



AGENDA
Regular Town Council
Tuesday, December 10, 2019
Council Chambers 4:00 PM

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MINUTES

Regular Town Council Meeting

3:00 PM - Tuesday, November 12, 2019
Council Chambers

The Regular Town Council of the Town of Beech Mountain was called to order on Tuesday, November 12, 2019, at 3:00 PM, in the Council Chambers, with the following members present:

COUNCIL PRESENT: Mayor Renee Castiglione
Vice-Mayor Barry Kaufman
Councilman Carl Marquardt
Councilman Weidner Abernethy
Councilman Wendel Sauer

COUNCIL EXCUSED:

STAFF PRESENT: Town Manager Tim Holloman
Attorney Stacy Eggers, IV
Town Clerk Tamara Mercer
Public Utilities Superintendent Daniel Davis
Building Inspector Jeff Fish
Director of Tourism and Economic Development Kate Gavenus
Assistant Parks and Rec Director Kate Prisco
Public Works Superintendent Matthew Clawson
Town Planner Preston Yates
Police Captain Renee Carpenter
Director of Special Projects Riley Hatch
Director of Infrastructure Robert Heaton
Fire Chief Robert Pudney
Parks and Rec Director Sean Royall

1. CALL TO ORDER

1.1. Mayor Castiglione requested a motion to move into closed session.

Motion

Wendel Sauer made a motion to recess to closed session and Weidner Abernethy seconded the motion. CARRIED. unanimously.

2. CLOSED SESSION - PURSUANT TO NC GS 143-318.11 (A) (6)

PERSONNEL (7) ATTORNEY CLIENT MATTERS

3. ADOPTION OF AGENDA

- 3.1.** Mayor Castiglione reviewed revisions to the agenda and said as advertised we have the Public Hearing for the Local Government Commission application for a financial agreement for the new Public Works project, which was moved from Consent Agenda to New Business, and to be added under the Consent Agenda, the Attorney's Office has a Consent Order filing to enforce the zoning ordinance, also under New Business, Councilman Abernethy requested the Finance Report be added; and she asked for a motion to adopt the agenda with the aforementioned revisions.

Motion

Wendel Sauer made a motion to revise and adopt the agenda as stated and Weidner Abernethy seconded the motion. CARRIED. unanimously.

4. INVOCATION- TIM HOLLOMAN

5. PLEDGE OF ALLEGIANCE - MAYOR CASTIGLIONE THANKED THE VETERANS WHO HAVE SERVED OUR COUNTRY

6. PROCLAMATION HONORING JON ALAN & RICKY HOLCOMBE

- 6.1.** Proclamation Honoring Jon Alan Holcombe & Fredericka Marquardt Holcombe

Councilman Marquardt presented the Proclamation honoring the founding family, Mr. Jon Alan Holcombe and Fredericka (Ricky) Marquardt Holcombe.

7. CLERKS CERTIFICATION UNC SCHOOL OF GOVERNMENT- TAMARA MERCER

- 7.1.** Clerk's Certification Institute UNC SOG

Mayor Castiglione presented the International Institute of Municipal Clerk's School of Government certificate to Town Clerk, Tamara Mercer.

8. PUBLIC HEARING FOR OFFICIAL ZONING MAP

- 8.1.** Mayor Castiglione requested a motion to open the Public Hearing and Barry Kaufman made a motion to open the Public Hearing on the proposed Official Zoning Map and no one elected to speak regarding the proposed map and Wendel Sauer seconded the motion. CARRIED 5-0

Mayor Castiglione noted that there are no zoning changes to the map. The Official Zoning Map includes the new GIS software and the format is upgraded, which was submitted by Senior Planner, Preston Yates.

Motion

Barry Kaufman made a motion to close the Public Hearing for the Official Zoning Map and Wendel Sauer seconded the motion. CARRIED. unanimously.

9. PUBLIC HEARING ON THE RESOLUTION FOR THE PUBLIC WORKS FINANCING AGREEMENT G.S. §160A-20

- 9.1.** Mayor Castiglione requested a motion to open the Public Hearing and Barry Kaufman made a motion to open the Public Hearing on the Resolution authorizing the filing of an application for a financing agreement in accordance with §160A-20 and Wendel Sauer seconded the motion. CARRIED 5-0 No one elected to speak regarding the resolution.

Motion

Barry Kaufman made a motion to close the public hearing and Wendel Sauer seconded the motion. CARRIED. unanimously.

10. PUBLIC COMMENT

- 10.1.** David Hellenthal of 105 Upper Holiday Lane F23 recounted his history of growing up on Beech Mountain and of living in the west coast. Mr. Hellenthal said he walks all over the mountain and picks up litter all over here as he did in Alaska and Washington State.

He said he wished to get on the agenda in the future in order to discuss a proposal. He has set-up non-profits and can organize groups to assist with keeping the mountain free from trash. Mr. Hellenthal presented pictures of areas where he has removed trash from waterways and in culverts. He removed 53 yards of trash, plastic, and bottles, etc. from a waterway. He wishes to keep the mountain aesthetically pleasing. He worked with Fred cleaning the roadside down to Banner Elk. Mr. Hellenthal is willing to work with staff and the community setting up a nonprofit and he requested help from volunteers who wish to become members and for creating a name for the program.

Councilman Abernethy thanked Mr. Hellenthal for his efforts as he had encountered him cleaning one day and stopped to pick-up trash bags and brought the trash to the dump.

- 10.2.** Ms. Belle Bennett of 405 Beech Mountain Parkway said she represented the homeowners on SkiLoft Road and addressed the proposed ordinance for SkiLoft Road. Ms. Bennett said she believes the homeowners on SkiLoft Road are abused. She discussed the garbage bins and said they get destroyed by animals and the residents are fined. As to the parking spaces, they follow the rules. She said the Town's snow equipment pushes the snow into the parking spaces.

She recounted how she had seen over 6' snow plowed into the spaces and the homeowners are punished. Ms. Bennett questioned how the homeowners are required to plow if no one is there and she is opposed to the ordinance.

11. CONSENT AGENDA

- 11.1.** Consent Order filing to enforce zoning ordinance at 107 Spruce Hollow Lane
- 11.2.** Adoption of Council Minutes October 1, 2019
- 11.3.** Approval to create a Capital Reserve Fund
- 11.4.** 2019 Public Works Facility Capital Project No. 2019-10

Motion

Wendel Sauer made a motion to accept the Consent Agenda and Barry Kaufman seconded the motion. CARRIED. unanimously.

12. NEW BUSINESS

- 12.1.** Monthly Finance Report-

Councilman Abernethy had requested a monthly fuel summary report and he had questions regarding the fuel summary as the report received has discrepancies considering that the gallons used for the Police Department showed one month at 4,100 gallons of diesel. He added that since the Police Department uses gas the report is not accurate. Mr. Holloman replied that the numbers must have been transposed from the gas to diesel. He said he would review this and fix the report. Mr. Holloman added that Public Works was looking into getting updated software equipment for the gas and diesel pumps as the output information has been inaccurate for the usage report.

Councilman Abernethy continued and said for the past 6-8 months, the expense report was not correct as the budgeted amount for the Police Department is \$15,000 but the line items for the Department showed \$0. The Planning and Inspection's department is also budgeted for \$15,000 and is not reflected in the administration line items, so he questioned the revenue reports for inaccuracy.

Mr. Holloman noted that the fuel summary report may not have been accounted correctly, Staff has noted the problem and the fuel system software is being replaced. He said Staff will get the proper consumption information to Council.

- 12.2.** Local Government Commission Resolution for financing agreement

Mayor Castiglione reviewed the application for the financing agreement: The Town of Beech Mountain desires to finance the new Public Works Facilities Project by the use of an installment contract authorized under North Carolina General Statute 160A, Article 3, Section 20.

Motion

Carl Marquardt made a motion to accept the financing agreement installment contract authorized under North Carolina General Statute 160A, Article 3, Section 20; to construct a \$5,200,00.00 new Public Works Facility and Barry

Kaufman seconded the motion. CARRIED. unanimously.

12.3. Comprehensive Plan 2020-2035

Mayor Castiglione noted the time-line and work process of the Planning Board and Staff to compile and research all the data for the Comprehensive Plan. The citizens also met with the Board and Staff and gave input for the document. She thanked everyone and Chairman, Pete Chamberlain for their hard work but suggested a Table of Contents is needed for referencing. Councilman Marquardt agreed with the Mayor and thanked the citizens, staff and board.

Motion

Barry Kaufman made a motion to adopt the Comprehensive Plan 2020-2035 for the Town of Beech Mountain. The plan was developed by the Planning Board and Planning staff starting in February 2018, with input and participation from the public and staff members from various departments. On October 29, 2019, the Planning Board recommended adoption of the plan in that regular meeting. Upon consideration, Town Council approved the Comprehensive Plan 2020-2035 and Weidner Abernethy seconded the motion. CARRIED. unanimously.

12.4. Official Zoning Map

Mayor Castiglione requested consideration of adoption of the Official Zoning Map.

Motion

Wendel Sauer made a motion to adopt the Official Zoning Map for the Town which amends the zoning ordinance by adopting a new official map, there are no new re-zonings as part of this action and Carl Marquardt seconded the motion. CARRIED. unanimously.

12.5. SkiLoft Road Snow Removal Ordinance amendment

Mayor Castiglione requested a motion to approve for discussion the SkiLoft Road Snow Removal Ordinance amendment and Barry Kaufman made a motion to open for discussion the amendment to the ordinance specifically to SkiLoft Road Snow Removal and Wendel Sauer seconded the motion.

Mr. Holloman stated Staff had a request to initiate the ordinance amendment for the purpose of a tool to address the complaints by residents of SkiLoft by other people who were not keeping the parking areas clean from snow. If the ordinance amendment were in place the police can respond, the Town could tow or send out letters that residents must keep their parking areas clean of snow. Mr. Holloman explained why the complaint was received as the homeowners have noted that just ticketing the offenders does not help the problem when the parking space is snowed in and the renters have parked illegally.

Councilman Abernethy said the proposed ordinance was poorly written and it doesn't address the problem. He questioned why it was listed in the Health and Sanitation chapter for nuisances. He explained how cars are parked on SkiLoft and said this is a parking issue. He read the ordinance and questioned how it was drafted.

There was further discussion of police enforcement, ticketing and towing and the current procedure for addressing the issue on SkiLoft Road and the impetus for addressing the complaints and problems on the road.

Attorney Eggers explained the reason for the placement of the issue in the code and specifically codifying it in Chapter 94; as Chapter 94 addresses nuisances and deals with certain land uses or land conditions including the cleaning of lots. Attorney Eggers added that this allows the Town to plow and/or clean parcels and solve the problem. It empowers the town to abate the nuisance in order to ticket or to charge for snow removal for non-compliance with the code.

Motion

Barry Kaufman made a motion to accept the amended ordinance to Chapter 94: Health and Sanitation; Nuisances on SkiLoft Road and Wendel Sauer seconded the motion. DEFEATED. 0-5 (opposed: Barry Kaufman, Wendel Sauer, Carl Marquardt, Renee Castiglione, and Weidner Abernethy).

13. OLD BUSINESS - NONE

14. TOWN MANAGER AND STAFF REPORTS

- 14.1.** Mr. Holloman reviewed updates for Council and said the blood drive was a success. The Streetscape Project is underway and soon the new Public Works facilities will begin construction since the finance agreement was approved.

Mr. Royall reviewed the Halloween Haunted House event at Buckeye Creek Recreation Center on October 25th. He said over 200 people attended the event and there were 22 booths. He thanked the volunteers and local businesses for their donations. The Famous Brick Oven for the pizzas and desserts and Rascals for the hotdogs.

The Holiday Market upcoming event will have 42 vendors with musical entertainment on November 30th and from 5-7 Santa Claus will be available for the children.

- 14.2.** Police Department Monthly Report
- 14.3.** TDA November Report
- 14.4.** Infrastructure Report October 2019
- 14.5.** October Parks & Recreation Report
- 14.6.** Planning and Inspections Report 2019-10

15. TOWN COUNCIL COMMENTS

- 15.1.** Councilman Sauer said there have been accusations of back door meetings with no evidence of such deals. Councilman Sauer said he requested the list of registered voters from the Board of Elections for Avery and Watauga Counties but there was an absence of Councilman Abernethy's name on the lists. He noted he conducted further research.

Councilman Sauer presented the North Carolina Board of Elections record stating that Councilman Abernethy changed his voter registration on July 26, 2019 from Watauga County to Burke County and he submitted the registration. Councilman Sauer read the NC General Statute §160A-59: Qualifications for elective office, and also read NC State Constitution Article 6, Section 8: dis-qualifications for holding elected office and NC GS 163A-1586: Residency Clause, voting in municipal elections; wherein it states one is not entitled to reside in more than one city at a time. He presented a Deed of Trust on Councilman Abernethy's property in Burke County, reading the clause stating his primary occupancy as property address: 1925 Lake Acres Drive, Hickory North Carolina.

Councilman Sauer said on October 16, 2019, Mr. Abernethy signed a form for the Burke County Board of Elections office stating his residency is in Watauga County and he submitted the form. Councilman Sauer requested Councilman Abernethy to resign as he questioned if Councilman Abernethy is eligible to serve as a member of Town Council due to the residency question.

Councilman Abernethy thanked the veterans of the Town who served. He explained why he legally owns two houses and said he is not registered to vote in Burke County. He said he resides in Watauga County and his family resides in Burke County. Councilman Abernethy noted who he voted for in the Watauga County elections as he stated he lives on Beech Mountain.

Attorney Eggers said the Attorney's Office will research the elected official qualifications in order for members of Council to serve and to determine eligibility. He reviewed the hearing procedures to comply with the State's legal due process procedures. Attorney Eggers added his legal opinion serves the body of the Board and he encouraged Councilman Abernethy to retain counsel.

Vice Mayor Kaufman congratulated Erin Gonyea, Jimmie Accardi, and Kelly Melang on their election victory and hoped all can work together to avoid misunderstandings for the benefit of Beech Mountain.

Councilman Marquardt said he was not surprised by the residency controversy, but he thanked the public for allowing him to serve our Beech Mountain community. He wished good luck to the newly elected members and imparted advice of serving the community without gossip, to exercise common courtesy and for civil discourse to continue civilly serving Beech Mountain.

Councilman Marquardt paid tribute to the important citizens who have passed and are getting older: Bob Ash, Gene Bradshaw, Ray Costin, Jim

Linguist, Moe Wilson and other founding families, and asked that Council continue to celebrate citizens' contributions now, rather than honor folks after they have gone.

Mayor Castiglione noted that the Town has many part-time residents who are not able to vote and would like to participate. She said she is angry if a member on Council is not qualified to serve, and noted the Constitution is clear and it is a slippery slope at election time to change voter registrations and this is disturbing. She requested the Town Attorney to research the allegations.

Mayor Castiglione said she is grateful to have served the Town and citizens and thanked everyone. It has been both a pleasure, even with the challenges, and an honor to have served for four years.

16. CITIZENS' AGENDA COMMENTS

- 16.1.** Mr. David Hellenthal suggested the Town install cameras at the Convenience Center to which it was noted there are cameras installed.

17. ADJOURNMENT

- 17.1.** There being no further business, Mayor Castiglione requested a motion for adjournment at 5:14 p.m.

Town Clerk

Mayor, Town of Beech Mountain



MINUTES

Special Meeting of Town Council Meeting

5:00 PM - Thursday, November 21, 2019
Council Chambers

The Special Meeting of Town Council of the Town of Beech Mountain was called to order on Thursday, November 21, 2019, at 5:00 PM, in the Council Chambers, with the following members present:

**COUNCIL
PRESENT:** Mayor Renee Castiglione
Vice-Mayor Barry Kaufman
Councilman Carl Marquardt
Councilman Weidner Abernethy
Councilman Wendel Sauer

**COUNCIL
EXCUSED:**

**STAFF
PRESENT:** Town Manager Tim Holloman
Attorney Stacy Eggers, IV
Town Clerk Tamara Mercer
Police Captain Renee Carpenter
Director of Special Projects Riley Hatch
Fire Chief Robert Pudney
Director of Infrastructure Robert Heaton
Chief of Police Tim Barnett

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. NEW BUSINESS

- 3.1. Consider Eligibility of Council Member Abernethy to Continue to Serve on the Beech Mountain Town Council

Councilman Abernethy questioned the agenda saying that there should be a section for public comments, to which Mayor Castiglione noted the agenda will not have a public comment section. Attorney Eggers stated the public comments Statute, requires that Council enable the public to speak at least one time a month which was satisfied at the last Council meeting on November 12, 2019 and is not legally required at this meeting.

Attorney Eggers reviewed the procedure regarding the topic, he said

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Councilman Abernethy is entitled to due process in the context of the Council Special Called meeting; which includes the opportunity to be provided notice, to be heard on the issue of his disqualification, to have legal counsel present in order to seek advice or for presenting on behalf any information he wished to present. Attorney Eggers added that as a member of Council, Councilman Abernethy can deliberate on the issue of his eligibility and has the right to participate in the final vote on the issue.

Councilman Abernethy stated he has legal representation, Attorney Nathan Miller. Attorney Miller said Councilman Abernethy was not served notice of the meeting, citing G.S.160A -71(b)(1), the notice shall be delivered at least six hours before the meeting. He understood the clerk served the agenda via email and the Town code allows all reasonable efforts for notification be made, but General Statute trumps local ordinances. Attorney Miller added that the Mayor may call a special meeting, but Mr. Abernethy does not consent to this meeting.

Councilman Abernethy said the next Council can face this issue at the next meeting. Attorney Eggers said that G.S. 160A -71 does require certain notifications to the members but the presence of that member at the meeting may constitute acceptance of service and consent, and that with Councilman Abernethy's attendance, it appears that the requirements of the notice were met.

Attorney Miller disagreed and said Councilman Abernethy's presence doesn't waive the notice requirement. Attorney Eggers stated Council may call a recess or continuance of the meeting for notice or may choose to proceed. Councilman Sauer suggested a recess in order to proceed with due process, to which Attorney Eggers suggested at least 48 hours pass before reconvening.

Councilman Abernethy made a motion to continue the issue to December 10th, the motion died for a lack of a second and he called for a vote. FAILED 1-4 (opposed, Renee Castiglione, Barry Kaufman, Carl Marquardt, Wendel Sauer) Mayor Castiglione noted the meeting would proceed as everyone was present.

Attorney Miller next stated the matter should be dismissed for lack of jurisdiction on the subject matter by the Board. He said nothing in the Charter allows an evidentiary hearing as to the eligibility of one of the board members and or the process of removal. He said that procedure is set forth in a memorandum from Mr. Robert Joyce, with the School of Government. Attorney Miller reiterated there is not a process to remove a council member and Councilman Abernethy does not himself withdraw and disputes the allegations that he is not a resident of Beech Mountain, regardless of the DMV records and of the voter records listed in the memorandum. He said an evidentiary hearing power, according to Mr. Joyce, rests with the Board of Elections.

Attorney Miller presented an example of a citizen who challenged the residency of a County board member. He cited both G.S. 160A and G.S. 163A challenges to residency goes before an evidentiary hearing before the Board of Elections in either Avery or Watauga County since the Town straddles both

counties. The calling of the Special Meeting is not enough notice to afford a due process for evidentiary hearings and the Council has no authority to act as a mechanism.

Attorney Miller said North Carolina General Statute 1, Chapter 41 deals with quo warranto, a civil lawsuit filed if a person is illegally occupying or is a hold-over for the seat. At that hearing the complaint filed is reviewed through due process, the court date is set, and the challenged person continues to serve until a court makes the decision. Attorney Miller cited G.S. 163-85.

- 3.2.** Attorney Eggers noted that he has served on the County Board of Elections as well as the State Board of Election for a number of years, and he said the hypothetical scenario in Professor Joyce's essay post, poses a citizen's attempt to challenge a sitting board member. The avenue for a citizen to challenge the current residency of any voter or candidate for office is through the Board of Elections. The candidacy challenge refers to if a person is eligible or not to serve or secondly, if a person is currently registered in the jurisdiction.

In the present case, the issue is not whether Mr. Abernethy is presently a resident of Beech Mountain, but whether he failed to continue to meet the qualifications for office.

