attorney's Office guidance, the Town mailed a letter to homeowners who were not registered and Ms. Ward said that the Town has learned there are now 83 houses that are not registered of the possible 140. Ms. Ward said the rest are registered. Those not in compliance are going to receive another letter notifying the property owner that they have been identified by the Town. The Town is encouraging the property owners to fill out the affidavit and come into compliance with registering their dwelling.

Ms. Ward said through working with STR Helper the last two months, the occupancy tax

collected in August of 2017 was \$19,430 and for August of 2018 the collection was \$36,072; an increase of \$16,000. In September of 2017 the occupancy tax collection was \$20,546 and for September of 2018 the collection was \$30,707, another increase of \$10,000. The STR Helper program has been a success allowing the Town to see who is paying and who is not.

In response to Councilman Marquardt's inquiry into Airbnb payments, Ms. Ward stated that Airbnb remits taxes, but does not identify who they are remitting taxes for, in other words Airbnb submits taxes for Watauga County and for Avery County for a lump sum of payment for Watauga and for Avery, but it does not identify who they remit the taxes on behalf of; it is a form with a check of lump sum.

Mr. Holloman reiterated that as we learn who has not registered, those who have not, will receive another letter which identifies them of renting the dwelling and to register. He added this will be an ongoing process to work with the property owners to come into compliance.

Councilman Marquardt added that the property owners are working with a third party who is not a full service provider, and they are being assured by the third party provider, that they are paying the local occupancy tax, he questioned if they were also paying the state use tax; and they need to follow up, as there is no way to confirm that their taxes are paid. Ms. Ward agreed and gave the example of a homeowner who said they paid the occupancy tax twice. Ms. Ward advised the homeowner to go through Airbnb to get a refund as the Town has no proof of a double payment. She said that people are registering with the Town and are being tracked. Ms. Ward explained the tracking system to enforce compliance. The homeowner is instructed to pay all back taxes owed, plus penalties. Attorney Eggert explained how the taxes are billed under the presumption of rates and the burden of proof is on the homeowner to produce the rental history, these rates are based on the IRS and State Department revenue rates and they encompass the last five years. Ms. Ward noted the August collection was over \$3,000 in penalties.

## ***8.2 Sign Ordinance Change Considerations: Preston Yates, Town Planner***

Mr. Yates stated that Staff was instructed to review the sign ordinance and present options or changes to Town Council. He noted this was based on some complaints. The Staff reviewed benchmark towns and cities and he said that research was presented as different options to the Planning Board. The Planning Board reviewed it and at this time, is not recommending any changes to the ordinance. The prior issues and concerns which had existed previously were not a problem or had calmed down, and their recommendation was for no action at this time. The assessment is that the sign ordinance is restrictive enough and no further restrictions should be added.

In response to Vice Mayor Kaufman's question regarding the flags, Mr. Yates acknowledged that it was the flag signs that was in question. Councilman Abernethy said the format of the report was chopped off, to which Mr. Yates said that was the first column which contained the benchmark research town name. Councilman Abernethy said it did not print, Mr.

Yates realized it did not print well in the paper packet. He said it was legible in the electronic version, he apologized. That first city was Waynesville.

In response to Mayor Castiglione's comment regarding the Planning Commission's not having a recommendation at this time to change the sign ordinance, Councilman Sauer noted that to send it back to the Planning Commission to ask them to look at it again, would give the same result as a recommendation of no changes. Mr. Holloman noted that Town Council can add restrictions after conducting a public hearing, to which Attorney Eggers stated that any intended specific language changes could be instructed to Staff and then sent back through the Planning Board even if they do not agree, then the process can be brought before Town Council.

Councilman Abernethy stated he wants to know what Asheville does, Mr. Yates said that information is there on the electronic version. He said the tables were researched and the verbiage was submitted in the packet but unfortunately the hard copy was cut-off.

Vice Mayor Kaufman was concerned with people that hold up signs and spinners which are signs. Mayor Castiglione stated that has been curtailed to special events in which case then they may have signs. After further discussion it was decided that two members of council should serve on a sign committee, to which Vice Mayor Kaufman and Councilman Abernethy will work with staff on the issue. Mr. Yates said he will email the original research to the committee.

