



# MINUTES

## Regular Town Council Meeting

4:00 PM - Tuesday, December 13, 2022  
Council Chambers

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The Regular Town Council of the Town of Beech Mountain was called to order on Tuesday, December 13, 2022, at 4:00 PM, in the Council Chambers, with the following members present:

**COUNCIL PRESENT:** Mayor Barry Kaufman  
Vice Mayor Jimmie Accardi  
Councilmember Weidner Abernethy  
Councilmember Kelly Melang

**COUNCIL EXCUSED:**

**STAFF PRESENT:** Attorney Stacy Eggers, IV  
Town Clerk Tamara Mercer

### 1. CALL TO ORDER

### 2. ADOPTION OF AGENDA

2.1. Mayor Kaufman noted the amendment to the Agenda item 7.7.

#### **Motion**

Jimmie Accardi made a motion to amend the agenda adding item 7.7 Sgt. Chris Ward Bridge renaming support and Kelly Melang seconded the motion. CARRIED. unanimously.

2.2. Councilmember Erin Gonyea resignation and present Beech Mountain plaque of recognition and appreciation

Mayor Kaufman stated the Council would accept the resignation from Erin Gonyea and he presented the plaque in recognition for Councilmember Gonyea's service to Beech Mountain. Mayor Kaufman noted she was a tremendous asset to the town and her hard work and service will be missed.

Ms. Gonyea thanked the community and Council members for allowing her to serve as she will miss working for the Town. She will not be far and will reside in Banner Elk, so hopes to always be a part of this special community and will continue to give exercise lessons at the Beech Mountain Club.

### 3. INVOCATION- DEWEY CYCLONE BRETT

### 4. PLEDGE OF ALLEGIANCE

### 5. PUBLIC COMMENT

5.1. Mayor Kaufman opened up the public comment portion of the meeting.

Ms. Bell Bennett of 404 Beech Mountain Parkway said she has lived here since 1976. Ms. Bell addressed TDA and the rental occupancy tax. She works in real estate, specifically with renting dwellings. She was against using the occupancy tax that is generated from rentals for capital projects and said the taxes should be used for marketing and tourism.

(Mr. Michael Franz stood and requested to speak during item 7.5, Mayor Kaufman said he could discuss the item during public comments.)

Mr. Michael Franz, of Mariah North IV and is the Condominium Association President, addressed the dumpster violation cited by the Town's Zoning Official. Mr. Franz said the issue occurred when the improvements to the dumpster enclosure and location of said dumpster was placed on town property and was based on verbal approval of the location of the dumpster. He introduced his case:

- The Town passed a Solid Waste Ordinance (the “Ordinance”) requiring condo properties to be served by a dumpster. The Ordinance required the exact location of the dumpster to be agreed upon by Owner and Director of Public Works or his or her designee.
- Based on an on-site visit on Oct 21, 2021, by Town of Beech Mountain Public Works Director Daniel Davis, Republic representative Peggy Poston, and representatives of the various Mariah North condo associations, several sites were reviewed for potential options for dumpster placement. The Easement Area (aka the Mariah Circle turn) was identified as the best option and was discussed further with Daniel Davis with what was thought at the time verbal approval for this site given appropriate surveys were completed that the dumpster does not impede on any personal property (see Exhibit B).
- The Mariah Circle turn is aesthetically the best location, is in good proximity to all of the 46 units that the dumpster would serve and is not used as part of the roadway and also does not appear to be serving an economic purpose for the Town (see Exhibit C for photo prior to development).
- Surveys, detailed location / enclosure diagrams, and location development estimates (@\$24,000) were completed (see Exhibit D). City building permits were prepared in August 2022 including the attached detailed diagrams and estimates for approval based on the city requirements of any project being greater than \$15,000 (see Exhibit E).
- When permits were ready to be submitted in August, a Town inspector indicated that no permit was required due to the mandated dumpster enclosures. Therefore, no review of location was completed by the Town clearly showing dumpster location on Town property.

- Mariah IV then spent approximately \$14,000 of the \$24,000 budget developing the Easement Area as a location for the dumpster and with an enclosure satisfying the Ordinance (we will supplement this email with Exhibit F which will be photos of improvements completed to date). The Town stopped the development of the location after the concrete pad was constructed with a notice of non-compliance.
- Mariah IV acted in good faith given the verbal approvals of the location site and would have corrected the location if the Town would have applied its permit process and required Mariah IV to submit plans and specifications for approval.