Attorney Eggers noted that in the hypothetical situation presented by Professor Joyce, the underlying Board of Elections hearing did not address or resolve the eligibility to continue to serve. That decision and action was reserved to the Board which that member sat. G.S 163A and the process as codified in the Town's Code of Ordinances, section 30-60, (originally adopted by the Town of Beech Mountain on February 9, 1982), sets forth the procedure under which this matter would need to proceed.

Attorney Eggers requested the clerk to recount how the Special Meeting notice was posted and Tamara Mercer, Town Clerk reviewed the notification procedure. It was noted that no agent of the Town hand-delivered the notice to Councilman Abernethy at the 120 Slopeside Road address.

Attorney Eggers suggested that Council reconvene the meeting to an appropriate date for continuation of the Special Meeting, since Councilman Abernethy was not served notice by hand-delivery, in order for re-notification to be served to Councilman Abernethy. This would address Attorney Miller's objection that Mr. Abernethy be served least 6 hours notice prior to the meeting, although Councilman Abernethy's presence and Attorney Representation indicates he received notice, continuing the meeting in order to serve Mr. Abernethy at least 6 hours prior to the continuation would cure the objections by Attorney Miller.

There was a discussion regarding the options for Town Council and scheduling the Special Meeting. Vice Mayor Kaufman agreed with Councilman Abernethy that the matter could be addressed on December 10th and Attorney Eggers noted that when the newly elected Council members take the oath of office, by law that replaces existing council members and this matter would be for consideration by the new council on that date.

Newly elected Council member, Jimmie Accardi requested to speak, and Mayor Castiglione acknowledged Mr. Accardi. Mr. Accardi said the new Council members were confident that they could address the issue on December 10, 2019.

Motion

Barry Kaufman made a motion to continue to December 10, 2019, the question of Councilman Abernethy's eligibility to serve on Town Council and Wendel Sauer seconded the motion. CARRIED. unanimously.

- 3.3.** Consider Impact for Vacancy if any- Note the agenda items were continued to December 10, 2019

4. ADJOURNMENT

- 4.1.** There being no further business the meeting adjourned at 5:30 p.m.

Motion

Renee Castiglione made a motion adjourned the meeting and no one seconded the motion. CARRIED. unanimously.

Town Clerk

Mayor, Town of Beech Mountain



COUNCIL ACTION ITEM

TO: Town Council
FROM: Tamara Mercer
DATE: December 10, 2019
SUBJECT: Parcel Donation 227 Charter Hills Road lot 7

FOR THE PURPOSE OF:

Property donation to the Town from Mr. Ralph Gut and Mrs. Mary Gut: 227 Charter Hills Road, lot 7 , section A, PID: 1950-22-4849-000

SIGNATURES:

Town Manager

Town Clerk

December 2, 2019

Mrs. Mary Gut
Mr. Ralph Gut
7700 Kencot Court
Raleigh, NC 27615-5452

Re: Donation of Lot 7, Section A, Charter Hills to Town of Beech Mountain

Dear Mrs. and Mr. Gut:

In accordance with instructions from the Town of Beech Mountain, it is my understanding that you want to make a donation to Town of Beech Mountain for the above referred to property. I am therefore enclosing herewith the following documents for your signatures and notarization (where necessary):

1. Warranty Deed conveying Lot 7, Section A of Charter Hills Beech Mountain, Watauga County, North Carolina, to the Town of Beech Mountain as a donation;
2. 1099S form showing Donation to Town, which will need to be filled out and signed where indicated;
3. Owner Affidavit and Indemnity Agreement;

Please take these instruments before a notary public who is familiar with real estate transactions. Sign same on the lines above your typewritten names where indicated with red X marks, and where necessary. Have the notary complete the notary certificates, which I have highlighted in yellow, making sure he or she fills in the county, fills in his or her name, dates, signs, gives date of expiration of commission and affixes his or her seal.

When these have been completed, please return to me in the enclosed, self-addressed, stamped envelope, and if you have any questions, please feel free to contact me.

Very truly yours,

Stacy C. Eggers, IV

SCEiv:pm
Enclosures

Excise Tax _____ Recording Time, Book and Page _____
Parcel ID: _____ Parcel Identifier No. **1950-22-4849-000**
Verified by **Watauga** County on the **2nd** day of **December, 2019**.

Mail after recording to: **Town of Beech Mountain, c/o Tim Holloman,
403 Beech Mountain Parkway, Beech Mountain, North Carolina, 28604**

This instrument was prepared by: **Eggers, Eggers, Eggers, and Eggers, PLLC,
Attorneys at Law, P. O. Box 248, Boone, North Carolina 28607
(With a Limited Title Search Prepared by this Office)**

Brief Description for the Index: **Lot 7, Section A, Charter Hills-Beech
Mountain, lying at 227 Charter Hills Road, Beech Mountain, NC 28604**
NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED, made this **2nd day of December, 2019**, by and between:

GRANTORS	*	GRANTEE
	*	
Mary Gut and husband,	*	Town of Beech Mountain
Ralph Gut	*	403 Beech Mountain Parkway
	*	Beech Mountain, NC 28604
7700 Kencot Court	*	
Raleigh, NC 27615	*	
	*	
	*	

Please enter in appropriate block for each party, name, address, and if, appropriate, character of entity, e.g. corporation or partnership

The designation Grantors and Grantee as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH:

The Grantors, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, have and by these presents do grant, bargain, sell and convey unto the Grantee in fee simple, that certain lot or parcel of land situated in the Township of **Laurel Creek**, County of **Watauga**, State of **North Carolina**, and more particularly described as follows:

BEING all of Lot 7, Section A of the property known as CHARTER HILLS-BEECH MOUNTAIN, as shown and more fully described on plat thereof recorded in Map Book 4 at Page 38 of the Watauga County Registry.

This property is conveyed subject to Declaration of Restrictions recorded in Book 104 Page 8, Watauga County Registry, together with any other supplemental restrictions, amendments to restrictions or reservations, easements, conditions and other restrictions that may appear of record applicable to this property.

The property hereinabove described was acquired by Grantors by Deed Book of Records **500** at Page **276**, Watauga County Registry.

A map showing the above described property is recorded in Map Book **4** at Page **38**, Watauga County Registry.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereunto belonging to the Grantee in fee simple.

And the Grantors covenant with the Grantee, that Grantors are seized of the premises in fee simple, and have the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantors will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated. All warranties herein are subject to the following exceptions:

Subject to Declaration of Restrictions referred to above, together with any other supplemental restrictions, amendments to restrictions, reservations, easements, conditions and other restrictions that may appear of record applicable to this property.

The above described property **DOES NOT** include the primary residence of the Grantors herein.

IN WITNESS WHEREOF, the Grantors have hereunto set their hands and seals, the day and year first above written.

Mary Gut (SEAL)

Ralph Gut (SEAL)

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, Notary Public, do hereby certify that
MARY GUT AND HUSBAND, RALPH GUT, personally appeared before me this
day and acknowledged the due execution of the foregoing instrument for the
purposes therein expressed.

WITNESS my hand and notarial seal, this ____ day of _____,
2019.

Notary Public (SEAL)

My commission expires: _____

INFORMATION FOR REAL ESTATE 1099-S REPORT FILING
As required by the Internal Revenue Service

Section 6045 of the Internal Revenue Code, as amended by the Tax Reform Act of 1986, requires the reporting of certain information on every real estate transaction. From the information you provide below, a form 1099S will be produced and a copy of it will then furnished to the IRS no later than February 15 of next year. If you fail to provide adequate information (in particular a taxpayer I.D. number), then you will be subject to all I.R.S. regulations, including the possible withholding of twenty percent (20%) of the current sales price.

FILE NO. _____

TAXPAYER I.D. OR S.S. NOS.

SS# _____

SS# _____

PAYER I.D. TYPE (1) BUSINESS OR (2) INDIVIDUAL
SELLER(S) NAMES:

MARY GUT AND HUSBAND, RALPH GUT

Address:

STREET: 7700 Kencot Court

CITY: Raleigh

STATE: NC ZIP 27615

TRANSACTION INFORMATION:

CLOSING DATE: 12/____/2019

CONTRACT SALES PRICE: DONATION TO TOWN

BUYER OF PROPERTY: Town of Beech Mountain

DESCRIPTION OF PROPERTY: Lot 7, Section A, Charter Hills-Beech Mountain, Laurel Creek Township, Watauga County, Beech Mountain, NC

Prior to this transaction, was the subject property, the seller's principal residence:

No

Buyers part of real estate taxes: \$ _____

Mary Gut and husband, Ralph Gut, hereby certify that the above information is correct and understand that it will appear on a Form 1099 that will be sent to the Internal Revenue Service.

DATE: _____

Mary Gut (SEAL)

Ralph Gut (SEAL)

**OWNER AFFIDAVIT AND INDEMNITY AGREEMENT
(NO RECENT IMPROVEMENTS AND NO EXECUTORY CONTRACTS FOR IMPROVEMENTS)**

PARTIES: All parties identified in this section must execute this Agreement.

Owner: **Mary Gut and husband, Ralph Gut**

There can be more than one Owner if the Property has been owned by multiple parties or has been conveyed within the 120-Day Lien Period. A separate Agreement is required for each successive owner in the 120-Day Lien Period.)

PROPERTY: Property shown as Lot 7, Section A, Charter Hills - Beech Mountain, Watauga County, North Carolina

(Insert street address or brief description and/or attach a description as Exhibit A. Include here any real estate that is a portion of a larger, previously unsegregated tract when that area is reasonably necessary for the convenient use and occupation of Improvements on the larger tract.)

DEFINITIONS: The following capitalized terms as used in this Agreement shall have the following meanings:

- **Improvement:** All or any part of any building, structure, erection, alteration, demolition, excavation, clearing, grading, filling, or landscaping, including trees and shrubbery, driveways, and private roadways on the Property as defined below.
- **Labor, Services or Materials:** Labor or professional design (including architectural, engineering, landscaping) or surveying services or materials or rental equipment for which a lien can be claimed under NCGS Chapter 44A, Article 2.
- **Contractor:** Any person or entity who has performed or furnished or has contracted to perform or furnish Labor, Services or Materials pursuant to a contract, either express or implied, with the Owner of real property for the making of an Improvement thereon. (Note that services by architects, engineers, landscapers, surveyors, furnishers of rental equipment and contracts for construction on Property of Improvements are often provided before there is visible evidence of construction.)
- **120-Day Lien Period:** The 120 days immediately preceding the date of recordation of the latter of the deed to purchaser or deed of trust to lender in the Office of the Register of Deeds of the county in which the Property is located.
- **Owner:** Any person or entity, as defined in NCGS Chapter 44A, Article 2, who has or has had any interest in the Property within the 120-Day Lien Period. For the purposes of this Agreement, the term Owner includes: (i) a seller of the Property or a borrower under a loan agreement secured by the Property; (ii) a person with rights to purchase the Property under a contract and for whom an Improvement is made and who ordered the Improvement to be made; and (iii) the Owner's successors in interest and agents of the Owner acting within their authority.
- **Company:** The title insurance company providing the title policy for the transaction contemplated by the parties herein.
- **Property:** The real estate described above or on Exhibit A and any leaseholds, tenements, hereditaments, and improvements placed thereon.
- All defined terms shall include the singular or plural as required by context.

AGREEMENT: For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and as an inducement to the purchase of the Property by a purchaser and/or the making of a loan by a lender secured by a deed of trust encumbering the Property and the issuance of a title insurance policy or policies by Company insuring title to the Property without exception to liens for Labor, Services or Materials; Owner first being duly sworn, deposes, says and agrees:

1. **Certifications:** Owner certifies that at no time during the 120-Day Lien Period have any Labor, Services or Materials been furnished in connection with a contract, express or implied, for Improvements to the Property (including architectural, engineering, landscaping or surveying services or materials or rental equipment for which a lien can be claimed under NCGS Chapter 44A) nor have any Labor, Services or Materials been furnished on the Property prior to the 120-Day Lien Period that will or may be completed after the date of this affidavit OR only minor repairs and/or alterations to pre-existing Improvements have been made and Owner certifies such repairs and/or alterations have been completed and those providing Labor, Services or Materials for the repairs have been paid in full.

2. **Reliance and Indemnification:** This Agreement may be relied upon by the purchaser in the purchase of the Property, a lender to make a loan secured by a deed of trust encumbering the Property and by Company in issuance of a title insurance policy or policies insuring title to the Property without exception to matters certified in this Agreement. The provisions of this Agreement shall survive the disbursement of funds and closing of this transaction and shall be binding upon Owner and anyone claiming by, through or under Owner.

Owner agrees to indemnify and hold purchaser, lender, and Company harmless of and from any and all loss, cost, damage and expense of every kind, and attorney's fees, costs and expenses, which the purchaser, lender or Company shall or may incur or become liable for, directly or indirectly, as a result of reliance on the certifications of Owner made herein or in enforcement of the Company's rights hereunder.

3. **NCLTA Copyright and Entire Agreement:** This Agreement and any attachments hereto represent the entire agreement between the Owner and the Company, and no prior or contemporaneous agreement or understanding inconsistent herewith (whether oral or written) pertaining to such matters is effective.

THIS IS A COPYRIGHT FORM and any variances in the form provisions hereof must be specifically stated in the blank below and agreed to in writing by the Company.

No modification of this Agreement, and no waiver of any of its terms or conditions, shall be effective unless made in writing and approved by the Company.

PROVIDING A FALSE AFFIDAVIT IS A CRIMINAL OFFENSE		
EXECUTION BY OWNER		
Mary Gut (SEAL) Ralph Gut (SEAL)	State of NC County of _____ Signed and sworn (or affirmed) before me this day by MARY GUT AND HUSBAND, RALPH GUT Date: _____ _____, Notary Public My Commission Expires: _____	[Affix Original Notarial Seal]

(NO RECENT IMPROVEMENTS AND NO EXECUTORY CONTRACTS FOR IMPROVEMENTS)

1. This Owner Affidavit and Indemnity Agreement (the "Agreement") form is for use with any title insurer (the "Company") regarding owner and lender coverage for transactions affecting title to particular real estate in North Carolina (the "Property"), a description of which must be included in this Agreement, where there have been no Improvements made to the Property within the 120-Day Lien Period (as defined).

2. The closing attorney must *notify underwriting counsel for the Company prior to closing* regarding any filed Claim of Lien on Real Property or Notice of Claim of Lien upon Funds, or any Notice of Claim of Lien upon Funds known by the attorney or Owner to have been delivered to the Owner, whether on the Property or on *any* property in the state of North Carolina, as this may affect the Company's decisions about whether to insure and on what basis.

At the very least, any **filed Claim of Lien on Real Property** must be paid in full and canceled of record. **Any delivered or filed Notice of Claim of Lien upon Funds** (by a subcontractor) must be paid in full and a waiver obtained from the subcontractor. The attorney must discuss any questions or issues regarding these with underwriting counsel for the Company prior to closing.

3. This form is appropriate for use in transactions wherein *no* recent Improvements have been made on the Property. If Labor, Services or Materials (including surveying, architectural, engineering services or rental equipment) for Improvements to the Property have been provided within the 120-Day Lien Period (as defined in the Agreement) (other than minor repairs to existing Improvements completed by Owner without the assistance of a Contractor or supplier, or with evidence of payment at or before closing of completed work), then either the

- NCLTA Form #2: OWNER/CONTRACTOR AFFIDAVIT, WAIVER OF LIENS AND INDEMNITY AGREEMENT (FOR CONSTRUCTION RECENTLY COMPLETED) or
- NCLTA Form #3: OWNER/CONTRACTOR AFFIDAVIT, INDEMNITY AND LIEN SUBORDINATION AGREEMENT (FOR CONSTRUCTION IN PROCESS OR IMMEDIATELY CONTEMPLATED WITH CONSTRUCTION LOAN) should be used.

Note, however, that in the situation in which vacant unimproved Property is to be conveyed and the *purchaser* has already retained Contractors, the *seller* may execute this form, and the purchaser would provide NCLTA Form #3, as noted above, with regard to any potential combined purchase and construction loan.

4. NOTE: There may be transactions where no Improvements have been made within the 120-Day Lien Period but work under an executory contract with the Owner continues after closing. An "executory contract" is one under which certain obligations remain to be performed in the future. Such post-closing Improvements may give rise to lien rights in the Property. An example is a lot purchase transaction involving the developer in a subdivision where development or infrastructure work has temporarily stopped but could or would be restarted after the date of this affidavit. In this scenario the NCLTA Form #2 or NCLTA Form #3 should be used.

5. Any variances in execution of this form or in parties signing must be approved by underwriting counsel for the Company prior to closing.



Author: Preston Yates

Date: 10/31/2019

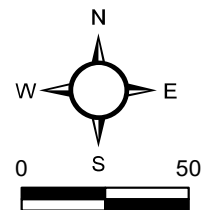
Document: \\SERVER12\\Shared Folders\\Company\\Planning\\MAPS\\Projects\\227 Charter Hills Rd.mxd



227 CHARTER HILLS RD PROPERTY DONATION

Source: Beech Mountain GIS

This product is for informational purposes and is not suitable for legal, engineering, or surveying purposes. Users of this map and the contents therein are solely responsible for interpretations made from these products. Town of Beech Mountain cannot accept any responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product.





COUNCIL ACTION ITEM

TO: Town Council
FROM: Tim Holloman
DATE: December 10, 2019
SUBJECT: Oath of Office Ceremony

FOR THE PURPOSE OF:

Newly Elected Officials' Oath of Office: James Accardi II, Kelly Melang, and Erin Gonyea

SIGNATURES:

Town Manager

Town Clerk



OATH OF OFFICE

I, James Accardi II, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution and laws of North Carolina not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; and that I will faithfully discharge the duties of my office as Councilman to the Town of Beech Mountain, so help me God.”

James (Jimmie) Accardi II, Councilman

STATE OF NORTH CAROLINA

TOWN OF BEECH MOUNTAIN

I, Tamara Mercer do hereby certify that _____ appeared this ____ day of December 2019 and took the above oath of office.

SEAL

Tamara Mercer



OATH OF OFFICE

I, Kelly Melang, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution and laws of North Carolina not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; and that I will faithfully discharge the duties of my office as Councilman to the Town of Beech Mountain, so help me God.”

Kelly Melang, Councilman

STATE OF NORTH CAROLINA

TOWN OF BEECH MOUNTAIN

I, Tamara Mercer do hereby certify that _____ appeared this ____ day of December 2019 and took the above oath of office.

SEAL

Tamara Mercer



OATH OF OFFICE

I, Erin Gonyea, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution and laws of North Carolina not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; and that I will faithfully discharge the duties of my office as Councilman to the Town of Beech Mountain, so help me God.”

Erin Gonyea, Councilman

STATE OF NORTH CAROLINA

TOWN OF BEECH MOUNTAIN

I, Tamara Mercer do hereby certify that _____ appeared this ____ day of December 2019 and took the above oath of office.

