

MINUTES
BEECH MOUNTAIN TOWN COUNCIL
Regular Meeting – April 14, 2015

I. CALL TO ORDER

Mayor Owen called the regular meeting of the Beech Mountain Town Council to order at 4:02 p.m., Tuesday April 14, 2015 in the Town Hall Council Chambers. Other Council Members present were Paul Piquet, Alan Holcombe, and E. ‘Rick’ Miller. Councilwoman Cindy Keller was not present. Town Attorney Stacy C. Eggers, IV. was present. Staff members present were Town Manager Randy Feierabend; Town Clerk Jennifer Broderick, Finance Officer Steve Smith, Tax Collections Administrator Rebecca Ward, Public Works Director Riley Hatch, Public Utilities Director Robert Heaton, Fire Chief Robert Pudney, Building Inspector John Merritt, Police Chief Shawn Freeman, Town Planner James Scott, Director of Tourism and Economic Development Kate Gavenus, and Parks and Recreation Director Sandy Carr. Town Engineer Benjamin Thomas of P.E. West Consultants was also present.

II. Invocation – Dewey ‘Cyclone’ Brett presented the invocation.

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

IV. Adoption of Agenda – Mayor Owen stated that the agenda would stand as presented.

V. Approval of the Minutes

a. March 10, 2015 Regular Meeting – Councilman Miller motioned to approve the March 10, 2015 Regular Meeting Minutes. Councilman Holcombe seconded the motion and the vote passed unanimously.

b. March 10, 2015 Closed Session – Vice Mayor Piquet motioned to approve the March 10, 2015 Closed Session Minutes. Councilman Holcombe seconded the motion and the vote passed unanimously.

VI. Public Hearing

a. Public Hearing for Dimensional Requirements Table – Mayor Owen asked that Town Planner James Scott discuss the ordinance that Council was being asked to consider. Mr. Scott stated that the amended requirement for setbacks clarifies road frontage to be inclusive of any point of the home that is in front of a road. The other area that the portion of the proposed amended ordinance also correct a building height requirement. Vice Mayor Piquet motioned to open the public hearing. Councilman Holcombe seconded the motion and the vote passed unanimously. Mayor Owen asked if anyone wished to speak. Hearing no comments from the public Vice Mayor Piquet motioned to close the public hearing. Councilman Holcombe seconded the motion and the vote passed unanimously.

VII. Public Comment – There was no public comment.

Finance Officer – Mayor Owen welcomed the Town's new Finance Officer Steve Smith. Mr. Smith received a round of applause.

VIII. New Business

- a. Water Plant Project Update** – Benjamin Thomas, P.E. West Consultants stated that the plans and specifications have been completed for the new Water Plant Project. The North Carolina Department of Environment and Natural Resources has approved the documents and issued an authorization-to-construct. The United States Department of Agriculture sent an email yesterday saying that the plans were approved. The United States Department of Agriculture has requested a change in liquidated damages from the proposed \$1,000 per day to a \$500 a day penalty. The revisions and the specs will be sent out this week. The United States Department of Agriculture stated that the Town may be able to put this project out to bid in a month; perhaps the end of May. The building inspections department has been reviewing the plans and specifications. The title opinion for the property, on which the project will be constructed, has been completed. Attorney Eggers provided a title opinion and Town Planner James Scott provided his survey expertise. Town staff, the Local Government Council staff, and Parker Poe attorneys are preparing for submission of the application to the Local Government Commission for revenue bonds issuance approval. This is tentatively scheduled for approval at the June Local Government Commission meeting. Vice Mayor Piquet pointed to the drawings that had been provided for the exterior of the new Water Plant. Mr. Thomas stated that they were trying to eliminate penetration. Councilman Miller asked how much more this would cost. Mr. Thomas stated that he has received some loose feedback that this project will be between \$5,000,000 and \$6,000,000. These numbers are not firm though. Mr. Thomas stated that the rock would be the higher cost of the cosmetic changes. Staff pointed out that the cupola, stone veneer across the bottom, and enlarging the windows were the three proposed cosmetic changes in front of Council. Councilman Miller asked how the new Water Plant building and Buckeye Recreation Center were going to look with the old water plant building still there. Building Inspector John Merritt stated that it was believed, through walking around the property, that the old building would be obscured. Mr. Thomas stated that a brown paint will be applied to the gables on the old building and that there would be plantings of shrubbery too. Mayor Owen asked for Council's thoughts on the design. Council stated that they were fine with proceeding with this design.
- b. Contract to Audit Accounts** – Mayor Owen stated that Misty Watson did the Town's audit last year. Councilman Miller questioned the amount of the contract. Staff responded that the contract was set up in a manner that only allowed for a portion of the total contractual agreement to be earned until the audit was completed. Vice Mayor Piquet asked about the years stipulated in the agreement. Town Clerk Jennifer Broderick stated that the terms of the agreement was for the upcoming two consecutive fiscal years at the same price. Either party could opt out of the agreement should they so choose. Vice Mayor Piquet motioned approve the contract. Councilman Holcombe