Mr. Franz reiterated there was a verbal approval to Mr. Brian O'Connor president of Mariah III, who met with Daniel Davis and based on the verbal approval a dumpster location was constructed. He said Mr. Michael Holland, with Inspections Department, indicated that a permit was not required. He said the Association spent \$14,000 on the dumpster and enclosure. A stop work order was issued by the Inspections Department which was contrary to discussions and the removal costs will incur more charges to the homeowners explained by Mr. Franz.

Mr. Franz stated that the two objection letters submitted by neighbors is based on the perceived use of the dumpsters, but this is mandated by ordinance, so their letters are not persuasive arguments by these two adjacent landowners. An objection based on the use of public property can be argued by numerous grants for utility easements. Property owners agree to sewer water and drain field easements, and conversely property owners work with the town to grant trails and ingress egress easements for other uses in public rights-of-way so with proper agreements this does not necessarily mean an encroachment.

Ms. Jana Greer of 505 Oz Road read a letter from Kari McMichael's who could not attend the meeting stating she was not in favor of item 7.1 Ms. Greer added that she was not in favor of the proposed resolution to regulate single-family dwelling. She questioned who decides what an element of style or use of materials and how that should be regulated. Ms. Greer was not in favor of the resolution, there will be inconsistent enforcement. Ms. Greer questioned the aesthetic appeal of design elements in the proposed ordinance.

Mr. Ben Swadley of 207 North Pinnacle Ridge Road loves Beech Mountain and the landscaping and beauty of the mountain. He serves on the Parks and Recreation advisory board. There has been growth on the mountain and growth in recreational needs. The next budget should include more funds for Parks and Recreation to increase memberships. The department could be undervalued but increasing and charging more fees for events closes that gap. We should reinvest in infrastructure and use our recreation assets for growth. This increases home equity growth. We are vulnerable to market sways so reinvesting in the town protects us from market sways. He thanked the Council for this consideration.

## 6. **CONSENT AGENDA**

- 6.1. Adoption of Minutes of Town Hall Meeting October 6, 2022, and Regular Council Meeting November 8, 2022
- 6.2. 2023 Town Council & Boards' Meeting Schedule Calendar and Annual Budget Calendar for Fiscal Year 2023-2024
- 6.3. Tax Release & Refunds

### **Motion**

Kelly Melang made a motion to approve the consent agenda items for: 6.1 adoption of the minutes, 6.2 2023 town Council and Boards' Meeting Schedule Calendar and Annual Budget Calendar, and 6.3 Tax Release and Refunds and Jimmie Accardi seconded the motion. CARRIED. unanimously.

## **7. NEW BUSINESS**

- 7.1. Resolution to request local control of the design of residential structures

Vice Mayor Accardi believed this would create government overreach and was in favor of the current regulations and not adding more. In response to his inquiry, Mr. Pudney said that Sugar Mountain and Banner Elk introduced the resolution in their respective towns. We have had residents' complaints against buildings and materials such as metal buildings. In that respect we have no authority to regulate houses and address the complaints via the state statute. Mr. Pudney added that we may send this resolution to the General Assembly, but it probably has limited chance of passing. This attempts to give local control by the state general assembly to enforce design of residential structures. This is not an ordinance; it is a resolution. Sugar Mountain passed it, but Banner Elk did not, noted Mr. Pudney.

Mayor Kaufman noted that all standards are different, and we should check what is appropriate. Councilmember Abernethy understands both sides, he believes some local control should be in place, so he is in favor of the resolution. Councilmember Melang questioned how it is implemented. Does it go before the Planning Board, to which Mr. Pudney answered the guidelines would first go before the Planning Board for a recommendation to Council.

Mr. Pudney reviewed how the zoning regulations and permit review works for commercial business, but that process is not over single-family homes, only commercial zoning. For example, paint colors and design, etc. If a building meets the building code, we do not have authority to change materials as long as it meets building code. In 2018, the law was changed by the General Assembly, and this was enacted by lobbyists from the Home Builders Association. They amended the statute. Currently a municipality cannot control appearance. The General Assembly repealed the restrictions and regulation authority for single-family design standards. Sugar Mountain is seeking to receive authority to control single-family dwellings design standards. Attorney Eggers concurred this resolution looks to achieve local authority for residential guidelines, so the Building and Planning staff would have design standards pre-approval.