SEAL

Tamara Mercer



COUNCIL ACTION ITEM

TO: Town Council
FROM: Tamara Mercer
DATE: December 10, 2019
2020 Council / Boards Meeting Schedule and FY:2020-2021 Budget
SUBJECT: Calendar

FOR THE PURPOSE OF:

Consent agenda item for adoption of the Council, Boards, and Committees' 2020 Meeting Schedule & FY: 2020-2021 Budget Calendar and meeting dates

SIGNATURES:

Town Manager

Town Clerk



Town of Beech Mountain
2020 Regular Council & Board Meeting Schedule
January - June

Board	Day of Month*	Time	January	February	March	April	May	June
Town Council-regular	2nd Tuesday	3:00 PM - Closed Session; 4:00:00 PM - Public Meeting	1/14/20	2/11/20	3/10/20	4/14/20	5/12/20	6/9/20
Town Council	Retreat/ Workshop	please note date and times	1/23 & 24 @ 8:30am			4/22 @ 10:00am	5/20 @ 2:00pm	
Board of Adjustment	1st Tuesday	4:00 PM	1/7	2/4	3/3	4/7	5/5	6/2
Planning Board	Last Tuesday	9:00 AM	1/28	2/25	3/31	4/28	5/26	6/30
Recreation Committee	1st Thursday	8:30 AM	1/2	2/6	3/5	4/2	5/7	6/4
TDA	2nd Wednesday	3:00 PM	1/8	2/12	3/11	4/8	5/13	6/10
Tree Committee	1st Monday	10:00 AM	1/6	2/3	3/2	4/6	5/4	6/1
Chamber of Commerce	2nd Monday	1:00 PM	1/13	2/10	3/9	4/13	5/11	6/8
Historical Society	3rd Tuesday	1:00 PM					5/19	6/16

July - December

Board	Day of Month*	Time	July	August	September	October	November	December
Town Council-regular	2nd Tuesday	3:00 PM - Closed Session; 4:00:00 PM - Public Meeting	7/14/20	8/11/20	9/8/20	10/13/20	11/10/20	12/8/20
Board of Adjustment	1st Tuesday	4:00 PM	7/7	8/4	9/1	10/6	11/3	12/1
Planning Board	Last Tuesday	9:00 AM	7/28	8/25	9/29	10/27	11/24	12/29
Recreation Committee	1st Thursday	8:30 AM	7/2	8/6	9/3	10/1	11/5	12/3
TDA	2nd Wednesday	3:00 PM	7/8	8/12	9/9	10/14	11/4/2020*	12/9
Tree Committee	1st Monday	10:00 AM	7/6	8/3	9/14/2020*	10/5	11/2	12/7
Chamber of Commerce	2nd Monday	1:00 PM	7/13	8/10	9/14	10/12	11/9	12/14
Historical Society	3rd Tuesday	1:00 PM	7/21	8/18	9/15	10/20		

* Dates highlighted in yellow indicate a change in the regular meeting date due to a scheduling conflict or due to Holidays



Budget Calendar FY:2020-2021

Date	Time	Meeting Information and Budget Schedule
December 10, 2019	4:00 p.m.	Town Council Regular Meeting - Adoption of Budget Calendar
December 16, 2019- January 10, 2020		2019-2020 FY Budget Calendar placed on town website; public input requested through published legal advertisements
January 23, 2020	8:30 a.m.	Town Council Planning Retreat
January 24, 2020	8:30 a.m.	Town Council Planning Retreat
February 10, 2020		Distribute budget information to Department Heads
February 11, 2020	4:00 p.m.	Town Council Regular Meeting
March 2-6, 2020		Town Manager and Finance Officer meet individually with Department Heads to discuss budget and receive all budget requests (<i>1st meeting</i>)
March 30, 2020		Finalize departmental budget requests with Department Heads (<i>2nd meeting</i>)
Spring 2020		Tax Administrator submits projected collection amount-
April 22, 2020	Wed. 10:00 a.m.	Town Council Meeting – Budget Workshop I - Public Presentation of the Budget
April 27, 2020		Proposed FY:2020-2021 Town Budget placed on town website and made available to the public
May 4,5,6, 2020		Town Manager and Finance Officer meet individually with Department Heads (<i>meetings as needed</i>)



Budget Calendar FY:2020-2021

Date	Time	Meeting Information and Budget Schedule
May 12, 2020	4:00 p.m.	Town Council Regular Meeting – 1 st Public Hearing on Budget
May 22, 2020	2:00 p.m.	Town Council Meeting – Budget Workshop II
June 9, 2020	4:00 p.m.	Town Council Meeting – 2 nd Public Hearing on Budget; Town Council Adopts FY 2019-2020 Budget



COUNCIL ACTION ITEM

TO: Town Council
FROM: Wendel Sauer
DATE: December 10, 2019
SUBJECT: Eligibility of Councilman Abernethy to Serve on Beech Mountain Town Council
Council

FOR THE PURPOSE OF:

OLD BUSINESS-

- *Eligibility of Councilman Abernethy to Serve on Beech Mountain Town Council
- *Consider vacancy if any

SIGNATURES:

Town Manager

Town Clerk

EGGERS, EGGERS, EGGERS, AND EGGERS, PLLC
ATTORNEYS AND COUNSELORS AT LAW

P.O. BOX 248

STACY C. EGGERS, JR. (1924–2018)
STACY C. EGGERS, III (1948–1990)
STACY C. EGGERS, IV
CHRISTOPHER C. BARNES
JONATHAN D. GREEN
JOSHUA S. COFFEY

BOONE, NORTH CAROLINA 28607

PHONE (828) 264-3601
FAX (828) 262-5229
737 WEST KING STREET

MEMORANDUM

To: Town Council, Town of Beech Mountain

From: Stacy C. Eggers, IV; Town Attorney

Re: Guidance as to the Eligibility of Councilman Abernethy to Serve on the Beech Mountain Town Council

Per Council request, this Memorandum is prepared to assist the Town Council regarding the issues raised at the November 12, 2019 Council Meeting as to Mr. Weidner Abernethy's eligibility to serve on the Beech Mountain Town Council. Attached to this Memorandum are the documents and applicable law cited below for your review and consideration.

Issue Presented

As presented by Mr. Sauer, the North Carolina Board of Elections records state that Mr. Abernethy changed his voter registration on July 26, 2019 from Watauga County to Burke County. On October 16, 2019, Mr. Abernethy went to the Burke County Board of Elections office and signed a form upon which he stated that he has moved to Watauga County on October 16, 2019 and requested that his name be removed from the Burke County election rolls. This form also included an acknowledgement that he would no longer be eligible to vote in Burke County Elections. The issue presented is whether Mr. Abernethy remains eligible to serve as a member of the Town Council.

Applicable Law

Under North Carolina law, an individual may only have one place of residence at a time. G.S. §163A-1586 states: "The rules for determining residency within a municipality shall be the same as prescribed in G.S. §163A-842 for determining county residency. No person shall be entitled to reside in more

than one city or town at the same time.” Therefore, Mr. Abernethy’s residence can either be in Burke County or Watauga County, but it cannot be both.

Article VI, Section 8 of the North Carolina State Constitution addresses disqualification for office. “The following persons shall be disqualified for office: ... Second, with respect to any office that is filled by election by the people, any person who is not qualified to vote in an election for that office...” The general statutes apply this Constitutional provision to local governments through G.S. §160A-59: “All city officers elected by the people shall possess the qualifications set out in Article VI of the Constitution.... When any elected city officer ceases to meet all of the qualifications for holding office pursuant to the Constitution ... the office is *ipso facto* vacant.”

Based upon the above stated facts, Mr. Abernethy became ineligible to serve on the Beech Mountain Town Council upon his registering to vote in Burke County on July 26, 2019. The question then becomes whether Mr. Abernethy’s re-registration in Watauga County operates to “cure” this ineligibility. Under the language of G.S. §160A-59 and the applicable case law, this ineligibility cannot be cured.

The reasoning behind this is the phrase “*ipso facto* vacant.” G.S. §160A-59. *Ipso facto* is a Latin phrase meaning “by that very fact or act.” Therefore, the failure to maintain his voter registration in Watauga County results in the office of Councilman being vacant “by that very fact or act.”

The North Carolina Supreme Court addressed a similar issue in an Advisory Opinion in 1946. In this opinion, the Governor of North Carolina requested the Supreme Court to advise whether Judge F. Donald Phillips could return to work as a Judge if he was appointed by the War Department as a war crimes judge in Germany. The Governor proposed a leave of absence to Judge Phillips from his State Court duties to take this position and return the following year. The North Carolina Supreme Court stated that he could not do so, and by taking another appointment it would operate *ipso facto* to result in his office being vacant. *In re Phillips*, 226 N.C. 772 (1946).

A similar result was reached by the Supreme Court in the case of *Whitehead v. Pittman*, 165 N.C. 89 (1914). In that case, Mr. Pittman was elected to the office of “cotton weigher” for the Town of Enfield. The Court held that by becoming elected to the office of Superintendant of Public Schools for Halifax County his previous office was ‘*ipso facto* vacant.’ While these two cases do not address the disqualification prong of being eligible to vote for the position held, they do address a co-equal ground of disqualification under the State Constitution and provide guidance on the language related to an office being ‘*ipso facto* vacant.’ Essentially, by registering to vote in Burke County, Mr. Abernethy was no

longer eligible to serve on the Beech Mountain Town Council and that act operates as a matter of law to make his seat vacant.

Conclusion

Due to Mr. Abernethy's registration to vote in Burke County on July 26, 2019, Mr. Abernethy was not eligible to serve on the Beech Mountain Town Council until his re-registration in Watauga County on October 16, 2019. Pursuant to G.S. §160A-59, the office became vacant at that time and the subsequent re-registration would not act to cure that vacancy.

Impact on Council Decisions

For official actions of the Town Council taken during this period, it is arguable that they are void if predicated on Mr. Abernethy's vote for approval. Speaking plainly, if Mr. Abernethy were the deciding vote on a matter before the Council during this period of in-eligibility, the action would not be officially approved. I have reviewed the minutes of the Town Council meetings from July 2019, and there was not a matter in which Mr. Abernethy was the deciding vote for an approval during this time. This means the Council would not need to revisit any of its past decisions. However, if Mr. Abernethy remains on the Council going forward it could jeopardize the legitimacy of any action where he is the deciding vote.

Next Steps

Prior to distribution of this memorandum to Council, I have provided Mr. Abernethy with a copy of this analysis for his review. If Mr. Abernethy chooses to resign his seat on the Town Council, that vacancy would be filled by a majority vote of the remaining members of the Town Council.

If Mr. Abernethy disagrees with this analysis and wishes to dispute this conclusion, the matter would be before the Town Council to hold a hearing and determine his eligibility to continue to hold office. §30.60 of the Town of Beech Mountain Ordinances sets forth the procedure for determining qualifications for office: "Upon the motion of any member, the Council shall determine the qualifications of any member. An office may be declared vacant by a majority vote of the Council membership if the member fails to meet any of the statutory or constitutional requirements of office."

If such a hearing is necessary, I would recommend that it be included as an agenda item with notice given to both Mr. Abernethy and the general public. At this hearing, Mr. Abernethy would be entitled to present information, participate in deliberations, and vote on the determinations of his qualifications. He would also be entitled to have legal representation present his position on his behalf if he chooses to do so. The determination as to

whether Mr. Abernethy meets the requirements to serve on the Town Council would ultimately be a decision for the Town Council to make.

Eligibility for Re-Appointment

I would note that even if Mr. Abernethy were to resign or be found to have become ineligible to serve during this period, he may be eligible for re-appointment once the vacancy has been created. On October 16, 2019, Mr. Abernethy's re-registration in Watauga County expressed his intent that his residence is now Beech Mountain. Residency is a facts and circumstances test, which includes (but is not fully determined by) the voter's expressed intention as to where they intend to reside.

Mr. Sauer pointed out in his statement that Mr. Abernethy signed a Deed of Trust on April 15, 2019, which is recorded in the Burke County Register of Deeds in Book 2398 at Page 35. In this document signed by Mr. Abernethy and duly notarized, it states: "**6. Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence [1925 Lake Acres Drive, Hickory, NC] within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control." (*bold in original, address inserted*).

This document would be some evidence that Mr. Abernethy's residence is 1925 Lake Acres Drive, Hickory, NC in Burke County. Factors which would need to be considered in determining Mr. Abernethy's residency would include: statements by Mr. Abernethy as to his residency, signed documents evidencing which is his primary residence, the number of nights he spends at each location, where his mail is sent, the address on his driver's license, the title to the respective tracts of real estate, where one's spouse resides, the location of any pets, and any other factor which the Council deems relevant to determining residency. I would note that it is a legal principal that someone who signs a document is bound by the terms contained in that document, and that it is not a legal defense for one to simply state they did not read the document prior to signing it. Ultimately, however, it is the totality of the circumstances which would need to be considered in determining residency.

This decision and process is separate from a voter registration challenge filed with the Board of Elections. As this involves the eligibility to serve on the Town Council, G.S. §160A-59 and Beech Mountain Code of Ordinances §30.60 place this determination with the Town Council.

If the Board finds that Mr. Abernethy has re-established his residency on Beech Mountain and wishes to appoint him to fill the remainder of his term,

best practices would recommend that he obtain the written consent from his Lender as referenced in Paragraph Six of his Deed of Trust and provide the Council with a copy of that document. This would help avoid potential challenges to the legitimacy of a 3-2 decision by the Town Council in which Mr. Abernethy is the deciding vote.

I hope the information contained in this Memorandum is helpful to you. If you have any questions or concerns, please do not hesitate to contact me. Thank you for your service to the Town of Beech Mountain.

NC CONSTITUTION

ARTICLE VI

Sec. 6. Eligibility to elective office.

Every qualified voter in North Carolina who is 21 years of age, except as in this Constitution disqualified, shall be eligible for election by the people to office.

Sec. 7. Oath.

Before entering upon the duties of an office, a person elected or appointed to the office shall take and subscribe the following oath:

"I, _____, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as _____, so help me God."

Sec. 8. Disqualifications for office.

The following persons shall be disqualified for office:

First, any person who shall deny the being of Almighty God.

Second, with respect to any office that is filled by election by the people, any person who is not qualified to vote in an election for that office.

Third, any person who has been adjudged guilty of treason or any other felony against this State or the United States, or any person who has been adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, or any person who has been adjudged guilty of corruption or malpractice in any office, or any person who has been removed by impeachment from any office, and who has not been restored to the rights of citizenship in the manner prescribed by law.

West's North Carolina General Statutes Annotated
Chapter 160A. Cities and Towns
Article 5. Form of Government
Part 1. General Provisions

N.C.G.S.A. § 160A-59

§ 160A-59. Qualifications for elective office

Currentness

All city officers elected by the people shall possess the qualifications set out in Article VI of the Constitution. In addition, when the city is divided into electoral districts for the purpose of electing members of the council, council members shall reside in the district they represent. When any elected city officer ceases to meet all of the qualifications for holding office pursuant to the Constitution, or when a council member ceases to reside in an electoral district that he was elected to represent, the office is ipso facto vacant.

Credits

Added by Laws 1973, c. 609.

N.C.G.S.A. § 160A-59, NC ST § 160A-59

The statutes and Constitution are current through S.L. 2018-145 of the 2018 Regular and Extra Sessions, including through 2019-163, of the General Assembly, subject to changes made pursuant to the direction of the Revisor of Statutes.

End of Document

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West's North Carolina General Statutes Annotated
Chapter 163A. Elections and Ethics Enforcement Act
Subchapter III. Election and Election Laws
Article 27. Municipal Elections
Part 1. Municipal Election Procedure

N.C.G.S.A. § 163A-1586
Formerly cited as § 163-282

§ 163A-1586. Residency defined for voting in municipal elections

Effective: May 1, 2017
Currentness

The rules for determining residency within a municipality shall be the same as prescribed in G.S. 163A-842 for determining county residency. No person shall be entitled to reside in more than one city or town at the same time.

Credits

Added by Laws 1971, c. 835, § 1. Recodified from § 163-282 by S.L. 2017-6, § 3, eff. May 1, 2017.

N.C.G.S.A. § 163A-1586, NC ST § 163A-1586

The statutes and Constitution are current through S.L. 2018-145 of the 2018 Regular and Extra Sessions, including through 2019-163, of the General Assembly, subject to changes made pursuant to the direction of the Revisor of Statutes.

End of Document

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226 N.C. 772
Supreme Court of North Carolina.

In re ADVISORY OPINION.
In re PHILLIPS, Judge.

Sept. 13, 1946

Synopsis

Proceeding in the matter of the request of R. Gregg Cherry, Governor of North Carolina, for an advisory opinion of the Supreme Court as to whether the acceptance of F. Donald Phillips, judge of the superior court of the Thirteenth judicial district, during a leave of absence granted by the Governor, of an appointment by the War Department as one of the presiding judges at a United States Zonal Court in Germany for the trial of war criminals would create a vacancy in the office of judge of the superior court.

Question answered in the affirmative.

Opinion

****217 *772** On 3 September, 1946, the following communication was received from His Excellency, R. Gregg Cherry, Governor of the State of North Carolina:

Honorable W. P. Stacy
Chief Justice

Honorable Michael Schenck

Honorable W. A. Devin

Honorable M. V. Barnhill

Honorable J. Wallace Winborne

Honorable A. A. F. Seawell

Honorable E. B. Denny
Associate Justices

Raleigh, North Carolina

My dear Sirs:

Honorable Robert P. Patterson, Secretary of War, has requested Honorable F. Donald Phillips, Judge of the Superior Court of the Thirteenth Judicial District, to accept an appointment by the War Department as one of the presiding judges of the military courts set up by the War Department, under a directive of the War Department, for the trial of war criminals exclusively in the American zone of occupation in Germany. I am attaching here-with a copy of a letter to me from the Secretary of War.

****218 *773** Judge Phillips has requested leave of absence as Judge of the Superior Court of the Thirteenth Judicial District, without pay, for a period of one year or for less than one year, if the present national emergency declared by Congress is terminated before the end of such year. Such leave of absence is requested by Judge Phillips under the provisions of G.S. s

128-39, and is asked for on the condition that such leave of absence could be granted by me under the terms of the statute, G.S. s 128-39. The leave of absence requested by Judge Phillips would not be desired by him if the acceptance of the appointment of the War Department, as a presiding judge of the military court referred to, would result in and be regarded as a resignation by Judge Phillips of his office as a Judge of the Superior Court.

I would not wish to grant the leave of absence if the granting of same and acceptance of such position by Judge Phillips would result in vacating his office as Judge of the Superior Court, and I would not wish to grant the said leave of absence unless, under authority of the statute G.S. s 128-39, during the period of the leave of absence, I would have the authority to appoint a person to act as Judge of the Superior Court in the place and stead of Judge Phillips, with all his authority, duties, perquisites, and emoluments during the continuation of the leave of absence.

I have received a letter from Honorable Harry McMullan, Attorney General, under date of 26 August 1946, which is hereto attached, in which it is stated that doubt exists as to whether or not such a leave of absence could be granted under these circumstances without causing Judge Phillips to vacate his office as Judge of the Superior Court.

In view of the fact that in the event such a leave of absence is granted, grave questions of public concern would arise affecting the validity of the judicial acts which might be performed by any person appointed by me as the Acting Judge of the Superior Court during the leave of the Superior Court during the leave of absence, as well as the status of Judge Phillips resulting from the acceptance of such appointment, in the public interest I desire to herewith request the opinion of the Chief Justice and Associate Justices of the Supreme Court of North Carolina, specifically covering the following questions:

1) In view of the provisions of Section 11 of Article IV of the State Constitution, that every Judge of the Superior Court shall reside in the district for which he is elected and the other provisions of said section, would I, as Governor of North Carolina, under authority of the statute G.S. s 128-39, have the power and authority to grant a leave of absence to Honorable F. Donald Phillips, Judge of the Superior Court, for a period of one year for the purpose of acting as one of the presiding judges of the military courts of the United States Army set up by the War Department in the American occupied zone of Germany?

*774 2) If such leave of absence may be granted and it is found necessary to appoint some other person to perform the duties of Honorable F. Donald Phillips, Judge of the Superior Court, during the term of such leave, could such person so appointed serve without regard to the residence or district in which such person resides, as provided in G.S. s 128-39?

3) Would such person so appointed have all the authority, duties, perquisites and emoluments of a Judge of the Superior Court, regularly nominated in the Thirteenth Judicial District and elected by the people of the State of North Carolina to the office of Superior Court Judge?

4) Would acceptance by Judge F. Donald Phillips of the position tendered him by the War Department, as a presiding judge of the military courts set up by the War Department for the trial of war criminals exclusively in Germany for a term of not exceeding one year, amount to a resignation by Judge Phillips of his position as a Judge of the Superior Court, or would said Judge have a right, upon the termination of said leave of absence, to **219 resume the performance of his duties as such Judge of the Superior Court and serve therein to the end of his existing term?

Respectfully submitted.

RGC: mw R. Gregg Cherry, Governor

26 August 1946

Honorable R. Gregg Cherry

Governor of North Carolina

Raleigh, North Carolina

Dear Governor Cherry:

Honorable F. Donald Phillips, Judge of the Superior Court of the Thirteenth Judicial District, has been requested by the War Department of the United States to act as one of the presiding judges of the military courts set up by the War Department, under a War Department Directive, for the trial of war criminals exclusively in the American zone of occupation in Germany. I am informed that the Secretary of War, Honorable Robert P. Patterson, is communicating with you with reference to this matter and furnishing you with the information above recited.