seconded the motion and the vote passed unanimously. Director of Tourism and Economic Development Kate Gavenus stated that the Tourism Development Authority proposed audit contract is \$1,700.

- c. *Resolution Opposing Senate Bill 369*** – Attorney Eggers informed Council that Senate Bill 369 is not receiving favorable feedback. Currently sales tax is distributed at the point of collection and then redistributed back. The proposed language of Senate Bill 369, as written, would cause the poorest areas and metropolitan areas to lose a lot of money. There are other proposals related to sales tax that propose a hybrid method that could be used in addition to the current method which permits Counties to choose between the ad valorem method or the per capita method. Councilman Holcombe motioned to adopt the resolution opposing Senate Bill 369. Councilman Miller seconded the motion. Mayor Owen called the vote and the vote passed unanimously. Mayor Owen thanked Attorney Eggers for the update. Resolution 2015-03 ‘*A Resolution of the Town of Beech Mountain Opposing Senate Bill 369*’ is attached as Exhibit A and incorporated by reference as if fully set out within these minutes.
- d. *Resolution of the Town of Beech Mountain Dealing with Small Underpayments and Overpayments of Ad Valorem*** – Mayor Owen stated this resolution permitted the Tax Collector the ability to not pursue delinquency levels that were \$1.00 or less and to apply overpayments that were \$1.00 or less to future ad valorem taxes. Vice Mayor Piquet motioned adopt the resolution dealing with small underpayments and overpayments of ad valorem. Councilman Holcombe seconded the motion and the vote passed unanimously. Resolution 2015-04 ‘*A Resolution of the Town of Beech Mountain Dealing with Small Underpayments and Overpayments of Ad Valorem*’ is attached as Exhibit B and incorporated by reference as if fully set out within these minutes.
- e. *Order to Advertise 2014 Delinquent Property Taxes*** – Councilman Holcombe motioned to advertise the 2014 delinquent property taxes in the amount of \$225,822.95. Vice Mayor Piquet seconded the motion and the vote passed unanimously. Manager Feierabend notified Council that staff may have to send out an additional notice due to the total amount being printed by the software and not just the remainder amount that is owed. Tax Collections Administrator Rebecca Ward stated that the Town’s software company, Incode, is able to make that change without a cost to the Town and that the advertisement would take place by the end of May.
- f. *Public Hearing Request to Amended Regulations for Electric Fences*** – Town Planner James Scott stated that the proposed amendment would prohibit electric fences due to concerns regarding safety. Vice Mayor Piquet motioned to schedule the public hearing for Councils next regular Council meeting. Councilman Holcombe seconded the motion and the vote passed unanimously.
- g. *Public Hearing Request to Amend Regulation for Accessory Structures*** – Town Planner James Scott stated that this is to ensure that accessory structures are truly an accessory. The discussion came up when a property owner wanted to build a very large garage and little house. The proposed language in this amendment will ensure that accessory structures will be accessory to the primary structure, keeping the accessory

structure less than 75% of the square footage of the primary structure. Additionally, the accessory structure could not be taller than the primary structure. Vice Mayor Piquet motioned to schedule the public hearing for Councils next regular Council meeting. Councilman Miller seconded the motion and the vote passed unanimously.

h. Public Hearing Request to Amend Regulations Regarding Rules for Town Parks –

Town Planner James Scott stated that this proposed amendment came up when the Police and Fire Department were called out to Buckeye Lake due to individuals playing hockey on the frozen lake. The language would include a penalty for individuals who enter on these frozen surfaces. Vice Mayor Piquet motioned to schedule the public hearing for Councils next regular Council meeting. Councilman Holcombe seconded the motion and the vote passed unanimously. Councilman Miller asked what the fine was. Mr. Scott stated that he believed that it was a \$100 fine.