Attorney Eggers explained the history in the City of Cary, and he said the proposed amendment addressed the property rights for single-family residence. He stated this resolution asks the General Assembly to grant local authority to enforce residential guidelines. Any residential guidelines as written up and defined by the Planning Board could go before Town Council to be vetted and adopted by Council. The guidelines would be regulated by staff such as the Zoning Official and Building Inspectors based on those design standards. Current structures would be grandfathered.

Mayor Kaufman called for a vote or to table the matter, to which Councilmember Melang stated she was not comfortable, and said the request should be tabled. Councilmember Abernethy was in favor of the resolution and like the outdoor amusements text amendment, he felt the town needs to take control of the aesthetic appearance of the town. Mayor Kaufman noted that Vice Mayor Accardi was opposed, and he was opposed.

### **Motion**

Weidner Abernethy made a motion to approve Resolution No. 2022-11 to request local control to regulate residential dwelling appearances and seconded the motion. DEFEATED. 1-3 (opposed: Barry Kaufman, Jimmie Accardi, and Kelly Melang).

## **7.2. 2022 Financial Statement Presentation**

Ms. Cindy Randolph, CPA with C. Randolph CPA, PLLC presented the Financial Annual Audit report. The audit was submitted to and has been accepted by the Local Government Commission (LGC). She highlighted the fiscal year accomplishments and provided the independent audit analysis. The financial statement audit and the un-modified opinion was favorable. The town had a 'yellow-book' audit which means the Town received State funding in excess of \$300,000 which includes more compliance testing based on the grants received. We had no 'non-compliance' issues, as well as no material weaknesses or deficiencies found as per standards accepted by the Local Government Commission and Government Auditing Standards, (GAAS).

She reviewed the General Fund, unassigned general fund, revenues, expenditures and changes in fund balances. She pointed out the unassigned balance for the General Fund was \$6,669,960.00 for the fiscal year which was an increase of \$789,000 from the previous year. Unassigned fund balance represents 68% of the General Fund expenditures for the fiscal year.

Ms. Randolph explained the definitions for an unassigned fund balance, appropriations, years of declining revenues, or any unforeseen expenditures, and how this affects and allows cash flow; as for the Town of Beech Mountain, the town has fund balance of 68.11% which is above the LGC requirement of 63%, so Beech Mountain is above the average. The current property tax collection rate is 98.96%. The average State property tax collection rate is 98.11%, so the town is above average.

Ms. Randolph reviewed Net statement position, revenues from increased property and sales tax, Powell Bill allotments, and increased budget for the TDA audit report. The line items for expenditures had no violations and are closely monitored. The Town Council and staff will begin working on their next fiscal year budget for the upcoming year as well as long-term capital improvements.

In response to Councilmember Abernethy's inquiry, Ms. Randolph reviewed page 41, long-term expected rate of return for future projections. She explained pension expenses and liabilities and OPEP information which is a template for retirements and funding retirement for law enforcement and general employees. She said we receive those numbers as provided by the LGC as to what has been paid into the Orbits system for law enforcement and general employees.

In response to Councilmember Abernethy's follow-up question regarding the retirement benefits, Ms. Randolph first consulted Mr. Smith, and said he was referring to future liabilities based on the retirement system. The law enforcement separation allowance which was referred to as the deferred outflows of resources and deferred inflow of resources related to pension plans. Ms. Randolph reiterated the figures are given to the town from the State Retirement Office or Orbits, so those numbers are provided by the State.

Mayor Kaufman requested a motion to accept the findings for the Beech Mountain Annual Audit Report.

### **Motion**

Weidner Abernethy made a motion to accept the auditor's findings and financial statements for Fiscal Year ended June 30, 2022, and Kelly Melang seconded the motion. CARRIED. unanimously.

### **7.3. Consulting Proposal**

In response to Councilmember Melang's inquiry, Mr. Pudney stated this request had been budgeted for the source water reservoir project and is funded by the water bill source water fee of \$7.00. That has been funding the design professionals and consultants.