Judge Phillips has consulted with me and requested my opinion as to whether or not a leave of absence can be granted to him under the provisions of G.S. s 128-39, in the event such would have your approval, to serve in the capacity which he has been requested by the War Department, without salary during the period of his leave of absence, such leave *775 of absence to be granted for a period of one year, to be terminated upon the termination of the present national emergency. Judge Phillips desires to know, if leave of absence is granted to him and he should accept the appointment tendered him by the War Department, such an acceptance would result in terminating his office as Judge of the Superior Court, or whether he could continue to hold said office while on leave of absence and resume his duties as Judge of the Superior Court upon the termination of the leave.

My information from the War Department is that the position to be filled by Judge Phillips while serving in the military service of the United States is created by directives of the War Department for military purposes incident to the trial of war criminals in the American occupied zones of Germany.

The question presented by Judge Phillips, in its exact character, has never been presented to our Supreme Court. In the advisory opinion of the Chief Justice and Associate Justices of the Supreme Court of North Carolina, In re Yelton, 223 N.C. 845, 28 S.E.2d 567, the Governor was advised that under Chapter 121 of the Public Laws of 1941 (G.S. s 128-39), a leave of absence could be granted to Captain Yelton to accept a temporary officer's commission in the United States Army or Navy without perforce vacating his civil office and without a violation of the provisions of the North Carolina Constitution, Article XIV, Section 7. While the question presented in that advisory opinion is very similar to the question presented in this matter, there remains some differences due to the fact that the appointment of Captain Yelton was as an officer in the United States Army while actual hostilities were in progress.

While in my opinion the leave of absence may be properly granted and while the acceptance of this position on the part of Judge Phillips would not vacate his office as Superior Court Judge, yet there being no direct authority in this State on the question and a variety of authority in other states, I believe it is very important that the question should be set at rest by an advisory opinion of the Chief Justice and Associate Justices of the Supreme Court of North Carolina, which they will doubtless render at your request. This question is important to Judge Phillips but also important to the public, as it will be necessary to know whether or not any person who may be appointed to fill the vacancy while he is on leave of absence, under authority of G.S. s 128-39, would in all respects be authorized and empowered to act as the Judge of the Superior Court.

****220** HM: w Harry McMullan, Attorney General

***776** War Department Washington

31 Aug. 1946

Honorable R. Gregg Cherry

Governor of North Carolina

Raleigh, North Carolina

Dear Governor Cherry:

It is contemplated that the Honorable F. Donald Phillips, Judge of Superior Court of North Carolina, Western Division, Thirteenth District, will be appointed as a Judge to sit in Germany as a member of a U. S. Zonal Court that will try Nazi war criminals. Judge Phillips has been interviewed and he is willing to accept such an appointment if the necessary leave of absence can be obtained from his present position.

If you approve, it is requested that he be given a leave of absence from the Superior Court of North Carolina, in order to make him available for the overseas appointment. These war crimes trials are it is estimated they will continue for approximately one year. Sincerely yours,

Kenneth Royall,

Acting Secretary of War

The following response was made by the Chief Justice and Associate Justices of the Supreme Court on 13 September, 1946:

Raleigh, N. C., 13 September, 1946 To His Excellency, R. Gregg Cherry, Governor of North Carolina:

ADVISORY OPINION IN RE F. DONALD

PHILLIPS

Your request for an advisory opinion in the matter of a leave of absence for Judge F. Donald Phillips under the provisions of G.S. s 128-39, poses four separate questions. It is stated, however, that the leave of absence requested by Judge Phillips would not be desired by him, nor would you wish to grant it, if the contemplated arrangement should work a vacancy in the judgeship of the Thirteenth Judicial District. The principal inquiry, then, which lies at the threshold of the matter, is whether Judge Phillips would vacate his present office, if, during his absence, he should accept appointment as Judge of a United *777 States Zonal Court in Germany. The remaining interrogatories are predicated on a negative answer to this central question.

No doubt it has been thought, and with good reason, that, in principle, some of the questions submitted were under consideration at the time of the advisory opinion in Matter of Yelton, reported in 223 N.C. 845, 28 S.E.2d 567. Even so, the Attorney General is correct in advising that the constitutional matters here raised are in excess of the questions presented on that occasion. There, the position accepted by the civilian officer during his absence was a 'temporary captaincy in the army during the war emergency', which, it was thought, was not different in character from those held by 'officers in the militia,' who are eo nomine excepted from the operation of the section of the Constitution inhibiting double officeholding. Here, the office which Judge Phillips proposes to accept, during his absence, apparently carries with it some of the attributes of sovereignty, and, if so, it would perforce invest him with governmental authority. Wootton v. Smith, 145 N.C. 476, 59 S.E. 649; Barnhill v. Thompson, 122 N.C. 493, 29 S.E. 720. He would then be holding an office or place of trust or profit under the United States, or a department thereof. United States v. Mouat, 124 U.S. 303, 8 S.Ct. 505, 31 L. Ed. 463; United States v. Germaine, 99 U.S. 508, 25 L.Ed. 482; Grove v. Barden, 169 N.C. 8, 84 S.E. 1042, L.R.A.1917A, 288, Ann.Cas.1917D, 316. 'An office is a [public station, or employment, conferred by appointment of government. The term embraces the idea of tenure, duration, emolument, and duties.' United States v. Hartwell, 73 U.S. 385, 18 L.Ed. 830; Eliason v. Coleman, 86 N.C. 235, 236; Clark v. Stanley, 66 N.C. 59, 8 Am.Rep. 488. While Judge Phillips has requested a leave of absence 'for a period of one year or for less than one year, if the **221 present national emergency declared by Congress is terminated before the end of such year,' it will be noted the Zonal Court over which he would preside is not so limited. Moreover, compliance with the provisions of Art. IV, sec. 11, of the Constitution in the appointment of a substitute would also present a serious problem, if that question were reached.

In re Advisory Opinion, 226 N.C. 772 (1946)

39 S.E.2d 217

One who holds an office or place of trust under authority of this State forfeits such office or place of trust when he accepts another office or place of trust which is forbidden by the Constitution or is incompatible with the office or place of trust already held. The acceptance of the second forbidden or incompatible office or place of trust, operates ipso facto to vacate the first. *Barnhill v. Thompson*, supra; *Whitehead v. Pittman*, 165 N.C. 89, 80 S.E. 976; *In re Martin*, 60 N.C. 153; Anno. 53 A.L.R. 595.

The Constitution, Art. XIV, sec. 7, provides: 'No person who shall hold any office or place of trust or profit under the United States, or any department thereof, or under this State, or under any other state or government, shall hold or exercise any other office or place of trust or *778 profit under the authority of this State, or be eligible to a seat in either House of the General Assembly: Provided, that nothing herein contained shall extend to officers in the militia, [notaries public], justices of the peace, commissioners of public charities, or commissioners for special purposes.'

Under this section, which is intended and designed to prevent or inhibit double office-holding, except in certain instances, it is not permissible for one person to hold two offices at the same time. *Groves v. Barden*, supra; *Harris v. Watson*, 201 N.C. 661, 161 S.E. 215, 79 A.L.R. 441; *Brigman v. Baley*, 213 N.C. 119, 195 S.E. 617; *In re Barnes*, 212 N.C. 735, 194 S.E. 499. 'The manifest intent is to prevent double office-holding—that offices and places of trust should not accumulate in a single person.' *Smith, C. J.*, in *Doyle v. Aldermen of Raleigh*, 89 N.C. 133, 45 Am.Rep. 677. See *McIntosh on Procedure*, 1089 et seq.

Accordingly, you are advised that the pivotal question above stated is regarded as involved in too much doubt to warrant a negative response or one favorable to the purposes indicated or contemplated.

Respectfully submitted,

WALTER P. STACY

Chief Justice

MICHAEL SCHENCK

WILLIAM A. DEVIN

M. V. BARNHILL

J. WALLACE WINBORNE

A. A. F. SEAWELL

EMERY B. DENNY

Associate Justices

All Citations

226 N.C. 772, 39 S.E.2d 217

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165 N.C. 89
Supreme Court of North Carolina.

WHITEHEAD

v.

PITTMAN.

Feb. 25, 1914.

Synopsis

Appeal from Superior Court, Halifax County; Peebles, Judge.

Action by W. T. Whitehead against F. C. Pittman. From a judgment for plaintiff, defendant appeals. Affirmed.

Attorneys and Law Firms

*976 George C. Green, of Weldon, for appellant.

W. E. Daniel, of Weldon, for appellee.

Opinion

CLARK, C. J.

This is an action to oust the defendant from the office of cotton weigher of the town of Enfield. In August, 1913, the board of commissioners of Enfield was composed of four members, besides A. S. Harrison, who had been elected commissioner with the others in May, 1913. But in June, 1913, he had been elected and qualified as superintendent of public instruction for Halifax county, and was acting as such in August, 1913.

In August, 1913, the board of commissioners of Enfield balloted for the position of cotton weigher of said town. The plaintiff, Whitehead, received the votes of only two commissioners, besides the vote of A. S. Harrison. The defendant, Pittman, who was the incumbent, received one vote, and one vote was given for another party. The statutory number of the board of commissioners was seven.

The judge finds as a fact that Harrison resigned, and his resignation was accepted. But, even if he had not, his acceptance of the position of county superintendent of public instruction eo instante vacated his position on the board of trustees. *Midgett v. Gray*, 159 N. C. 443, 74 S. E. 1050; *Barnhill v. Thompson*, 122 N. C. 493, 29 S. E. 720. There were therefore only two votes cast for the plaintiff out of the four legal votes cast, and he was not elected.

The Constitution, art. 14, § 7, provides: "No person, who shall hold any office, or place of trust or profit under the United States, or any department thereof, or under this state, or under any other state or government, shall hold or exercise any other office, or place of trust or profit under the authority of this state, or be eligible to a seat in either House of the General Assembly: Provided, that nothing herein contained shall extend to officers in the militia, justices of the peace, commissioners of public charities, or commissioners for special purposes."

In *State v. Smith*, 145 N. C. 476, 59 S. E. 649, it is said that in the purview of this section it is immaterial whether one of the positions, or both, are "offices" or "places of trust or profit."

In *Barnhill v. Thompson*, 122 N. C. 493, 29 S. E. 720, it is held: "The acceptance of a second office by one already holding a public office operates ipso facto to vacate the first. While the officer has a right to elect which * * * he will retain, his election is

Whitehead v. Pittman, 165 N.C. 89 (1914)

80 S.E. 976

deemed to be made when he accepts and qualifies for the second." The acceptance of the second office is of itself a resignation of the first. In this case the court finds as facts, not only that Harrison accepted the second office, and was exercising its duties, but also that he had sent in his resignation as a commissioner, and the same had been accepted.

This is not the case of one holding an office under color of title, and therefore a de facto officer whose acts are valid (*Norfleet v. Staton*, 73 N. C. 551, 21 Am. Rep. 479), for Harrison's acceptance of the second office, and his resignation, and either of these acts, was a vacation of the first office, and he was hence no longer commissioner either de facto or de jure. He was a mere usurper whose acts were utterly void. *Van Amringe v. Taylor*, 108 N. C. 201, 12 S. E. 1005, 12 L. R. A. 202, 23 Am. St. Rep. 51, and cases there cited.

Neither is this the case of a de facto officer, whose acts are held valid as to third parties and the public, from exercising the functions of his office for a "considerable length of time," as in *Hughes v. Long*, 119 N. C. 52, 25 S. E. 743, where it was held that the probate of a de facto clerk was valid. Nor is it the case of a de facto officer under a questionable election or appointment whose acts are held valid until his title is decided in an action for that purpose. *Norfleet v. Staton*, supra. But here Harrison was a mere usurper, having vacated his office as commissioner, both by resignation duly accepted, and by accepting another office, and exercising its duties, which was notice to the public that he was not a de facto town commissioner, though he continued to act.

The court properly adjudged that the plaintiff was not entitled to the office of cotton weigher.

Affirmed.

WALKER, J., concurs in result only.

All Citations

165 N.C. 89, 80 S.E. 976

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§ 30.44 MOTION TO TERMINATE DEBATE.

A motion to call the previous question is a motion to cut off debate on a matter under consideration and put the matter to a vote. This motion shall be in order at any time, but unless each Council member present has had an opportunity to speak at least once on the issue, the motion requires a two-thirds vote for adoption. This motion is not debatable and may not be amended.

(1989 Code, Title II, Ch. 22, § 6-26) (Ord. passed 2-9-1982; Ord. passed 4-12-1983; Ord. passed 10-9-1990)

§ 30.45 MISCELLANEOUS MOTIONS.

In addition to others authorized by this chapter, the following motions shall be in order:

(A) Divide a complex question and consider it by paragraph;

(B) Suspend the rules. This motion shall require a two-thirds vote for adoption;

(C) Take a recess; and

(D) Adjourn. This motion may not be amended.

(1989 Code, Title II, Ch. 22, § 6-27) (Ord. passed 2-9-1982; Ord. passed 4-12-1983; Ord. passed 10-9-1990)

MISCELLANEOUS PROVISIONS

§ 30.60 QUALIFICATIONS FOR OFFICE.

Upon the motion of any member, the Council shall determine the qualifications of any member. An office may be declared vacant by a majority vote of the Council membership if the member fails to meet any of the statutory or constitutional requirements of office.

(1989 Code, Title II, Ch. 22, § 6-31) (Ord. passed 2-9-1982; Ord. passed 4-12-1983; Ord. passed 10-9-1990)

West's North Carolina General Statutes Annotated
Chapter 163A. Elections and Ethics Enforcement Act
Subchapter III. Election and Election Laws
Article 17. Qualifying to Vote
Part 1. Qualifications of Voters

N.C.G.S.A. § 163A-842
Formerly cited as § 163-57

§ 163A-842. Residence defined for registration and voting

Effective: May 1, 2017
Currentness

All election officials in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may apply:

- (1) That place shall be considered the residence of a person in which that person's habitation is fixed, and to which, whenever that person is absent, that person has the intention of returning [, subject to the following:].
 - a. In the event that a person's habitation is divided by a State, county, municipal, precinct, ward, or other election district, then the location of the bedroom or usual sleeping area for that person with respect to the location of the boundary line at issue shall be controlling as the residency of that person.
 - b. If the person disputes the determination of residency, the person may request a hearing before the county board of elections making the determination of residency. The procedures for notice of hearing and the conduct of the hearing shall be as provided in G.S. 163A-912. The presentation of an accurate and current determination of a person's residence and the boundary line at issue by map or other means available shall constitute prima facie evidence of the geographic location of the residence of that person.
 - c. In the event that a person's residence is not a traditional residence associated with real property, then the location of the usual sleeping area for that person shall be controlling as to the residency of that person. Residence shall be broadly construed to provide all persons with the opportunity to register and to vote, including stating a mailing address different from residence address.
- (2) A person shall not be considered to have lost that person's residence if that person leaves home and goes into another state, county, municipality, precinct, ward, or other election district of this State, for temporary purposes only, with the intention of returning.
- (3) A person shall not be considered to have gained a residence in any county, municipality, precinct, ward, or other election district of this State, into which that person comes for temporary purposes only, without the intention of making that county, municipality, precinct, ward, or other election district a permanent place of abode.

- (4) If a person removes to another state or county, municipality, precinct, ward, or other election district within this State, with the intention of making that state, county, municipality, precinct, ward, or other election district a permanent residence, that person shall be considered to have lost residence in the state, county, municipality, precinct, ward, or other election district from which that person has removed.
- (5) If a person removes to another state or county, municipality, precinct, ward, or other election district within this State, with the intention of remaining there an indefinite time and making that state, county, municipality, precinct, ward, or other election district that person's place of residence, that person shall be considered to have lost that person's place of residence in this State, county, municipality, precinct, ward, or other election district from which that person has removed, notwithstanding that person may entertain an intention to return at some future time.
- (6) If a person goes into another state, county, municipality, precinct, ward, or other election district, or into the District of Columbia, and while there exercises the right of a citizen by voting in an election, that person shall be considered to have lost residence in that State, county, municipality, precinct, ward, or other election district from which that person removed.
- (7) School teachers who remove to a county, municipality, precinct, ward, or other election district in this State for the purpose of teaching in the schools of that county temporarily and with the intention or expectation of returning during vacation periods to live where their parents or other relatives reside in this State and who do not have the intention of becoming residents of the county, municipality, precinct, ward, or other election district to which they have moved to teach, for purposes of registration and voting shall be considered residents of the county, municipality, precinct, ward, or other election district in which their parents or other relatives reside.
- (8) If a person removes to the District of Columbia or other federal territory to engage in the government service, that person shall not be considered to have lost residence in this State during the period of such service unless that person votes in the place to which the person removed, and the place at which that person resided at the time of that person's removal shall be considered and held to be the place of residence.
- (9) If a person removes to a county, municipality, precinct, ward, or other election district to engage in the service of the State government, that person shall not be considered to have lost residence in the county, municipality, precinct, ward, or other election district from which that person removed, unless that person votes in the place to which the person removed, and the place at which that person resided at the time of that person's removal shall be considered and held to be the place of residence.
- (10) The establishment of a secondary residence by an elected official outside the district of the elected official shall not constitute prima facie evidence of a change of residence.
- (11) For the purpose of voting a spouse shall be eligible to establish a separate domicile.
- (12) So long as a student intends to make the student's home in the community where the student is physically present for the purpose of attending school while the student is attending school and has no intent to return to the student's former home after graduation, the student may claim the college community as the student's domicile. The student need not

§ 163A-842. Residence defined for registration and voting, NC ST § 163A-842

also intend to stay in the college community beyond graduation in order to establish domicile there. This subdivision is intended to codify the case law.

Credits

Added by Laws 1967, c. 775, § 1. Amended by Laws 1981, c. 184; Laws 1991, c. 727, § 5.1; Laws 1993 (Reg. Sess., 1994), c. 762, § 22, eff. Jan. 1, 1995; S.L. 2001-316, § 1, eff. July 28, 2001; S.L. 2005-428, § 3(b), eff. Jan. 1, 2006; S.L. 2006-262, § 2.1, eff. Aug. 27, 2006. Recodified from § 163-57 by S.L. 2017-6, § 3, eff. May 1, 2017.

N.C.G.S.A. § 163A-842, NC ST § 163A-842

The statutes and Constitution are current through S.L. 2018-145 of the 2018 Regular and Extra Sessions, including through 2019-163, of the General Assembly, subject to changes made pursuant to the direction of the Revisor of Statutes.

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Stephanie A. Norman
Burke County, NC
04/15/2019 at 01:45:00 PM
Book 2398 Page 35 (10)
FEE: \$64.00

INSTRUMENT # 2017026755



INSTRUMENT # 2017026755

[Space Above This Line For Recording Data]

DEED OF TRUST

When recorded, return to: DAVID L. ISENHOWER, Attorney at Law, Conover, NC
Peoples Bank
Attn: Mortgage Loan Department
518 West C St
Newton, NC 28658

This document was prepared by: Patricia Robledo
Peoples Bank
518 West C St
Newton, NC 28658

LOAN #: 320358747

MIN 1008396-0000016176-2

MERS PHONE #: 1-888-679-6377

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated April 15, 2019, together with all Riders to this document.

(B) "Borrower" is JAMES WEIDNER ABERNETHY, A MARRIED MAN, AND TRACY H ABERNETHY, A MARRIED WOMAN, JOINT TENANTS.

Borrower is the trustor under this Security Instrument.

(C) "Lender" is Peoples Bank.

Lender is a Corporation,
North Carolina,
467, Newton, NC 28658.

organized and existing under the laws of
Lender's address is 518 West C Street, P.O. Box

(D) "Trustee" is Tim Turner.

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

NORTH CAROLINA—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3034 1/01
Ellie Mae, Inc.