i. Public Hearing Request to Rezone 1103 Beech Mountain Parkway –

Town Planner James Scott stated that somehow when the zoning map for the Town was redrawn and computerized this property was misidentified. It is currently shown as zoned for residential purposes. Mr. Scott stated that everyone that he has talked with has stated that this has always been used as a commercial property. Mr. Scott stated that staff is requesting that Council rezone this to CS-1. Vice Mayor Piquet motioned to schedule the public hearing for Councils next regular Council meeting. Councilman Holcombe seconded the motion and the vote passed unanimously.

j. Compensation Study Presentation –

Mayor Owen stated that Council received a copy of the Compensation Study Report in their packet and that after David Hill of HR Essentials Consulting's presentation Council may want to invite Mr. Hill back for more follow up questions. Mr. Hill stated that the presentation this evening was a methodology explanation of the study. Mr. Hill stated that he appreciated the opportunity to be here and the hospitality of all of the Department Heads. Mr. Hill stated that he does not know of any other public government entity that provides the level of service that the Town of Beech Mountain does. Mr. Hill stated that the importance of conducting periodic pay studies is to ensure that there is a policy and pay philosophy in place so that employers can both recruit and retain the best employees. Comparable employers are identified to be included in the study. Mr. Hill stated that a meeting with the Department Heads was held to discuss why he was there and what he was going to be doing. The study included a nineteen page questionnaire that captured every element of the various positions of the Town. This was followed up with personnel interviews with the employees to review their responses to the questionnaire. Mr. Hill stated that of all the positions in local government the position that is standard throughout is the position of Police Officer. The primary duties and responsibilities are the same for Police Officers. The Police Officer position becomes the benchmark. Mr. Hill reviewed other factors such as the minimum, mid-point, and average. The next element to the study was to weigh the mid-point for the closest neighboring community who is Beech Mountain's largest direct competitor. The result recommendation for the Town of Beech Mountain's Police Officer is a pay range of \$34,666 to \$51,999. Each of the positions that are currently funded by the Town of Beech Mountain went through the same analysis of all of the data that was collected. Mr. Hill provided a visual aid of the

standard bell curve. Mr. Hill stated that an employer should look for, in a mature work force, a bell curve where the majority of employees reside at the mid-point. Mr. Hill then showed an example which illustrated how Beech Mountain's current salaries fall into this bell curve. Mr. Hill recommended that the Town adopt the proposed salary pay schedule. Mr. Hill stated that if Beech Mountain adopted this pay schedule without an appropriate allocation method then, at the end of the day, there would be compression. Mr. Hill stated without making further adjustments to employee salaries then the majority of the employees will end up at a very narrow option at the end of the scale. Mr. Hill showed Council the figures for the number of employees for the Town and where they were at in their current salary range. Mr. Hill reviewed Option 1 through Option 5 of the allocation methods provided. Mr. Hill noted that Option 1 would grow the Town's compression. Mr. Hill stated that the proposed salary schedule is based on the mathematical data collected from the other local governments. The allocation methods provided for in Option 4 and Option 5 would allow the employees to grow horizontally in the scale. Mr. Hill stated that the proposed Pay Plan is a mathematical compilation of data. Mr. Hill stated that then there would need to be consideration given to movement of employees horizontally through the scale. Mr. Hill stated that he was happy to come back. Staff was asked to email Mr. Hill's presentation to Council. Councilman Holcombe stated that he would like to ask a question that an individual had posed. Councilman Holcombe asked if it was important to use Tennessee for comparable data. Manager Feierabend stated that he spoke with Attorney Eggers about this and that Tennessee was not a favorable comparable because they are a sales tax state. Councilman Holcombe asked about employee morale. Mr. Hill stated that you do get into these types of discussions. Mostly he heard back from employees on the level of pride that they get at being able to do the level of service that they do. Vice Mayor Piquet asked for clarification on the .5% for Option 1. Mr. Hill stated that it was .5%. Councilman Miller asked how the schedule ranges are determined. Mr. Hill stated that typically there is a 50% range of growth with the maximum being 50% higher and then 5% growth between grade levels. Mayor Owen asked how the comparable Towns were chosen. Mr. Hill stated that some are there due to the geographical location and then they were further identified based upon who out there had similar positions that the Town has and provided similar services that the Town of Beech Mountain provides. Mayor Owen stated that Mr. Hill had a clear competitor identified in the study. Mayor Owen stated that the comparisons that are used were not location related so he can see that for a job description or a pay grade level but has a hard time seeing that by just looking at geographical. Mayor Owen provided an example of Banner Elk's Finance Officer making the choice to come work for Beech Mountain. Mayor Owen questioned the geographical locations of comparable data used. Mr. Hill stated that Tennessee does not have any systematic administration. Tennessee is made up of independent departments with not centralized guidance. Mr. Hill provided the Sheriff's Department as an example stating that it is funded and then the Sheriff makes the determination of how the Sheriff wishes to pay the staff with the funds the department has been funded. Mr. Hill stated that Tennessee did not offer favorable comparable data. Mr. Hill stated that there is a trim average that is looked at when computing the data that takes out both the high and low. Mr. Hill stated that he does this to assist with establishing a secondary benchmark. Mayor Owen asked if Mr. Hill considered benefit packages. Mr. Hill stated that this was not a part of the scope of the work that the Town had requested. Mr. Hill