In response to Councilmember Abernethy's question regarding long-term infrastructure plan, Mr. Pudney said we looked at the FEMA funding for the Lake Coffey Project. The BRIC grant was submitted, and we were denied, so we reapplied again for federal funding as well as the Jobs Investment Act for 14-million-dollars. The State denied it again so we lack the expertise to address grant writing. We sought the consultant and negotiated the rate per hour. The contract includes a non-exceed maximum rate. This is the proposal presented to Council.

Mr. Pudney explained there are three phases, 1) identify grant funding, 2) assist in applications review and 3) liaison for more favorable grant response to find funding. FEMA has funding to disperse, Brock Long is an ex-FEMA

director, and will work for us locating grant funding and this is the next logical step.

Councilmember Abernethy was in favor of this opportunity to move forward and Councilmember Melang was in favor of investing in our future. Mr. Pudney noted that this proposal did not go to bid. Mayor Kaufman requested a motion to accept the contract proposal.

### **Motion**

Weidner Abernethy made a motion to accept the consulting firm of Hagerty Consulting, INC. for Federal and State Funding Support to the Public Water System and Kelly Melang seconded the motion. CARRIED. unanimously.

#### **7.4. RFQ 2022 Grassy Gap WWTP Sewershed Study**

In response to Mayor Kaufman's inquiry, Mr. Pudney said this is a sewer repair and study project funded through the North Carolina SRF funding and a requirement of that loan is to perform an engineer's RFQ. West Consultants submitted and with Council's acceptance of their qualifications, this allows staff to move forward with that project.

Mayor Kaufman requested a motion to accept the RFQ Grassy Gap Sewershed Study.

### **Motion**

Kelly Melang made a motion to accept RFQ 2022 Grassy Gap WWTP Sewershed Study from West Consultants and Weidner Abernethy seconded the motion. CARRIED. unanimously.

#### **7.5. Mariah Circle Dumpster Location POA Request**

Mr. Pudney reviewed the history of events that led up to the citation issued by the Zoning Official. He said the Mariah Circle dumpster location was placed on the town's property without permission. In the beginning there was a series of meetings with representatives of the Condominium Owners Association and the Town Planner, Preston Yates. Originally the dumpster was not in this location. The placement was originally located on an old tennis court area, and was approved by the service provider, Republic Services but this location was unacceptable to some residents and neighbors. At one of the on-site meetings was Daniel Davis of Public Works and Peggy Post with Republic Services.

Mr. Pudney reviewed the submitted documents from Condo Association president Mr. Franz, and he pointed out that in the email thread there was a misunderstanding by the Condo Association. Mr. Davis did not have authority to place a dumpster on a town right-of-way. The Condo Association was seeking that permission. In their emails, one can see their confusion, but Mr. Davis never replied giving permission. There was no response from Mr. Davis. On October 21 and October 22 emails, there is conflicting location information.

They were asking please confirm to place the dumpster in the city's 30-foot easement. So here is the discrepancy.

Unfortunately, the concrete pads were poured, not on Moriah's private property, but on town property. On property that Moriah does not control nor owns. The Town Manager's Office was informed, and we extended the deadlines and consulted with Town Attorney's Office regarding the violation and issued a citation for removal of the dumpster.

It is the town's wish for the return of town property to its original state. In response to Councilmember Abernethy's question, Mr. Pudney replied that he did not know the date on which the concrete pad was poured. In response to Councilmember Melang's question, Mr. Pudney said the cost of removal would be by the Condo Association as the concrete was improperly placed and needs to be removed. The dumpster itself could be moved by a truck easily.

In response to a question regarding liability, Attorney Eggers explained an encroachment agreement and allowances for an agreement. He discussed public health and safety, and encroachments. As a discretionary decision by Council, it is Town Council to decide if this is appropriate or not appropriate. If the town would need roadway or travel access to the property could be considered as well. In response to Councilmember Melang's request to view the site, Mr. Franz provided more photographs of the dumpster and site location.

Attorney Eggers noted the proper motion would be to either grant or deny an encroachment agreement. Mayor Kaufman requested a motion to deny the request.

### **Motion**

Weidner Abernethy made a motion deny an encroachment agreement for dumpster concrete pad location and Kelly Melang seconded the motion. CARRIED. unanimously.