Page 1 of 9

NCEDEED 0315
NCEDEED (CLS)
04/11/2019 09:41 AM PST



LOAN #: 320358747

(F) "Note" means the promissory note signed by Borrower and dated April 15, 2019. The Note states that Borrower owes Lender **THREE HUNDRED TWENTY SEVEN THOUSAND TWO HUNDRED FIFTY AND NO/100** ***** Dollars (U.S. **\$327,250.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **May 1, 2049**.

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

- | | | |
|--|---|---|
| ☐ Adjustable Rate Rider | ☐ Condominium Rider | ☐ Second Home Rider |
| ☐ Balloon Rider | ☐ Planned Unit Development Rider | ☐ Other(s) [specify] |
| ☐ 1-4 Family Rider | ☐ Biweekly Payment Rider | |
| ☐ V.A. Rider | | |

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (12 C.F.R. Part 1024), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee and Trustee's successors and assigns, in trust, with power of sale, the following described property located in the **County** [Type of Recording Jurisdiction] of **Burke**

[Name of Recording Jurisdiction]:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS "EXHIBIT A".

which currently has the address of **1925 Lake Acres Dr, Hickory,**

[Street] [City]

North Carolina **28601**

("Property Address"):

[Zip Code]

TO HAVE AND TO HOLD this property unto Trustee and Trustee's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS



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holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. If Borrower has breached any covenant or agreement in this Security Instrument and Lender has accelerated the obligations of Borrower hereunder pursuant to Section 22 then Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.



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The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.



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If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all Insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve, if permitted under Applicable Law, in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve, if permitted under Applicable Law. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, if permitted under Applicable Law, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.



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Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for mortgage insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security



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Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured



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hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, and if it is determined in a hearing held in accordance with Applicable Law that Trustee can proceed to sale, Trustee shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as Applicable Law may require. After the time required by Applicable Law and after publication of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, Trustee's fees of 5.00 % of the gross sale price; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to



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it. The interest rate set forth in the Note shall apply whether before or after any judgment on the indebtedness evidenced by the Note.

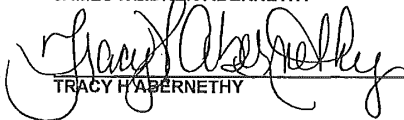
23. Release. Upon payment of all sums secured by this Security Instrument, Lender or Trustee shall cancel this Security Instrument. If Trustee is requested to release this Security Instrument, all notes evidencing debt secured by this Security Instrument shall be surrendered to Trustee. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Security Instrument is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Attorneys' Fees. Attorneys' fees must be reasonable.

BY SIGNING UNDER SEAL BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

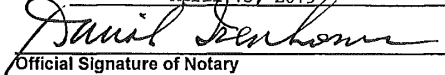

JAMES WEIDNER ABERNETHY 4/15/2019 (Seal)
DATE


TRACY H ABERNETHY 4/15/2019 (Seal)
DATE

STATE of NORTH CAROLINA }
COUNTY of CATAWBA } SS:
}

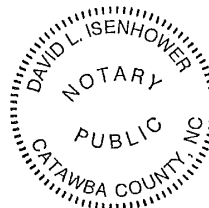
I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document: JAMES WEIDNER ABERNETHY AND TRACY H ABERNETHY.

Date: April 15, 2019 (Official Seal)


Official Signature of Notary

David L. Isenhower
Notary's printed or typed name, Notary Public

My commission expires: 1/10/2022



Lender: Peoples Bank
NMLS ID: 403493
Loan Originator: Angela Eva Palmer
NMLS ID: 788556



"EXHIBIT A"

BEGINNING at an iron pin, said iron pin being located in the northern margin of a 50-foot street, and said iron pin being a southeastern corner of L-2, and running with the line of L-2, North 24° 34' 15" East 389.34 feet to an iron pin located in the margin of the Catawba River; thence with the Catawba River, North 82° 45' 02" East 4.41 feet to an iron pin; thence South 17° 50' 11" East 32.38 feet to an iron pin; thence South 71° 55' 46" East 63.39 feet to an iron pin; thence with the line of L-4, South 24° 21' 07" West 375.22 feet to an iron pin located in the northern margin of a 50-foot street; thence with the northern margin of the 50-foot street, North 65° 15' West 90.00 feet to an iron pin, being the point of BEGINNING, and being L-3, 0.767 acres, more or less.

This description taken from a map entitled, "Property of Robert Canterbury and wife, Belinda Canterbury", Icard Township, Burke County, North Carolina, made by Dolphus E. Harmon, Registered Land Surveyor, and dated August 5, 1991.

This conveyance is made subject to those Covenants of Lake Acres Development, as recorded in Book 783 at Page 434 of the Burke County Registry.

Coates' Canons Blog: Residency Changes by Elected Officials

By Robert Joyce

Article: <https://canons.sog.unc.edu/residency-changes-by-elected-officials/>

This entry was posted on December 07, 2010 and is filed under Elections, Removal Of Elected Officials

Two years ago, you won a countywide at-large election to a seat on the board of county commissioners, and now one of your fellow citizens, Mary Anderson, has developed the suspicion that you don't really live in the county. She thinks you really live at the big house you just bought on the lake in the next county, not in the little house downtown that your wife inherited from her mama. Can you continue to serve as a county commissioner? The answer to that question turns on where the law considers your residence to be.

To be eligible to hold an elective office in North Carolina—county commissioner, city council member, school board member, any other elective office—you must be eligible to vote for that office. More precisely, the state's Constitution (Article VI, Sec. 8) provides that you are disqualified for office if you are "not qualified to vote in an election for that office." To be qualified to vote for an office, you must reside in the appropriate jurisdiction—the county or city or other electoral district (Article VI, Sec. 2). So, your eligibility to be elected to office or to continue in office turns on your residency for voting purposes. What happens if your residency comes into question?

The meaning of "residence" for voting purposes. A unique body of law has grown up around the question of residence for voting purposes. It starts with the statutory definition (found in **G.S. 163-57**) that some people find a little vague. "That place shall be considered the residence of a person in which that person's habitation is fixed, and to which, whenever that person is absent, that person has the intention of returning." Got it? It's not a simple formula, such as where you sleep or where you get your mail. Instead, it's a little more fluid, boiling down to a few rules, simple to state but sometimes hard to apply.

First, everybody has one and only one residence for voting purposes. You may own and spend time at two or more houses, but only one can be your voting residence.

Second, your residence once established remains your residence until by your actions and intent you affirmatively change it to a new residence. As the state supreme court once put it, a person acquires a new residence for voting purposes when "he (1) has abandoned his prior home, (2) has a present intention to make that place his home, and (3) has no intention presently to leave that place." *Lloyd v. Babb*, 296 N.C. 416, 449 (1979).

And third, your intent counts (that is, what you consider your home is very important in a determination as to what your residence is), but what you say your intent is can be overridden by what you actually do. As the state court of appeals once put it, "We have not ignored defendant's declarations concerning his [residence]. We must point out, however, that conduct is of greater evidential value than expressions of intent." *Farnsworth v. Jones*, 114 N.C. App. 182, 189 (1994).

So, is your residence really still the little house downtown, or have you, like Mary Anderson believes, in fact changed your residence to the big house on the lake? Mary is so convinced that you have moved out to the lake that she thinks you should no longer serve as a county commissioner in her county. What can Mary do?

Challenge to voter registration. State law provides no procedure for directly challenging an elected official's residence, so Mary must take the indirect route of disputing your voter registration. Remember that to be eligible to hold your elective office you must be eligible to vote for it. So Mary may use her statutory right to challenge your right to vote, based on your residency: "Any registered voter of the county may challenge the right of any person to register, remain registered or vote in such county." **G.S. 163-85**.

If, when she files her challenge, Mary comes forward with evidence that your residence is really at the lake—perhaps Mary



supplies an affidavit that she has personally observed that no lights have been turned on in the little house in five months—the board of elections then has the duty, set out in **G.S. 163-86**, to conduct a hearing on Mary's challenge. The question for it to decide is your residence. Is it the lake house or the house downtown? The board can subpoena witnesses and it hears testimony under oath. Mary has the burden to substantiate her challenge with "affirmative proof." **G.S. 163-90.1**. Perhaps witnesses testify about how many nights it appears that you and your wife have spent at the lake house, or maybe there is testimony about where you had your Thanksgiving and Christmas dinners, or the amount of the electric bills at the two houses, or the state of the furnishings of the two places, or where the family dog stays.

If the board of elections finds that Mary has not carried the burden of proving that you have changed your residence, it will dismiss the challenge. If, however, it finds that you have changed your residence, it will cancel your voter registration. **G.S. 163-90.2**. At that point, you are no longer eligible to vote in the county, and, as we have seen, you are no longer eligible to continue in office as a county commissioner. [Of course, either Mary or you, depending on who loses, can appeal the matter to court. **G.S. 163-90.2**]

Now, if the decision is against you, what happens? You are ineligible to continue in office and you should resign. But what if you don't? Again, there is no state law setting out the procedure for removal, but your fellow commissioners may act nonetheless.

Removal from office. A member of the board of commissioners may move that a vacancy be declared: "I move that Fred Jones's seat on this board be declared vacant because he has been determined by the board of elections not to be a resident of the county and that this board proceed to fill the vacancy as provided by law." The board then should vote on the motion, and you may vote because you are still on the board at that time.

Although there is no specific statutory provision for declaring a vacancy, there is from the board's point of view a keen advantage to proceeding this way: it puts the onus on you, the former incumbent, to bring the lawsuit to challenge it.

The only removal alternative to this declare-the-vacancy-and-fill-it process is an action in the nature of quo warranto, a process found in G.S. Ch. 1, Art. 41. This action is completely unsuited to the purpose, because of its awkward process and because by its own terms it must be brought within 90 days after the office holder's induction into office. Nonetheless, in a 1999 letter opinion, the Attorney General's office cited Art. 41 as the means for removal.

So, on balance, the best advice to the board is this: declare the vacancy and fill it, and don't bother with quo warranto.

Counties, cities, school boards, and other elective offices. Everything said above applies not just to county commissioners, but to all elected officials. Everybody elected from a county or a city or a special electoral district must reside in the proper county or city or district to be eligible to hold the office. But, for some reason, only cities have a statute spelling it out. **G.S. 160A-59** provides: "When any elected city officer ceases to meet all the qualifications for holding office pursuant to the Constitution, or when a council member ceases to reside in an electoral district that he was elected to represent, the office is ipso facto vacant." When you see Latin in there like that, you know the statute means business.

Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_163/GS_163-57.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_163/GS_163-85.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_163/GS_163-86.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_163/GS_163-90.1.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_163/GS_163-90.2.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-59.html

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Page

North Carolina Voter Registration Application
DMV Agency Form

05

Qualifications to register to vote:

- You must be a U.S. citizen by birth or naturalization.
- You must register to vote only in the county in where you live.
- You must be at least 18 years old by general election day OR you may preregister if you are at least 16 years old and understand that you must be 18 years of age on or before election day to vote.
- If convicted of a felony, you may register to vote only after you have completed your sentence, including probation or parole. After your sentence is completed, North Carolina automatically restores your citizenship rights including your right to vote. No special document is needed.

Please note:

The location where you received this form will remain confidential and will be used only for voter registration purposes. If you choose not to register to vote, your choice not to register will also remain confidential.

1 Your Qualifications to Vote

Check the appropriate box next to each question

Are you a citizen of the United States of America?

Note: If you checked "No" in response to this question, DO NOT submit this form. U.S. citizenship is required to vote.

☒ Yes ☐ No

Will you be at least 18 years of age on or before election day?

☒ Yes ☐ No

Are you at least 16 years of age and understand that you must be 18 years of age on or before election day to vote?

Note: If you checked "No" in response to both questions, DO NOT submit this form. You must be at least 18 years old to register to vote or at least 16 years old to preregister to vote.

☒ Yes ☐ No

2 Your Name

Legal Last Name

ABERNETHY

Legal First Name

JAMES

Middle Name

WEIDNER

Suffix

3 Your date of birth and identification information

Date of Birth (MM/DD/YYYY)

[REDACTED]

State or Country of Birth

NC Driver License or NC DMV ID Number

[REDACTED]

Last Four Digits of Social Security Number

[REDACTED]

4 Your Residential Address - where you physically live

DO NOT enter a P.O. Box or a mail drop location.

Residential Address

1925 LAKE ACRES DR
HICKORY, NC, 28601-7145

County of Residence

CATAWBA

5 Your Mailing Address (optional) - where you receive mail

If you do not receive mail where you live, please provide a mailing address.

Mailing Address

1925 LAKE ACRES DR
HICKORY, NC, USA, 28601-7145

6 Your Demographic information and Party Affiliation (optional)

If you do not indicate a party affiliation, you will be registered as an unaffiliated voter.

Gender

Race

Ethnicity

Party Affiliation

REPUBLICAN

7 Your Previous Voter Registration Address (optional)

Please complete this section if you are currently registered to vote in another county or state.

Name Used in Last Registration

Address Where You Were Last Registered

330 S COLLEGE AVE, NEWTON, NC, 28658-3410

County or State of Last Registration

CATAWBA

8 Your Contact Information (optional)

This information may be used to contact you concerning your voter registration. This information may be disclosed as a public record.

Phone Number

9 Your Attestation and Signature

I attest, under penalty of perjury, that in addition to having read and understood the contents of this form, that:

- I am a United States citizen, as indicated above;
- I am at least 18 years old, or will be at the time of the next general election, or I am at least 16 years old and understand that I must be at least 18 years old on Election Day of the general election in order to vote;
- I shall have been a resident of North Carolina, this county, precinct, or other election district for 30 days before the election in which I intend to vote;
- I will not vote in any other county or state after submission of this form and if I am registered elsewhere, I am canceling that registration at this time; and
- I have not been convicted of a felony, or if I have been convicted of a felony, I have completed my sentence, including any probation or parole. (Citizenship and voting rights are automatically restored upon completion of the sentence. No special document is needed).

FRAUDULENTLY OR FALSELY COMPLETING THIS FORM IS A CLASS 1 FELONY UNDER CHAPTER 183 OF THE NC GENERAL STATUTES.

Signature

2019.07.26 11.29.02

Date

NC580E 2018.02

NORTH CAROLINA VOTER REGISTRATION APPLICATION

Please use black ink and print legibly.

06w

1 Are you a citizen of the United States of America? ☐ Yes ☐ No IF YOU CHECKED "NO" IN RESPONSE TO THIS QUESTION, DO NOT SUBMIT THIS FORM.	Will you be at least 18 years of age on or before election day? ☐ Yes ☐ No IF YOU CHECKED "NO" IN RESPONSE TO THIS QUESTION, DO NOT SUBMIT THIS FORM.
---	---

2 Last Name (Required) A b e r n e t h y First Name (Required) J a m e s Middle Name (Required) W e i d n e r ☐ Jr ☐ Sr ☐ II ☐ III ☐ IV ☐ V	3 Date of Birth MMDDYYYY (Required) State of Birth/Country of Birth If you know your NC Voter Registration Number, enter it below. If you have a NC drivers license or non-operators ID card, enter the number below. Enter the last 4 digits of your SSN. ☐ Check here if you do not have a NC drivers license, ID card, or a SSN.
---	--

RESIDENTIAL ADDRESS INFORMATION - No P.O. Boxes or Rural Routes

4 Street Address where you live (Required) 1 2 0 5 I o p e s i d e R o a d City (Required) B e e c h M o u n t a i n County W a t u g a	Apartment, Lot, or Unit Number State N C Zip Code Have you lived here for 30 days or more? ☒ Yes ☐ No If "No," date moved? MMDDYYYY Phone (Optional)
---	---

MAILING ADDRESS

5 Mailing Address (if you do not receive mail at your residential address) P O B o x 7 8 3 Mailing Address Line 2 City H u d s o n State N C Zip Code 2 8 6 3 8	MAP/DIAGRAM If you do not have a street address, draw a map of where you reside. Please include roads and landmarks. RECEIVED JUL 17 2017
--	---

6 GENDER ☐ Female ☒ Male	RACE ☐ African American/Black ☐ Asian ☒ White ☐ American Indian/Alaska Native ☐ Multiracial ☐ Other	ETHNICITY ☐ Hispanic/Latino ☐ Not Hispanic/Latino	POLITICAL PARTY AFFILIATION ☐ Democrat ☒ Republican ☐ Libertarian ☐ Unaffiliated ☐ Other If you indicate a political party that is not currently qualified, or you do not indicate a choice, you will be listed as "Unaffiliated."
--	--	---	---

PREVIOUS VOTER REGISTRATION (This information will be used to cancel your previous voter registration in another county or state.)

7 Last Name used in Previous Registration Previous Address Previous City	First Name used in Previous Registration Previous County Previous State Previous Zip Code
---	--

I attest, under penalty of perjury, that in addition to having read and understood the contents of this form, that:

- I am a United States citizen, as indicated above;
 - I am at least 18 years of age, or will be by the date of the general election;
 - I shall have been a resident of North Carolina, this county, and precinct for 30 days before the election in which I intend to vote;
 - I will not vote in any other county or state after submission of this form and if I am registered elsewhere, I am cancelling that registration at this time; and
 - I have not been convicted of a felony, or if I have been convicted of a felony, I have completed my sentence, including any probation or parole.
- (Citizenship and voting rights are automatically restored upon completion of the sentence. No special document is needed.)

Fraudulently or falsely completing this form is a Class I Felony under Chapter 163 of the NC General Statutes.

X 
 Signature (Required)

7-17-17
 Date

Version 11/2015

NOTES: FOLD, SEAL AND MAIL TO YOUR COUNTY BOARD OF ELECTIONS.



NORTH CAROLINA VOTER REGISTRATION APPLICATION

07

1	Are you a citizen of the United States? ☒ Yes ☐ No	Will you be at least 18 years on or before Election Day? ☒ Yes ☐ No	
	IF YOU CHECKED "NO" IN RESPONSE TO THIS QUESTION, DO NOT SUBMIT THIS FORM.	IF YOU CHECKED "NO" IN RESPONSE TO THIS QUESTION, DO NOT SUBMIT THIS FORM.	
2	Last Name ABERNETHY	Date of Birth [REDACTED]	State of Birth NC
	First Name JAMES	Voter Registration Number [REDACTED]	NCID [REDACTED]
	Middle Name WEIDNER	NCID or Non-operators ID Number [REDACTED]	Last 4 Digits - Social Security Number [REDACTED]
	☐ Jr ☐ Sr ☐ I ☐ II ☐ III ☐ IV ☐ V ☐ VI ☐ VII ☐ VIII ☐ I do not have a NC driver license, ID card or a SSN.		

RESIDENTIAL ADDRESS INFORMATION - No P.O. Boxes or Rural Routes

4	Street Address where you live 120 SLOPE SIDE RD		Apartment, Lot, or Unit Number	
	City BANNER ELK		State NC	Zip Code 28604
	County WATAUGA	Have you lived here for 30 days or more? ☒ Yes ☐ No	If "No," date moved? _____	

MAILING ADDRESS AND CONTACT INFORMATION

5	Mailing Address PO BOX 783 HUDSON, NC 28638	Phone [REDACTED]	Email Address [REDACTED]
	Address Description [REDACTED] WATAUGA COUNTY BOARD OF ELECTIONS		

6	GENDER	RACE	ETHNICITY	POLITICAL PARTY AFFILIATION
	☐ Female ☒ Male	☐ African American/Black ☐ Asian ☒ White ☐ American Indian/Alaska Native ☐ Multiracial ☐ Other	☐ Hispanic/Latino ☐ Not Hispanic/Latino	☐ Democrat ☒ Republican ☐ Libertarian ☐ Unaffiliated ☐ Other If you indicate a political party that is not currently qualified, or you do not indicate a choice you will be listed as "Unaffiliated".

PREVIOUS VOTER REGISTRATION (This information will be used to cancel your previous voter registration in another county or state.)

7	Last Name and Suffix used in Previous Registration		First Name and Middle Name used in Previous Registration	
	Previous Address		Previous County BURKE	
	Previous City	Previous State	Previous Zip Code	

I attest, under penalty of perjury, that in addition to having read and understood the contents of this form, that:

I am a United States citizen, as indicated above; I am at least 18 years of age, or will be by the date of the general election; I shall have been a resident of North Carolina, this county, and precinct for 30 days before the election in which I intend to vote; I will not vote in any other county or state after submission of this form and if I am registered elsewhere, I am cancelling that registration at this time; and I have not been convicted of a felony, or if I have been convicted of a felony, I have completed my sentence, including any probation or parole. (Citizenship and voting rights are automatically restored upon completion of the sentence. No special document is needed.)