stated that he did a similar study for Maggie Valley that included a benefit component. Mayor Owen stated that if you get into contributions, such as 401k, how that in particular would play out. Mayor Owen stated that he felt like the Town had been keeping up with cost of living and wondered how recent any of their pay studies have been. Mr. Hill responded that probably half of the comparable data used have had a pay study done within the last 6 months that are to be adopted July 1, 2015. This means that the data gathered is still working off the old data. The data is relevant for current salaries but not for those entities that will be implementing their new pay plans for the upcoming fiscal year. Mayor Owen stated that it was disappointing. Councilman Miller asked about the Police Sergeant, for example, and how it seemed to remain the same. Mr. Hill stated that this was a fair representation of the work.

IX. Old Business

- a. Vote on Dimensional Requirement Table** – Vice Mayor Piquet motioned to approve the dimensional requirement table. Councilman Miller seconded the motion and the vote passed unanimously.

X. Town Manager, Staff Reports, and Council Concerns

- a. Benefit Update** – Manager Feierabend stated that staff has provided all health insurance information to Steve Smith and are expecting to hear back from Mr. Smith later this week.
- b. Flagstone Around Bench at Lake Coffey** – Manager Feierabend stated that he had contacted Ms. Applewhite concerning her proposed landscape plan and expressed the Town's desire that the bench remain in a natural setting. Ms. Applewhite understood but expressed a willingness to modify the original proposal to satisfy the Council. Manager Feierabend stated that he has personally viewed the location and would suggest that flagstone be added, if set in a loose natural way, to improve the site. Manager Feierabend asked for Council's consideration for approval. Council approved.
- c. Budget Calendar** – Manager Feierabend stated that Council needed to consider dates for budget meetings. Council held discussion on scheduling dates. Vice Mayor Piquet stated that ironing out employee pay and insurance needed to be a topic taken up. Mayor Owen stated that he too was in favor of this. Council determined that a special call meeting would be scheduled for a date that worked for all parties involved falling between Tuesday, May 5th and Thursday, May 7th. Council requested that David Hill, with HR Essential Consulting, be present at the meeting to continue the Pay Plan Study Report conversation.
- d. Proposed Change in Mowing Procedure** – Manager Feierabend informed Council that Rory Ellington, of the Beech Mountain Club, has helped staff secure quotes for mowing the Town's parks, Town Hall area, etc. on a bi-weekly and weekly basis beginning in May. This would free up the Town's Parks and Recreation Maintenance Workers to work on trails, park improvements, etc. The quotes include mowing and weed eating; not flower bed work. Manager Feierabend advised Council that the quote came in at a price

that it will save the Town money over using the part-time labor the Town has used the past several summers. This proposed mowing agreement would be done for the months of May, June, and July. Staff is requesting that Council consider giving this a method a try. Manager Feierabend stated that if approved this could require a budget amendment next month to move money from the Parks and Recreation Department salaries line item to the contractual line item. Vice Mayor Piquet asked about the biweekly versus the weekly price. Staff explained that some mowing would be done on a weekly basis and some mowing would be done on a biweekly basis. Council was in favor of staff moving forward with contracting out the mowing.