### **7.6. Board and Committee vacant terms**

Vice Mayor Accardi was in favor of postponing the appointments to board and committee vacant terms and Mayor Kaufman agreed.

### **Motion**

Jimmie Accardi made a motion to postpone the appointments to boards and committee vacant terms to January 10th meeting and Kelly Melang seconded the motion. CARRIED. unanimously.

### **7.7. Res. Honoring Sergeant Christopher Ward and naming Watauga Bridge**

Mayor Kaufman requested to support the bridge naming on Highway 321 in honor of Sergeant Christopher Ward.

## **Motion**

Kelly Melang made a motion to support the bridge naming on Highway 321 in honor of Sergeant Christopher Ward and Weidner Abernethy seconded the motion. CARRIED. unanimously.

## **8. TOWN MANAGER AND STAFF REPORTS**

### **8.1. Town Manager Report**

Mr. Pudney reviewed the projects and status updates for projects:

Water services line replacement project phases:

- \$1,000,000.00 grant replacing 350 individual service lines which reduces water loss. Drawing completed, submitting to state this month, then permitting and bidding. Construction to start in April 2023.
- \$4,000,000 grant plus \$2,971,745 SRF Loan at 1.13% 22,700 feet of water line. Reduce water loss and improve fire protection. Drawings to state in January for permitting. Construction to start in May 2023.

Sewer main improvement project:

- 40-year-old 10" line on selected roads before paving.
- \$2,870,000 SRF loan at 1.10%. Manholes have been raised and the sewer camera, drawing underway for submittal to the State. Construction to start late May 2023.

Skiloft Road Project: replacement of all infrastructure including water, sewer, electrical, cable and communications, rebuild the roadway and improve drainage. Continue to design and coordinate with the major utilities. Expect to finalize the drawings in January, plan to meet again with the property owners. Projected to start construction in April 2024.

Pinnacle Ridge Well Development: build out of the new well, contract awarded at \$268,060.00, a notice to proceed is imminent, construction expected to be completed in January 2024. Provides in excess of 100,000 gpd.

Lake Coffey: 30,000,000-gallon Water Reservoir. FEMA grant applied for \$12,000,000.00 received favorable State ranking. Seeking additional grant opportunities as well as possible bond funding is being investigated. The parrel routs at this time: general obligation bond, revenue bond, grants. We have met with the USDA, General Obligation Bond requires a referendum by the voters, a number of important decisions will be required by the Council in January.

Mr. Pudney stated a number of properties have been found to be in non-compliance with existing town ordinances, specifically when a pending sale is underway the town is requested to attest that the property meets all town ordinances. This program is designed to meet the zoning code enforcement requirement as directed by Council.

Planning Department mailed an informational letter to all properties regarding the top four issues encountered:

- 911 addressing
- above ground tank screening
- private culvert maintenance
- trash bins

Mr. Pudney added that the biggest issues are trash bins and culverts. He clarified, all properties are required to provide a code compliant trash bin, regardless of if they choose to use it. Short-term rentals must provide a metal bear resistant bin. There are 151 current delayed enforcement waivers, 51 have been rescinded due to sale of the property. (50.11(b)). The Zoning Department will be conducting a survey of all properties over the next two years at least, with specific attention to fuel tank screening, trash bins, driveway culverts, 911 numbers, right-of-way encroachments. Other issues will be identified as needed. Courtesy notices will be mailed as required; violation notices will be sent to those properties that do not respond. The program will be tracked in the monthly report to Council. This can be found on page 195 (of 202) bottom section.

#### Town Hall / Visitor Center Expansion Project:

Bid was received at \$2,107,165 million, John Merritt met with the contractor to reduce the costs, reduced \$226,510 to \$1,880,655.00. This project was in response to a projected new public safety building at approximately \$6-million-dollars.

Expands the Visitor Center to better meet the needs of the visiting public, provides additional office space, family bathroom, shared conference facilities. For Town Hall, the project expands the spaces for the Police Department, relocated the Planning and Zoning Department, removes the code review and drafting office from the kitchen and makes major repairs to both facilities roofs and infrastructure.