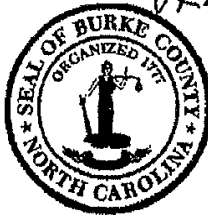
fraudulently or falsely completing this form is a Class 1 Felony under Chapter 163 of the NC General Statutes.

10/16/2019 12:45:28 PM
Date

104-102-20191016124528

SDR 2017.04

L.H. Kirksey, Chairman
Sandi C. Walker, Secretary
Trossie W. Wall, Member
Anthony S. Iovino, Member
Linda C. Walker, Member
Debbie K. Mace, Director



2128 S. Sterling St., Ste. 100
Morganton, NC 28655
Phone: (828) 764-9013
Fax: (828) 764-9011

Burke County Board of Elections

I HAVE MOVED TO WATAUGA COUNTY & REQUEST THAT MY NAME BE REMOVED
FROM THE RECORDS IN BURKE COUNTY.

I WILL NOT BE ELIGIBLE TO VOTE IN BURKE COUNTY AS OF TODAY, OCTOBER 16TH
2019.

[Redacted Signature]

SIGNATURE

10/16/19

DATE

B. Cancel Your Previous Registration in Another County or State

If you were previously registered to vote in another county or State, you must fill out the information below to cancel your prior registration.

Name: Weidner Abernethy

Previous Name: _____

Previous Address: 330 South College Ave.

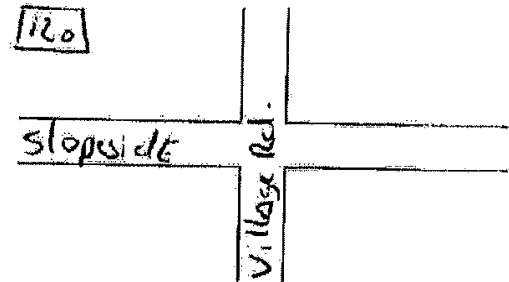
Previous City/State/ZIP Code: Newton, NC 28658

County of Previous Residence: Catawba

Date of Birth: _____ Place of Birth: Rowan City, NC

Signature: _____ Date: _____

If you do not have a street number, or if you have no address, please show on the map where you live.



- Write in the names of the crossroads (or streets) nearest to where you live.
- Draw an X to show where you live.
- Use a dot to show any schools, churches, stores, or other landmarks near where you live, and write the name of the landmark.
- Draw an arrow pointing North.



In order to vote in an election, the form shown below must be postmarked or delivered to the Board of Elections no later than the 25th day before the election.

IDENTIFICATION REQUIREMENT
If you do not have a driver's license or social security number, are submitting this form by mail, and have never registered to vote in the county in which you are now registering, you must send with this application, either a copy of current and valid photo identification, OR a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows your name and address. If you do not provide the information requested above, you will be required to provide ID to election officials when you vote for the first time.

C. Application to Register to Vote (Print Information and Sign Below)

Answer First		Are you a citizen of the United States of America? ☒ YES ☐ NO		☒ New Registration		Office Use Only	
Will you be 18 years of age on or before election day? ☒ YES ☐ NO		☒ YES ☐ NO		☐ Change of Information		VRN _____	
If you checked NO in response to either of these questions, do not complete this form.						Filing No. _____	
Last Name <u>Abernethy</u>		First Name <u>Weidner</u>		Middle/Maiden Name _____		Suffix _____	
Address where you now live (Number and Street/Road/Dorm) <u>120 Slopeside Rd.</u>		Apt/Lot <u>_____</u> City <u>Beech Mtn.</u>		County <u>Watauga</u>		State <u>NC</u> NC ZIP Code _____	
Address where you got your mail, if different from above (Include ZIP Code) <u>330 South College Ave. Newton, NC 28658</u>		Previous Name _____		Previous Name _____		Previous Name _____	
Previous Address, if you moved within the same county _____		Apt/Lot _____ City _____		State <u>NC</u>		NC ZIP Code _____	
Date of Birth _____		Birthplace (State) <u>NC</u>		Gender ☒ Male ☐ Female		Telephone Number (Optional) <u>(828) 381-1765</u>	
Ethnicity (Any Race) ☐ Hispanic/Latino ☐ Not Hispanic/Latino		Race ☒ White ☐ Asian ☐ Black or African American ☐ American Indian or Alaska Native ☐ Two or More Races ☐ Other		I Attest, Under Penalty of Perjury, that: 1. I shall have been a resident of North Carolina, this county, precinct, or other election district for 30 days before the next election in which I intend to vote. 2. I am 18 years old, or will be at the time of the next general election, as indicated above. 3. I am a United States citizen, as indicated above. 4. I am not registered to vote nor will I vote in any other county or state after submission of this voter registration form. I am canceling any voter registration that I may have elsewhere. 5. If I have been convicted of a felony, my rights of citizenship have been restored. I HAVE READ AND UNDERSTAND THE CONTENTS OF THIS FORM Warning: If you sign this card and know it to be false, you can be convicted of a Class 1 felony.			
Political Party Affiliation ☐ Democrat ☒ Republican ☐ Libertarian ☐ Unaffiliated ☐ Other Qualified Party		ID Number If you have a NC driver's license, check here and print the number where indicated below. ☐ License No. _____ If you have a NC driver's license, check here and print your Social Security No. where indicated below. ☐ SSN (Last 4 Digits) _____ If you have no NC driver's license or SSN, check here. ☒ I have no NC driver's license or SSN					
You must register with a party to vote in that party's primary unless that party allows unaffiliated voters to vote in its primary. If you indicate a political party that is not qualified or indicate no choice, you will be listed as "Unaffiliated."							



COUNCIL ACTION ITEM

TO: Town Council
FROM: Tamara Mercer
DATE: December 10, 2019
SUBJECT: High Country Council of Govt Representative

FOR THE PURPOSE OF:

Council to nominate and appoint one Council Member to represent the Town of Beech Mountain to the High Country Council of Governments Region-D Executive Board. This Board conducts monthly meetings on Monday nights. The regular meeting schedule is the third Monday of the month at 7:00 p.m. Meetings take place at the High Country Council of Government's Boardroom located at 486 New Market Blvd. Boone, NC 28607.

SIGNATURES:

Town Manager

Town Clerk

High Country Municipal Association

Bylaws

Name: The name of this organization shall be the High Country Municipal Association. Hereinafter referred to as “the Association”.

Regular Membership: Regular membership of the Association is open to each town’s appointed manager or other designee.

Full Membership: Full membership is reserved for each town’s elected Mayor and Council Members for the towns of Banner Elk, Beech Mountain, Seven Devils, and Sugar Mountain. ¹

Mission and Goals: To develop regional identity that fosters 1.) cooperation among communities and results in cost savings; 2.) increased levels of efficiencies and services; 3.) greater political influence within the region and state; 4.) a high quality of life for residents; and 5.) a positive experience for visitors.

Meetings: The Association shall schedule regular reoccurring meetings and special meetings as needed. Regular meetings shall rotate between member towns.

1. Regular Meetings: A regular meeting schedule shall be set by the Association until such time it is changed by the Association. The Secretary of the Association shall keep the Association’s regular meeting schedule on file.⁴
2. Special Meetings: A Mayor who is a member of the Association or an appointed designee may call for special meetings outside of regular meetings for any reasonable purpose.

Notice of Meeting: A schedule of regular meeting dates and times shall be posted one time in a public circular. Notices of special meetings shall be sent out no less than 48 hours before the date of the special meeting to each member of record.

Voting: For the purpose of voting each municipality has one vote. Full Members of the Association are permitted to vote; Regular Members are not permitted to vote. At the onset of the meeting the Full Member(s) present from each municipality will determine who from amongst their individual municipality shall cast their municipalities vote. ⁵

Quorum: A quorum shall exist when at least three (3) of the four (4) communities are present with at least one full member present from that respective community. If less than a quorum is

¹ Full Membership amended this 14th day of April, 2016.

⁴ Meetings amended this 14th day of April, 2016.

⁵ Voting amended this 14th day of April, 2016.

represented at a meeting, the members present hold the right to discuss the business of the meeting at hand, but no voting can occur until a quorum may be assembled.⁶

Organization: The Mayor of the hosting town or its elected designee shall chair the Association meeting. The Secretary, whom shall serve at the Associations pleasure, shall be elected by the Association as the official record keeper until such time the Association selects a new Secretary.⁸

Duties of Officers: The chairman is responsible for running the meeting. Thee Secretary is responsible for preparing the meeting agendas, inviting guests, and shall record and prepare meeting minutes, maintain files and historical records of the Association, as well as notifying the press and membership of meeting dates.

Procedure: The Association shall operate under Robert's Rules of Order, unless otherwise authorized in the Bylaws.

Amendments: These Bylaws may be amended as outlined under Robert's Rules of Order.

Approved this 14th day of April, 2016.

Title: _____
Town of Beech Mountain

Title: _____
Town of Seven Devils

Title: _____
Town of Banner Elk

Title: _____
Village of Sugar Mountain

ATTEST:

Tamara Mercer, Town Clerk

⁶ Quorum amended this 18th day of August, 2011.

⁸ Organization amended this 14th day of April, 2016.



RESOLUTION

TO: Town Council
FROM: Tim Holloman
DATE: December 10, 2019
SUBJECT: Resolution Authorizing Individuals for Deposit Accts. and Bank signatories

FOR THE PURPOSE OF:

A resolution of the Town Council of the Town of Beech Mountain to Authorize Individuals for Deposit Accounts, Investment Accounts, and Bank Signatories for BB&T, Mountain Community Bank, and Highlands Union Bank.

SIGNATURES:

Town Manager

Town Clerk



Resolution

**Town of Beech Mountain
North Carolina**

Date: 12/10/2019

**RESOLUTION BY THE TOWN COUNCIL
OF THE TOWN OF BEECH MOUNTAIN, North Carolina
(Res. No. 2019-07)**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BEECH MOUNTAIN,
NORTH CAROLINA, TO AMEND AUTHORIZED INDIVIDUALS FOR DEPOSIT ACCOUNTS,
AND BANK SIGNATORIES FOR BRANCH BANKING AND TRUST, MOUNTAIN
COMMUNITY BANK, AND HIGHLANDS UNION BANK**

BE IT RESOLVED by the governing Board (hereafter the “Town Council”) for the Town of Beech Mountain that all banks and all depositories where the Town of Beech Mountain has money on deposit and where the various departments of the Town of Beech Mountain have money on deposit, be, and they are hereby authorized and empowered to disburse the same upon checks, wire transfers, vouchers, and other like instruments signed by either Mayor _____, of the Town Council or Vice Mayor _____ of the Town Council or Town Manager Tim Holloman, or Interim Finance Officer Bonnie Bray, and this authority shall be effective from the date of Wednesday, December 11th, 2019 and continue until such banks and depositories are notified in writing of its revocation, and it is provided that all checks drawn on any deposit of the Town shall carry the signature of the Interim Finance Officer Bonnie Bray and one other three recognized signatories for the Town as follows; Mayor _____ of the Town Council, or Vice Mayor _____ of the Town Council, or Town Manager Tim Holloman.

BE IT FURTHER RESOLVED that all former actions of the Town Council with respect to signatures required to disburse funds of the Town of Beech Mountain are hereby rescinded.

Adopted at Beech Mountain, North Carolina this the 10th day of December, 2019.

, Mayor

ATTEST:

Tamara Mercer, Town Clerk

(Seal)



REPORT

TO: Town Council
FROM: Tamara Mercer
DATE: December 10, 2019
SUBJECT: Board and Committee appointments

FOR THE PURPOSE OF:

Boards and Committee terms expiring in December 2019. Town Council to consider nominations and appointments for January 14, 2020.

SIGNATURES:

Town Manager

Town Clerk

Board Members with Terms Expiring December 2019

Board or Committee	Board Member	Seeking Reappointment?
Planning Board	Pete Chamberlin	Yes
	Joseph Antonell	Yes
Board of Adjustment	Ron Nichols	Yes
Board of Adjustment Alternates	Sarah Welsh	Yes
Tourism Development Authority	Sandy Carr	Yes
	Mandy Taylor	Yes
	Jimmie Accardi stepping down	
Tree Committee	Jeff Fish stepping down	
	Jane Miller	?
Recreation Committee	Kelly Melang stepping down	



Beech Mountain Council/Board Members

Board Name	Name	Title	Term Expires	Email	P	Phone	Street Address	City, State, Zip
Town Council	Barry Kaufman	Council Member	Dec-21	bkaufman@townofbeechmountain.com	home	828-387-2274	117 Thistle Lane	Beech Mtn, NC 28605
Town Council	Weidner Abernethy	Council Member	Dec-21	wabernethy@townofbeechmountain.com	cell	828-387-2099	PO Box 783	Hudson, NC 28638
Town Council	James Accardi	Council Member	Dec-23	jaccardi@townofbeechmountain.com	home	828-260-3256	303 Charter Hills Rd	Beech Mtn, NC 28604
Town Council	Kelly Melang	Council Member	Dec-23	kmelang@townofbeechmountain.com	cell	336-926-3994	1032 Charter Hills Rd	Beech Mtn, NC 28604
Town Council	Erin Gonyea	Council Member	Dec-21	egonyea@townofbeechmountain.com	home	863-661-1775	146 Grassy Gap Loop	Beech Mtn, NC 28604

Board Name	Name	Title	Term Expires	Email	P	Phone	Street Address	City, State, Zip
Planning Board	Pete Chamberlin	Chairman	Dec-19	peterk@skybest.com	home	828-387-2674	113 Christie Way	Beech Mtn, NC 28604
Planning Board	John Hoffman	Vice Chairman	Dec-20	fire9104@hotmail.com	home	828-387-2420	100 Doe Lane	Beech Mtn, NC 28604
Planning Board	Joseph Antonell	Board Member	Dec-19	jimvantonell@gmail.com	home	305-342-5387	484 St. Andrews Rd	Beech Mtn, NC 28604
Planning Board	Peter Patton	Board Member	Dec-22	lure_freak@hotmail.com	phone	828-387-2842	900 Charter Hills Rd	Beech Mtn, NC 28604
Planning Board	Robert Cavagnaro	Board Member	Dec-20	ricavagnaro@gmail.com	home	828-387-7858	129 Wintergreen Way	Beech Mtn, NC 28604

Board Name	Name	Title	Term Expires	Email	P	Phone	Street Address	City, State, Zip
Board of Adjustment	Brian Barnes	Vice Chairman	Dec-22	beechgm@yahoo.com	home	828-387-6680	103 B N. Pinnacle Ridge Rd	Beech Mtn, NC 28604
Board of Adjustment	Fred France	Board Member	Dec-20	ffrance@ceexpress.com	home	828-504-8009	108 Lower Grouse Ridge Rd	Beech Mtn, NC 28604
Board of Adjustment	Ron Nichols	Chairman	Dec-19	ronaldi1435@hotmail.com	home	828-387-9394	111 Locust Ridge Rd	Beech Mtn, NC 28604
BOA - 1st Alternate	Jennifer Lavrack	Board Member	Dec-20	jennifer@lavrackteam.com	work	919-427-8574	101 Wedding Weg Way # A4	Beech Mtn, NC 28604
Board of Adjustment	Therese Barry	Board Member	Dec-20	tbwritewing@hotmail.com	home	828-387-4358	100 Squirrel Lane	Beech Mtn, NC 28604
BOA - 1st Alternate	Judy Elliott	1st Alternate	Dec-20	jdenunzio03@gmail.com	cell	954-579-3315	111 Courtside Lane B9	Beech Mtn, NC 28604
BOA - 2nd Alternate	Sarah Welsh	2nd Alternate	Dec-19	swelsh1258@gmail.com	home	828-387-9093	101 Bear Paw Path	Beech Mtn, NC 28604
BOA - 3rd Alternate	Karla Lerner	3rd Alternate	Dec-22	karlaprice@gmail.com	home	828-387-2842	111 Wintergreen Way	Beech Mtn, NC 28604



Beech Mountain Council/Board Members

Board Name	Name	Title	Term Expires	Email	P	Phone	Street Address	City, State, Zip
Tourism Development Authority	Sandy Carr	Board Member	Dec-19	sandyc@beechmtn.club	cell	828-387-9423	505 Pine Ridge Rd	Beech Mtn, NC 28604
Tourism Development Authority	Calder Smoot	Vice Chair	Dec-22	caldersmoot@yahoo.com	phone	828-387-4211	608 Beech Mountain Pkwy	Beech Mtn, NC 28604
Tourism Development Authority	Cindy Keller	Board Member	Dec-22	emeraldteal@skybest.com	cell	828-387-2000	100 Village Creek Lane	Beech Mtn, NC 28604
Tourism Development Authority	Mandy Taylor	Board Member	Dec-19	egrid12@yahoo.com	cell	828-504-0204	175 John Jones Rd	Elk Park, NC 28622
Tourism Development Authority	James "Jimmy" Accardi II	Chair	Dec-22	accardiis@appstate.edu	cell	828-260-3256		Beech Mtn, NC 28604

Board Name	Name	Title	Term Expires	Email	P	Phone	Street Address	City, State, Zip
Tree Board	Tony Hunter	Board Member	Dec-22	trees@htsinc.biz	office	828-733-3320	1731 Beech Mountain Rd	Elk Park, NC 28622
Tree Board	vacant	Chair	Dec-19		cell			Beech Mtn, NC 28604
Tree Board	Susie Kneppka	Board Member	Dec-22	skneppka@gmail.com	home	828-387-3683	1409 Beech Mountain Pkwy	Beech Mtn, NC 28604
Tree Board	Jane Miller	Board Member	Dec-19	janemiller242@gmail.com	cell	864-621-5405	242 Greenbriar Rd	Beech Mtn, NC 28604
Tree Board	Lear Powell	Board Member	Dec-22	learpowell@yahoo.com	cell	828-898-7457	1550 Beech Mountain Road	Elk Park, NC 28622

Board Name	Name	Title	Term Expires	Email	P	Phone	Street Address	City, State, Zip
Recreation Committee	Fred Pfohl	Chairperson	Dec-20	fred@fredsgeneral.com	office	828-387-4838	501 Beech Mountain Pkwy	Beech Mtn, NC 28604
Recreation Committee	Barbara Piquet	Board Member	Dec-20	bpiquet@yahoo.com	home	828-387-2484	121 Hollow Tree Lane	Beech Mtn, NC 28604
Recreation Committee	Gloria Alge	Board Member	Dec-20	algerglo@aol.com	home	828-387-4316	136 Grassy Gap Loop Rd	Beech Mtn, NC 28604
Recreation Committee	Loretta "Willie" Wagner	Board Member	Dec-22	lw1820@msn.com	home	828-387-2329	206 N. Pinnacle Ridge Rd	Beech Mtn, NC 28604
Recreation Committee	Rory Ellington	Board Member	Dec-22	rellington@outlook.com	office	828-387-4487	P.O. Box 565	Beech Mtn, NC 28604
Recreation Committee	Kelly Melang	Board Member	Dec-22	kelmelang@yahoo.com	cell	336-926-3994	1032 Charter Hills Rd	Beech Mtn, NC 28604
Recreation Committee	Carol Beckmann	Board Member	Dec-20	cbeme@gmail.com	home	828-260-5296	114 Teaberry Trail	Beech Mtn, NC 28604



REPORT

TO: Town Council
FROM: Daniel Davis
DATE: December 10, 2019
SUBJECT: Department of Infrastructure Reports