## **9. Old Business**

### **9.1 Buckeye Facility Fees: Parks and Recreation Director, Sean Royall**

Vice Mayor Kaufman requested clarification regarding the gymnasium/ facility fees and the rental which states is a 7-day notice and there is a 3-day cancellation which was confusing. Mr. Royall explained the contract, the deposit policy and the deposit return policy. He further clarified how weddings and events are scheduled and contracted. Vice Mayor Kaufman asked for more clarification regarding the 14-day notice and the non-refundable fees. Mr. Royall acknowledged this was on a case by case basis and if personnel accepted a contract there is a breakdown of the deposit and the timeline for cancellation within the policy. The rental contract gives the dates, and stipulates the rental, to which Vice Mayor Kaufman stated it could be clarified better for the public.

Attorney Eggers pointed out the adopted fee schedule is binding by Staff and is mandatory for the Staff to do but anything outside of the fee schedule in the contract, is at the discretion of Staff as to how the fees are applied. Any terms which are new, can be mandated to Staff by Town Council and can be included in the fee schedule as direction given. Mr. Holloman clarified how the policy defines the rentals in each category as listed in the fee table. Mr. Royal added that the Staff works with the public and explains the facility policy as well as the refund policy.

There was a question and answer period concerning different examples and scenarios

of renting at the Recreation Center. Mr. Holloman suggested adding verbiage wherein the town manager may review all the fees and may waive the refund. There was further discussion of special cases such as an emergency to which Vice Mayor Kaufman stated he did not want there to be confusion as to the refund policy. Mr. Holloman noted there have been last minute issues with staffing events as well.

Vice Mayor Kaufman moved to amend the facility policy to include that the town manager shall review the contract fees and may award the refund and the motion was seconded by Councilman Abernethy.

The motion carried 5-0, unanimously.

#### **10. *Town Manager and Staff Reports:***

The following reports were submitted: Police Report, Fire Department Monthly Report, Water Treatment Report, Tourism Development Authority Report, Recreation Report, Wastewater Report, Planning and Inspections Report and Public Works Department Report.

Mr. Holloman noted there were no additions to the submitted staff reports but he did point out that the mountain observation binoculars were installed. He also pointed out the locales of the newly installed bear-proof/bear resistant dumpsters. The camera trial run for recording the town meetings has begun, and the goal is to air the next November meeting live on the Town's YouTube channel.

In response to Councilman Marquardt's question regarding the storage of the salt for the roads, Mr. Holloman explained that the orders for salt had been placed and some storage is in the bays at Public Works. 277 tons is stored in the bay and construction on the new bays are planned to begin in the spring. The rest of the salt is coming from Knoxville, Tennessee.

Mr. Heaton explained how the salt is ordered and where the vendor ships it from. Originally 400 tons was ordered, the 277 tons is stored here, and the rest is coming from Knoxville, Tennessee. There is a supply and demand issues and he said the Town is a new customer and there are large cities already receiving salt but now the Town is on the list. The container and how the container is sealed was discussed.

Councilman Abernethy inquired into the bear proof container at Buckeye to which Mr. Royall noted the timeline and explained what was replaced and the method for preserving the dumpster. Mr. Holloman explained the plan to replace the dumpster and remove the fence and expand the parking in the area in question. Once the food source is removed, hopefully the bear won't migrate there.

Mayor Castiglione inquired into the color of the fire hydrants as they were painted forest green and now they are red, to which Fire Chief Robert Pudney said the reason is they were scheduled to be painted and during the last inspection, the Town lost points. The National Fire Association stipulate the hydrants to be red. So, over a period of years they are pressure treated and painted red. New hydrants are factory finished red. He added that the snow markers will show the pressure and the gallons permitted. By the next inspection all the fire

hydrants will be red which will be in four or five years. Public Works is continuing the project and there will be no loss of points.

It was noted by the Mayor the review process for unsealing the minutes was scheduled to occur to which Attorney Eggers agreed and said the review by himself, the mayor and the clerk would be scheduled in the upcoming weeks. The unsealed minutes and records are available upon a records request by the public.

Mayor Castiglione announced the Boy Scout and Eagle Scout recent projects and beautification of Beech Mountain. They have installed benches at the sledding hill, on the Overlook Trail they have installed bridges, as well as other improvements and she recognized the Scouts for their efforts and contribution to the community.

The Towns' newest police officer, Matt Bonestell was congratulated on his new position and upcoming engagement.

Mr. Royal added the Lees-McRae service project by the Boy Scouts had occurred in the fall as they had also helped clear a section of trail.

**11. *Adjournment:***

There being no further business, Councilman Sauer moved to adjourn at 5:03 and the motion was seconded by Councilman Abernethy.

The motion carried 5-0, unanimously.

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Renee D. Castiglione, Mayor

ATTEST:

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Tamara Mercer

Town Clerk