Mr. Pudney said at the regular TDA meeting held today, Dec 13, 2022, the TDA tabled the matter until they can consult with their attorney. Several members questioned if they even agreed to the project. We would like to review the project and bring it to Council at January's meeting.

Approximately \$117,000 has been spent on the project with the design, the engineers, and permitting, so TDA stating that they did not approve the plans and budgeting the funding for two years now is a concern. Four of the five members do not recall voting or approving. The TDA has hired their own attorney, who did not attend the meeting, so the matter was tabled to January. Mr. Pudney added that as a separate entity, the TDA has \$275,000 which was encumbered for the project. The Town and TDA have shared the costs so far.

Mr. Pudney pointed out the Police Department report on page 166, wherein all vacant positions on the force have been filled. Setting the

compensation higher and having competitive benefits have allowed the workforce to be at full staff. The Parks and Recreation 'Holiday market' was a great success raising \$2,596.00 and the 'angel tree' was sold out, supporting 30 children, partnered with Ram's Rack in Newland. Thanks to all who pitched in supporting our disadvantaged youth.

In response to Councilmember Melang's inquiry, 100% of the recycling loads taken to the transfer station are being accepted.

Mr. Pudney made a request to officially name the public works facility and he welcomed idea submissions as currently we just say the new public works facility. The holiday parade, A Very Beary Christmas is scheduled for December 22nd at 4:00 with Santa's workshop following the parade with photos, crafts, and hot chocolate at Town Hall. The parade will take place snow or shine.

- 8.2. Police Department Monthly Report
- 8.3. Fire Department Monthly Report
- 8.4. November Recreation report 2022
- 8.5. DOI Monthly Council Report
- 8.6. Finance Officer's Report for October 2022

### **Motion**

Review

- 8.7. Planning and Inspections Monthly Report 2022-11
- 8.8. TDA Report December 2022

## **9. TOWN COUNCIL COMMENTS**

- 9.1. Councilmember Melang was proud of the Public Works Department that the recycling program was working towards sustainability.

Councilmember Abernethy thanked Chief Pudney for being a visionary updating the Beech Mountain Fire and EMT programs and he donated \$1,000 in honor of the Chief's charity, the non-profit organization 'Tunnels to Towers' which honors those 9/11 responders in New York City and in Washington DC.

Vice Mayor Accardi thanked Steve for the favorable town financial audit. He thanked Riley Hatch working on the camera controls. The Brick Oven thanks the Fire and Police Departments, and 'Friendsgiving' event raised \$5,000 which is donated towards the town's new EMS ambulance. Ms. Erin Gonyea was recognized for her service and hard work, and Vice Mayor said he will miss working with her on Town Council.

Vice Mayor Accardi noted the Council's options are to nominate an interim council member or for the four council members to handle the business of the

town. Councilmember Melang said they should leave it to the people to vote at the next election in November of 2023, to which Attorney Eggers agreed they could leave the seat vacant or appoint someone to fill the vacant term by a majority vote of Council. Councilmember Abernethy noted that as long as the four members of council could agree to reduce taxes. Mayor Kaufman added that compromises may be in order to avoid stalemates. Vice Mayor and Mayor Kaufman agreed. Mayor Kaufman said they will leave the seat open and remain with four members for Town Council.

Mayor Kaufman added happy holidays and happy Hanukah. The next annual budget cycle begins in January. We will record the budget retreats. The first retreat is January 25, 2023, at 8:30 a.m.

Mayor Kaufman requested a motion to go into closed session at 5:55 p.m.

**Motion**

Jimmie Accardi made a motion to enter into closed session pursuant to NC GS 143-318.11 (a)(3) Attorney Client Matters and Kelly Melang seconded the motion. CARRIED. unanimously.

**10. CLOSED SESSION - PURSUANT TO NC GS 143-318.11 (A)(3) ATTORNEY CLIENT MATTERS**

10.1. Mayor Kaufman requested Council to send in their nominations for board members, as the Council is still receiving applications, please email the board member choices. The clerk will send updated applications as received.

**11. ADJOURNMENT**

11.1. There being no further business, Mayor Kaufman requested a motion to adjourn at 6:25 p.m.

**Motion**

Kelly Melang made a motion to adjourn the meeting and Weidner Abernethy seconded the motion. CARRIED. unanimously.

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Town Clerk

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Mayor, Town of Beech Mountain