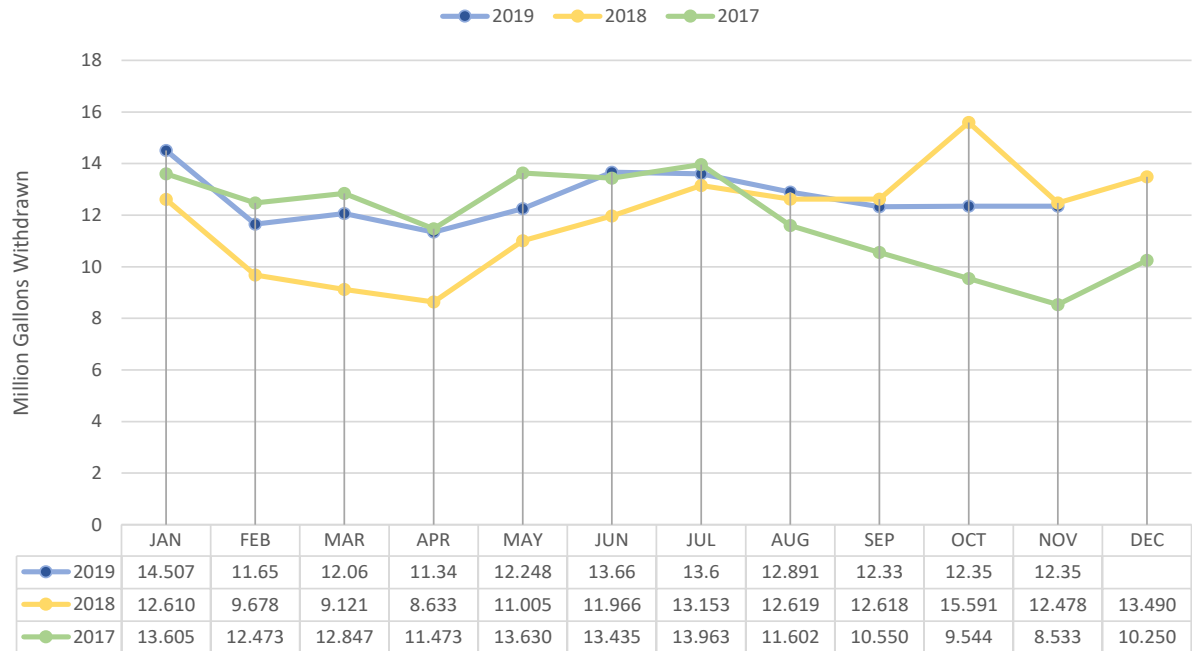
FOR THE PURPOSE OF:
Public Works, Utilities, and Sanitation Monthly Reports

SIGNATURES:

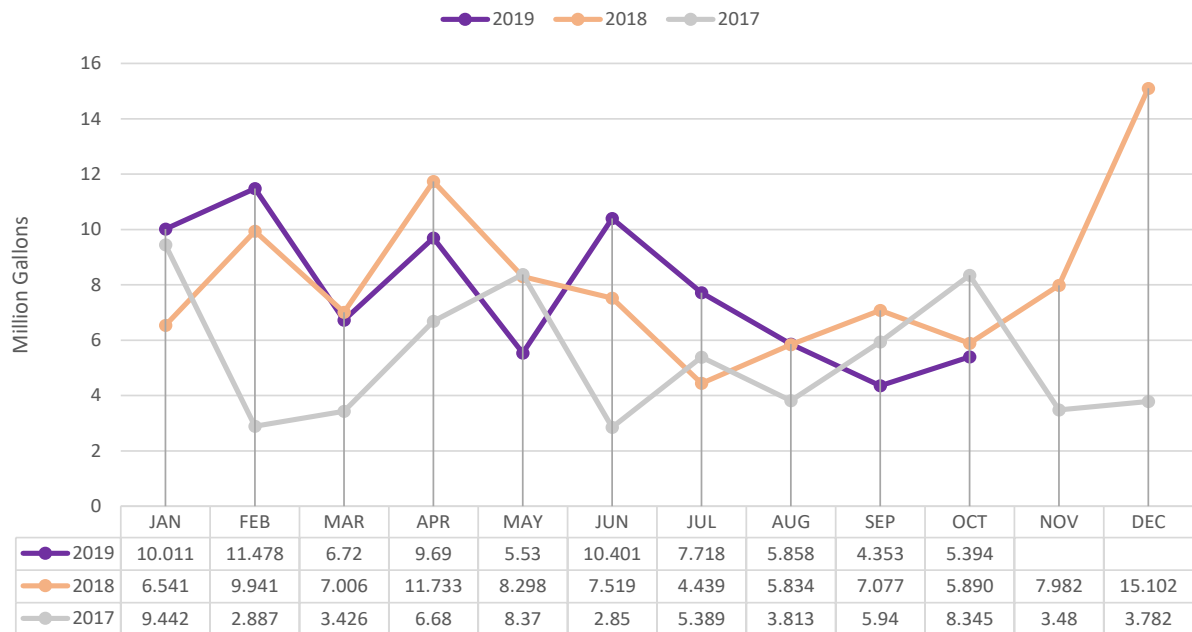
Town Manager

Town Clerk

Raw Water Withdrawl from Buckeye Lake 3 Year Period



Total Wastewater Flows 3 Year Period





Town of Beech Mountain
Public Works Department
Monthly Report

2018	SOLID WASTE	CONSTRUCTION MATERIAL	RECYCLING						~ROAD MAINTENANCE~					
			RECYCLED METAL	PAPER	PLASTIC	GLASS	ALUMINUM	CARDBOARD	ROADS GRADED	STABILIZING STONE	POT HOLES REPAIRED	WASH OUTS	DITCHES PULLED	ROADWAYS MOWED
JAN	94.70	12.82	1.16	0.85	0.76	3.53	1.02	22	0	0	0	0	0	0
FEB	83.37	8.50	1.95	0.66	0.51	0.00	0.00	0	0	0	0	0	0	0
MAR	48.34	9.45	2.69	0.48	0.24	0.00	0.00	0	0	0	0	0	0	0
APR	63.45	12.86	1.91	1.45	0.44	2.84	1.11	0	0	0	10	0	0	9
MAY	76.17	15.97	2.30	0.87	0.46	0.00	0.00	18	22	1	8	5	0	53
JUNE	107.85	20.24	6.90	1.83	1.14	4.08	1.14	8	7	0	3	10	1	31
JULY	129.38	19.42	2.39	1.16	1.04	3.57	0.65	15	4	1	10	0	0	25
AUG	110.16	22.22	4.68	0.98	0.86	3.59	0.89	0	27	0	7	6	0	6
SEP	81.79	27.44	5.21	2.49	0.71	3.97	1.95	15	34	1	3	5	0	7
OCT	86.93	14.20	2.40	2.13	1.08	0.00	0.00	0	4	2	0	9	0	0
NOV	83.98	16.87	2.63	1.19	0.49	4.36	0.99	0	3	2	5	2	0	0
DEC	81.37	11.23	5.00	5.00	5.00	5.00	5.00	15	11	2	0	8	0	0
YTD TOTALS	1047.49	191.22	39.22	19.09	12.73	30.94	12.75	93	112	9	46	45	1	131
2019	SOLID WASTE	CONSTRUCTION MATERIAL	RECYCLING						~ROAD MAINTENANCE~					
			RECYCLED METAL	PAPER	PLASTIC	GLASS	ALUMINUM	CARDBOARD	ROADS GRADED	STABILIZING STONE	POT HOLES REPAIRED	WASH OUTS	DITCHES PULLED	ROADWAYS MOWED
JANUARY	109.38	8.23	2.24	1.25	0.56	3.54	1.95	13	0	0	0	2	1	0
FEBRUARY	102.76	8.02	1.94	2.18	0.60	2.47	1.31	5	11	5	2	0	4	0
MARCH	94.19	7.74	6.14	1.68	0.40	2.12	1.02	6	9	2	0	0	10	0
APRIL	67.26	27.92	2.90	0.00	0.95	0.00	0.00	2	0	0	12	1	1	0
MAY	85.42	32.50	4.60	1.51	1.03	2.96	1.54	4	5	2	7	4	2	11
JUNE	111.48	6.39	2.00	1.05	0.65	4.39	1.47	8	45	4	6	12	22	30
JULY	131.73	9.95	3.25	1.16	1.07	2.86	0.32	8	20	3	3	2	4	12
AUGUST	114.04	4.11	0.00	1.40	1.18	5.54	2.48	5.52	12	5	0	2	0	16
SEPTEMBER	96.73	5.39	0.00	1.73	0.90	3.24	0.00	0	10	0	6	0	4	8
OCTOBER	117.21	2.11	0.00	1.13	0.76	2.34	1.85	4.92	12	1	9	2	6	0
NOVEMBER	85.75	0.00	0.00	0.79	0.50	0.00	0.00	4.65	12	0	4	0	6	0
DECEMBER														
YTD TOTALS	1115.95	112.36	23.07	13.88	8.60	29.46	11.94	61.09	136	22	49	25	60	77

Note: Sanitation & Recycling amounts are reported in tonnage

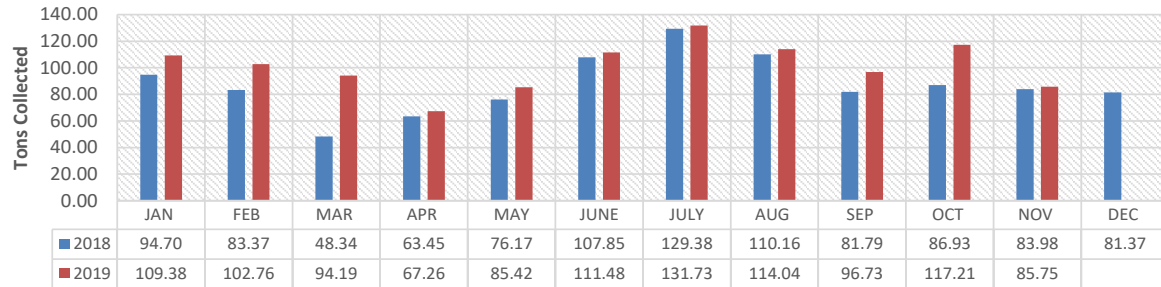
Note: Recycled metal taken to Omni Source

Note: Cardboard is by bales - each bale is approx 900 lbs.

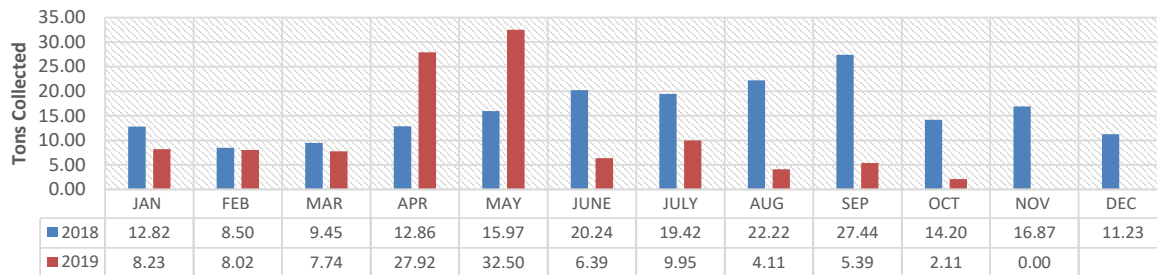
Note: Began tracking construction material Jan 2018

Note: Construction material is charged at \$53.00 per ton

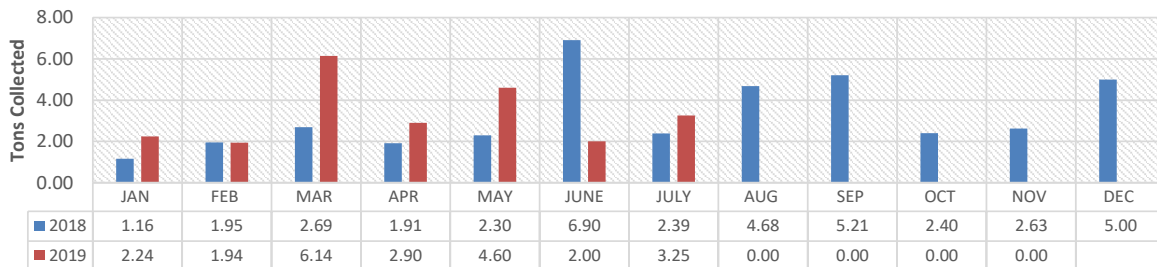
Solid Waste



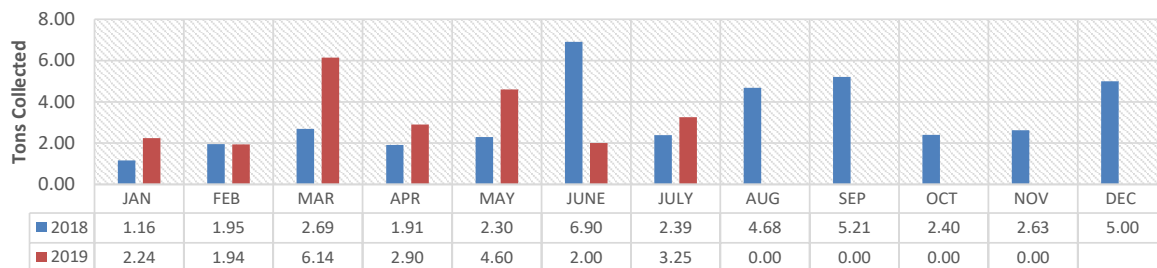
Construction Material



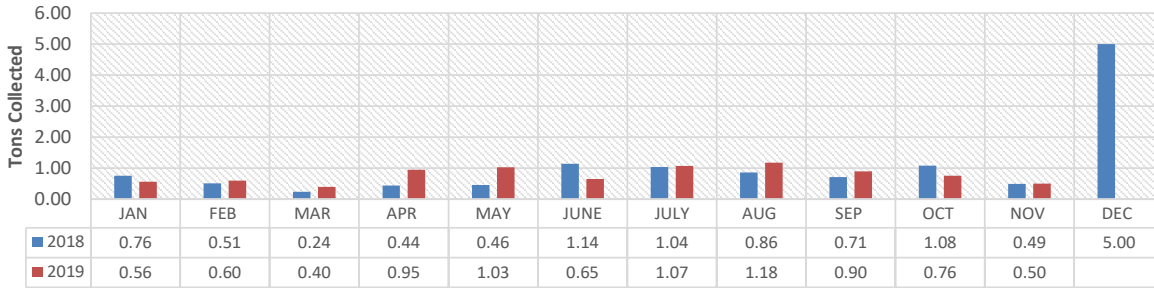
Recycled Metal



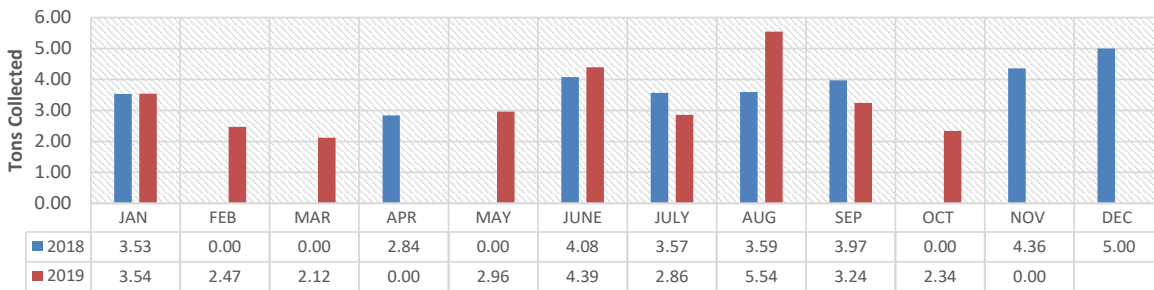
Recycled Paper



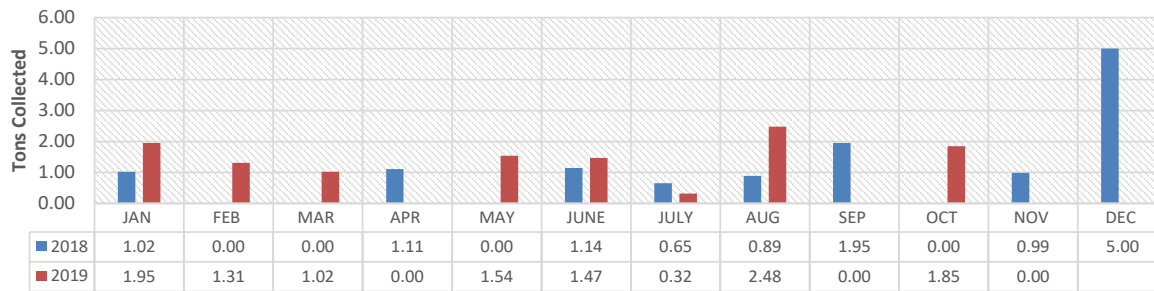
Recycled Plastic



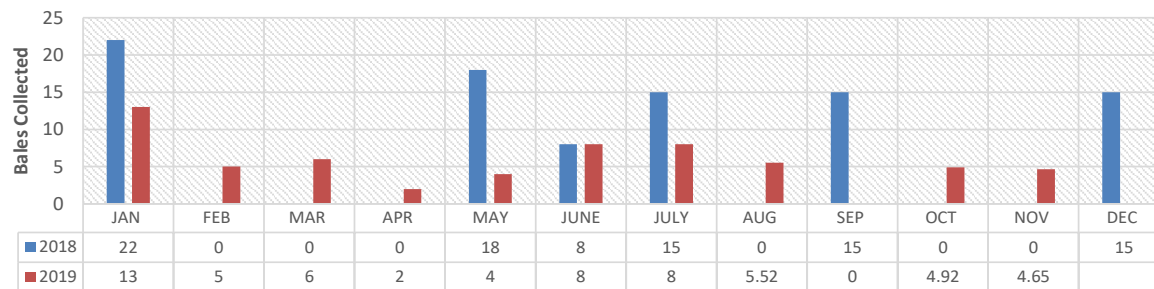
Recycled Glass



Recycled Aluminum



Recycled Cardboard





REPORT

TO: Town Council
FROM: Bob Pudney
DATE: December 10, 2019
SUBJECT: Fire Department Monthly Report

FOR THE PURPOSE OF:
November monthly Fire Dept. report

SIGNATURES:

Town Manager

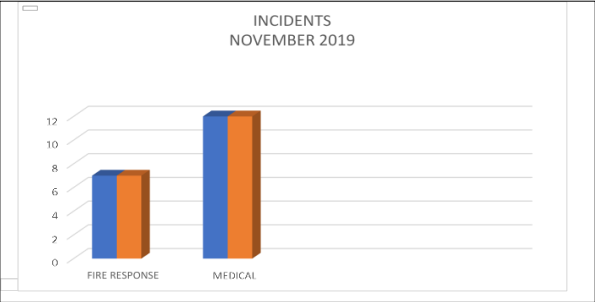
Town Clerk

BEECH MOUNTAIN FIRE DEPARTMENT Monthly Report November 30, 2019			
EVENT	THIS PERIOD	SAME PERIOD LAST YEAR	FISCAL YTD
FIRE CALLS	9	3	34
MEDICAL CALLS	9	6	61
FIRE SAFETY INSPECTIONS	1	0	14
PUBLIC EDUCATION	0	0	4
FIRE HYDRANT INSPECTIONS	0	0	2
TRAINING HOURS	354	275.5	1286
MEETINGS	9	8	41

COMMENTS:

Membership Recruitment Program.
Addressing Project Underway
EMT Class

Goals Next Period:





REPORT

TO: Mayor and Town Council
FROM: Tim Barnett
DATE: December 10, 2019
SUBJECT: Police Department Monthly Report

SIGNATURES:

Town Manager

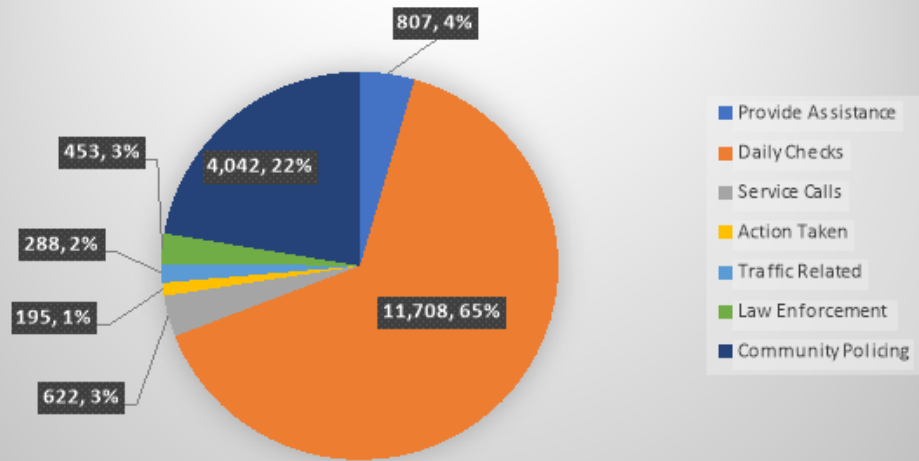
Town Clerk



Activity Log Yearly Summary Totals
 Beech Mountain Police Department
 January 1, 2019 through November 30, 2019

<i>Call Type</i>	<i>2018</i>	<i>2019</i>	<i>Call Type</i>	<i>2018</i>	<i>2019</i>
Provide Assistance			Traffic Related		
Assist Fire Department	34	28	Driving While Impaired	5	5
Assist Investigation	0	0	Improper Parking	26	62
Assist Other Agency	57	66	Stationary/Directed Patrol	48	78
Assist Town Dept/Business	79	8	Traffic Control	5	15
Assist Home Owner	43	50	Vehicle Accidents	43	27
Assist Motorist	220	148	Vehicle Stops	85	101
Assist Other Officer	83	151			
Escort	423	285	Law Enforcement Calls		
Assist Medical Calls	44	71	911 Hang Ups	22	27
			Alarms	107	95
Daily Checks			Breaking & Entering	8	14
Business Checks	10,467	10,647	Domestic Complaints	26	19
Care Track Test	62	33	Fight	3	2
Security Checks	941	1,607	Fire Works Violations	3	17
Residence Checks	1,068	976	Fraud	1	2
Welfare Check	42	52	Hit & Run	1	3
			Intoxicated/Drunk & Disruptive	4	4
Service Calls			Investigation	21	12
Animal Control Domestic/Wildlife	69	61	Larceny	17	14
Calls For Service	276	331	Mental Subject	6	6
Deliver Letter/Message	29	66	Missing Person	5	7
Found Property	4	5	Noise Disturbance/Loud Music	28	29
Golf Cart / UTV Inspections	0	44	Open Door/Open Window	23	52
ATV/Golf Cart Complaints	11	14	Prowler	6	1
Recreation/Town Deposit	91	101	Shots Fired/Sound of Shots Fired	3	9
			Ski Pass Violation	0	0
Action Taken			Suspicious Vehicle	62	78
Court	22	25	Trespassing	47	42
Felony Arrest	1	0	Vandalism	8	12
Misdemeanor Arrest	7	13	Continuing Investigation	1	8
State Citations	51	32			
Town Ordinance Violations	5	5	Community Policing		
Verbal Warning	47	57	Community Policing Contacts	3,429	4,427
Warning Citations	20	42	Community Events	25	36
Warrant Service	10	21			
2018 Event Totals: 18,287			2019 Event Totals: 20,469		

2019 Monthly Condensed Calls





REPORT

TO: Mayor and Town Council
FROM: Kate Gavenus
DATE: December 10, 2019
SUBJECT: December TDA Report

FOR THE PURPOSE OF:

This report provides samples of some of the recent media coverage received by the Town, results and gross lodging receipt analysis.

SIGNATURES:

Town Manager

Town Clerk

**Beech Mountain TDA Report
To Town Council
December 2019**

Marketing/Media:

We have a social media sweepstakes running until December 13th, with a winter ski trip for two to Beech Mountain and the resort as the prize.

The following are some examples of coverage we've received in the month of November:

From Murfreesboro Magazine, regarding things you don't want to miss in western NC:

<https://www.dnj.com/story/news/local/murfreesboro-magazine/2019/11/20/smoky-mountains-louisville-biltmore-estate-enjoy-scenes-winter/4251528002/>

Blue Ridge Outdoors, regarding Southern Snow Towns:

<https://www.blueridgeoutdoors.com/magazine/november-december-2019-top-adventure-towns/>

Charlotte Magazine, written by Anna Van Erven, whom we hosted this fall:

<https://www.charlottemagazine.com/mountain-escapes-near-charlotte-beech-mountain/>

From VacationCritic.com, regarding affordable fun spring-break choices:

<https://www.familyvacationcritic.com/cheap-fun-spring-break-family-vacations/art/>

From A-List Nation Magazine (Beech Mountain is the only North Carolina Destination included in their travel round-up)

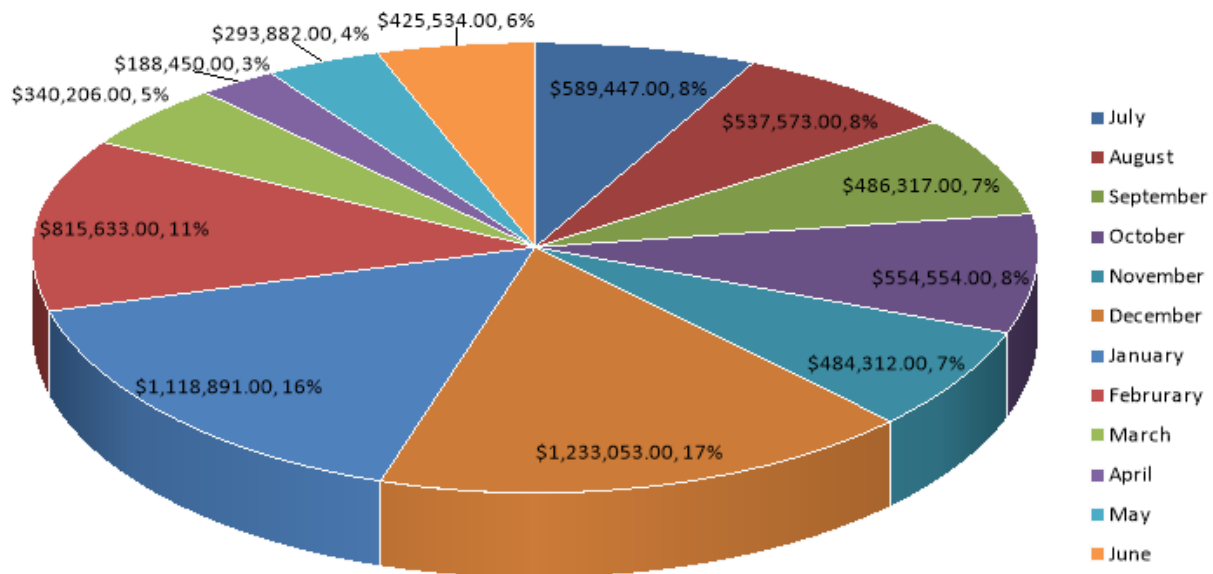
<https://www.alistnation.com/nov-dec-2019>

From the Asheville Citizen-Times, regarding ski resorts:

<https://www.citizen-times.com/story/news/2019/11/27/most-wnc-ski-slopes-open-thanksgiving-holiday/4300360002/>

Results:

For the month of **November there have been 573 visitors**, which is greater than the 498 visitors for the same month in 2018. Occupancy Tax is up 44.61% over the previous October, with \$46,024 collected. Visitors in November were looking for hiking trails and things to do in the area. The early opening of the resort boosted visits, and many people were staying for the entire week of Thanksgiving this year. Of those surveyed in the Visitor Center, 55% were from Florida and 10% were from Georgia; nine states were represented in all.



For 2018-19, December-February comprised 44% of the total lodging revenues on Beech Mountain, while June-August provided 22% of the more than seven million dollars collected in that fiscal year.



REPORT

TO: Mayor & Town Council
FROM: Sean Royall
DATE: December 10, 2019
SUBJECT: Parks and Recreation November Report

FOR THE PURPOSE OF:
Parks and Recreation Dept. facilities and program reports

SIGNATURES:

Town Manager

Town Clerk



November 2019 Recreation Report

Facility Report

Finance Report

Total Monthly Revenue	\$2,914.55
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Check-In Report

Member Visits	277
Non-Member Visits	75

Membership Report

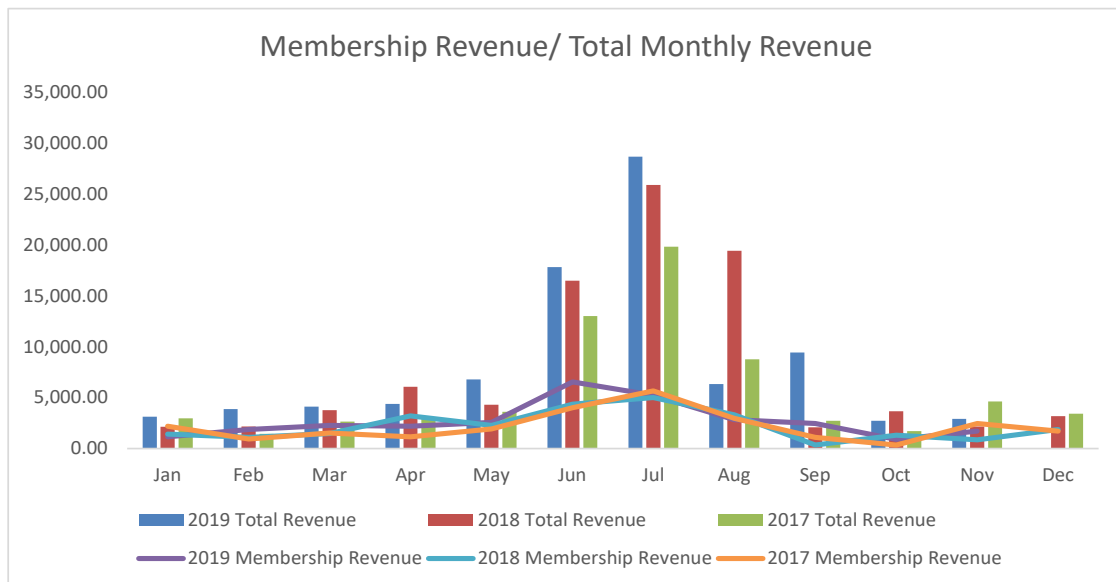
Total Memberships - \$1,705.00 (Details attached)

Family Annual \$1,225.00		
Active	Passes Expired (not renewed)	Passes sold
112	7	7

Individual Annual \$ 450.00		
Active	Passes Expired (not renewed)	Passes sold
133	6	5

Week Passes - \$30.00	
Family	Individual
1	0

Renewal Emails and Letters sent:

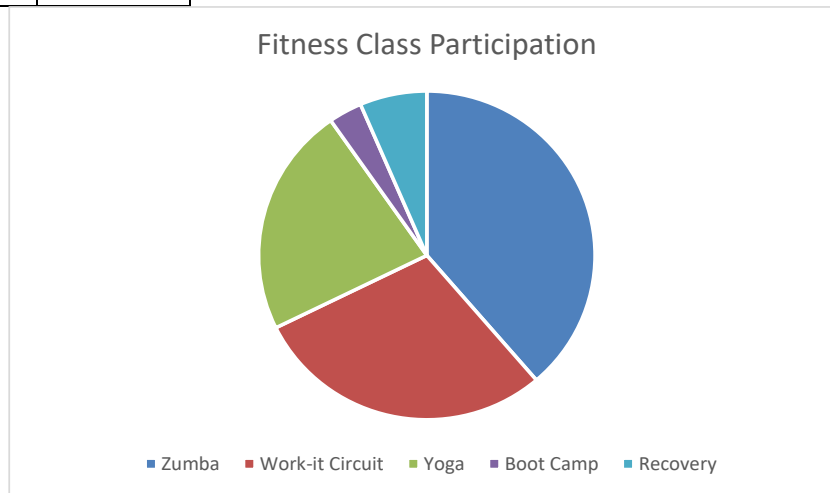


Fitness Report

Participants:

Class/Number of classes offered in the month/ Number of participants

Zumba	72
Work-it Circuit	54
Yoga	42
Boot Camp	6
Recovery	12



Outdoor Report

Participants:

Emerald Outback Trail (as read from trail counter)	1128
Bird Hike	0 (bad weather)
Thanksgiving hike	2

Director's Notes:

- Holiday Market had 750 customers
- Lower Pond Boardwalk completed and trail re-opened
- New snow gun and hill opened Thanksgiving weekend
- Hired our third full-time employee

Respectfully Submitted,

Sean Royall
Parks and Recreation Director
Town of Beech Mountain
December 2, 2019

Detailed Revenue Totals

PROGRAM REGISTRATIONS \$637.00

MEMBERSHIPS \$1,705.00

Facility Reservation \$0

POS \$572.55

Total Online Sales \$430.00

**TOTAL MONTHLY REVENUE
\$2,914.55**

Programs

2019 Holiday Market \$590.00

Wine Hayride \$47.00

Memberships

Family Annual Pass \$1,225.00

Individual Annual Pass \$450.00

Condo Membership \$0

Individual Week Pass \$0

Family Week Pass \$30.00

POS

Binoculars \$40.00

Coke Machine \$22.75

**Daily Use (Non Member Check-in)
\$225.00**

Dog Park Donations \$21.50

General Donation \$2.05

Personal Training \$250.00

Print/ Fax \$1.25

Trail Map \$10.00



REPORT

TO: Town Council
FROM: Preston Yates
DATE: December 10, 2019
SUBJECT: Planning and Inspections Report 2019-11

FOR THE PURPOSE OF:
For Town Council review and consideration.

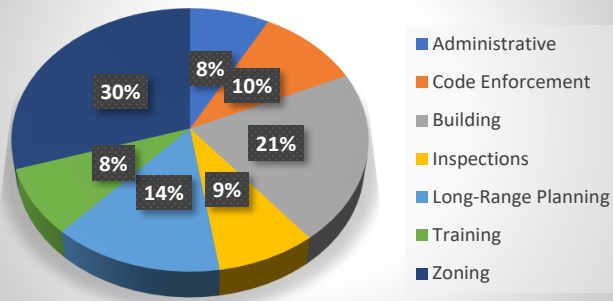
SIGNATURES:

Town Manager

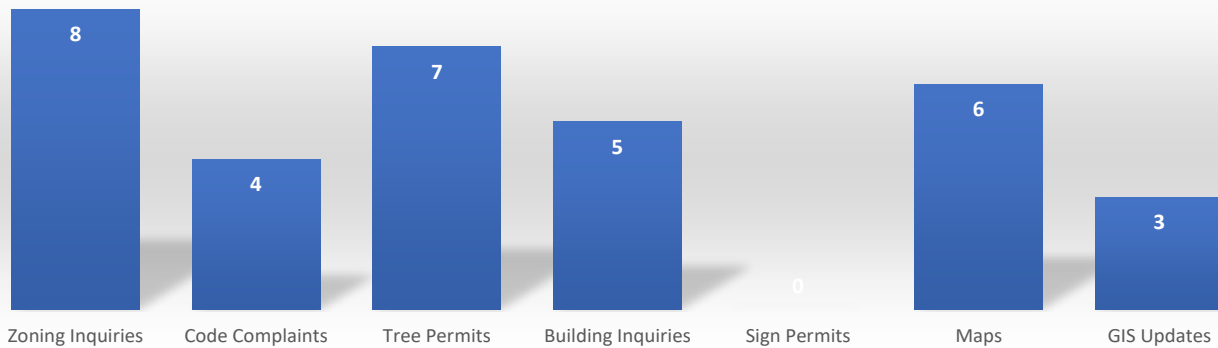
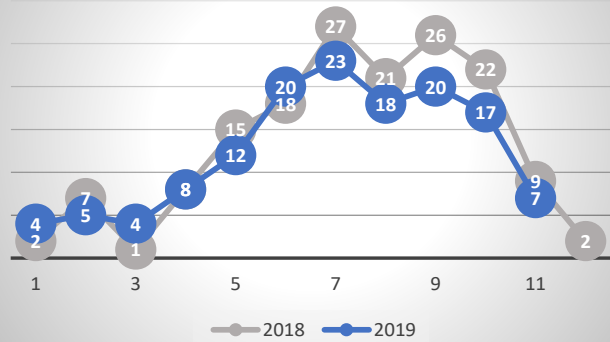
Town Clerk

TOWN OF BEECH MOUNTAIN
PLANNING AND ZONING MONTHLY REPORT
November-2019

Time Allocation



Tree Permits



Summary and Highlights

Long Range Planning:

Town Council adopted 2020-2035 Comprehensive Plan

Zoning:

Official Zoning map adopted by Town Council

GIS:

Updated Parcel data and several other data layers

Building

Inspections and permits consistent with previous years' decline during winter

Code Enforcement:

Initiated plan for enforcement of address posting compliance

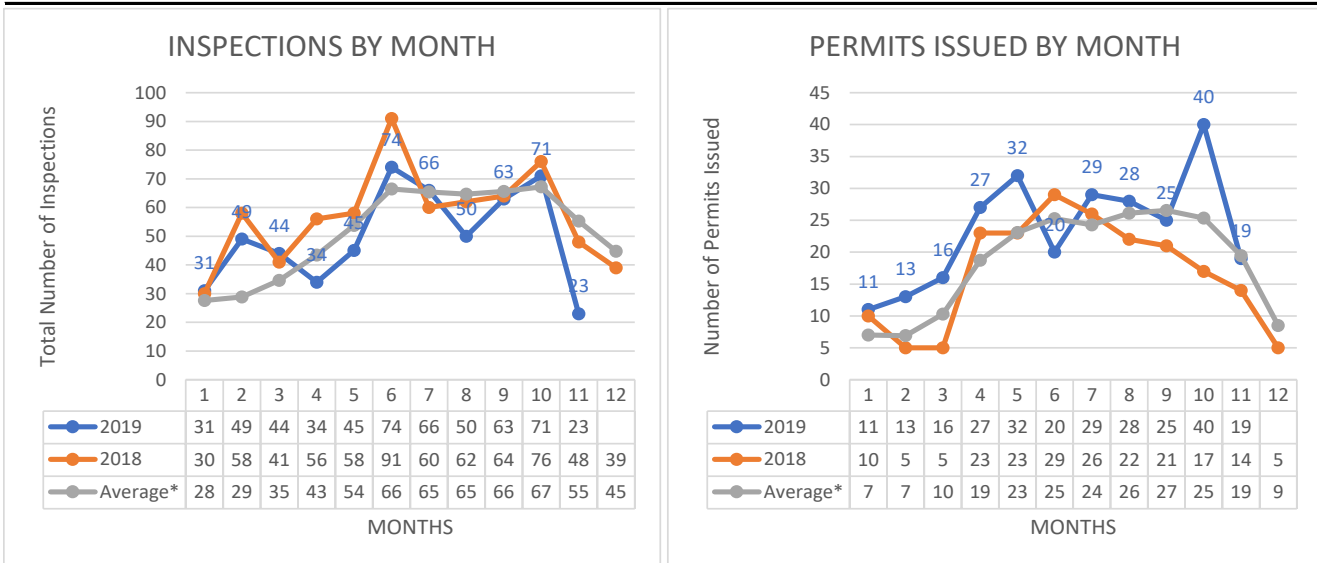
TOWN OF BEECH MOUNTAIN
Monthly Report
Department of Building Inspections
November-2019

1. Number of Inspections

	This Month	Last Month	Same Month Last Year	This Fiscal Year to Date	Last Fiscal Year to Date	Calendar Year to Date
Building	11	39	20	142	134	268
Electrical	5	10	10	47	39	96
Plumbing	5	7	4	26	21	63
Htg/Air & Misc.	2	15	14	58	52	123

2. Permits Issued

No. Issued	19	40	14	141	65	260
Value	\$ 165,129	\$ 1,211,200	\$ 84,549	\$ 3,244,443	\$ 1,031,477	\$ 4,772,567
Permit Fees	\$ 1,891.24	\$ 20,964.14	\$ 1,040.00	\$ 43,213.15	\$ 11,331.20	\$ 90,435.77



*NOTE: Average Inspections and Permits are calculated based on a running average since April 2009

3. Nature of Building Permits

# of Permits	Type	Address	Total Fees	Valuation	New Bldgs FY to Date	New Bldgs Last FY
	New Single Family				4	0
	New Multi-Family				0	0
	New Commercial				0	0
19	Other	Various	\$ 1,891.24	\$ 165,129		
19			\$ 1,891.24	\$ 165,129		