- e. *Town Hall Landscaping Proposal*** – Manager Feierabend stated that in front of Council was a proposed landscaping plan for the grass area in front of Town Hall where the sign for Town Hall stood. Staff is asking for Council's general thoughts on the proposed plan. Since the sidewalk will be paved soon staff decided to show Council the concept. The primary focus is on the placement of the walkway. The landscaping is something that staff can do now or at the end of summer. Manager Feierabend stated that the pathway would be taken care of when the pavers came up. Mayor Owen stated that it looked like staff was trying to curve the path. Council agreed to curve path design. Councilman Holcombe asked if anything was being done with the sign. Council directed staff to keep the potential change of the Town's sign in mind as they completed work. Town Planner James Scott stated that if Council was in favor of changing the sign then a discussion would be had with the Tourism Development Authority about potentially funding this project. Mr. Scott stated that this was an excellent opportunity to provide for the character of the Town. Manager Feierabend stated that one of the discussions that was had was what kind of street light can be used here. Perhaps some stock heavy wood with the lighting atop. Consideration to placing banners in the area were being made as well. Vice Mayor Piquet discussed adding the two additional flag poles; one to fly the State flag and the other to fly the Town's flag along with the American flag that the Town already flew. Staff stated that they would look into this idea. Mayor Owen asked how wide the path was. Mr. Scott stated 6' and that he has not heard any positive or negative feedback on the current width of the path.
- f. *Road Inspection List*** – Manager Feierabend stated David Poe with West Engineers has completed his rating of the Town's paved roads. Manager Feierabend directed Council's attention to a handout. Manager Feierabend pointed out that Tamarack Road would be torn up soon to complete a utility project so Council may not want to pave this entire road. Public Works Director Riley Hatch stated that Tamarack Road, Christie Way and Emerald Forest Lane were the three proposed areas for paving this year. Public Utilities Director Robert Heaton informed Council that a new water line would need to be installed on a portion of Tamarack in approximately 5 years. Mayor Owen clarified that the money that would be used was from the current fiscal year's budget. Mayor Owen asked about funding for the proposed utility project. Mr. Heaton stated that there are two projects that are coming in this same area. Vice Mayor Piquet pointed out that there were other roads that were in need. Councilman Miller stated that he was not in favor of putting money on a road that is going to be torn up. Mr. Heaton stated that paving would be a part of the bidding process for the utility work either way. Manager Feierabend stated that staff will be able to better answer budget questions about projects

once staff knows how much the Town will have to put down for the new Water Plant Project. Mr. Heaton stated that what is happening is that all of the 2" water line is being replaced with 6" water line. Mayor Owen stated that he was worried about making a decision without knowing how much the Town was putting down on the Water Plant Project. Mr. Heaton stated that it is a waste of \$2,500 for the Town to work on fire hydrants that are on 2" lines. Mayor Owen asked what the cost to pave this would be. Mayor Owen directed staff to determine what they think is best for a paving plan.

- g. ***Tax Collection Rate*** – Manager Feierabend stated that the Town's tax collection rate was almost 95%. Staff is projecting that the Town will be able to set next year's budget on a collection rate of 97%; which is the same as last years.
- h. ***Bullet Proof Vest Grant(s) for Police Department*** – Manager Feierabend stated that the Police Department was looking for potential funding from the Department of Justice and the North Carolina League of Municipalities. If both funding mechanisms are awarded vest cost for the Town will be approximately \$130 per vest.
- i. ***North Carolina Department of Transportation Grant for Pathway*** – Manager Feierabend stated that he has spoken with Dean Ledbetter, North Carolina Department of Transportation Division 11 Senior Planning Engineer, this morning. The Town's \$200,000 grant proposal currently resides with the committee who will be making a decision next month on the Town's shovel ready project.
- j. ***Bear Proof Containers*** – Manager Feierabend stated that there is information in front of Council concerning bear proof curb side containers. This is an option for Council to consider at a future date if the bear situation continues to escalate. Manager Feierabend stated that this came out to of the discussion with Republic Services and Holiday Beech Villas. Public Works Director Riley Hatch stated that it would be cumbersome for some of residents and staff to pick up these containers which is why additional equipment would be required.
- k. ***Condemnation, Pre-Condemnation, and Repair Properties*** – Manager Feierabend stated this report was in front of Council. Councilman Miller requested that the report start showing interior picture images of these properties that make the report.

Mayor Owen stated that Council would take a short break at 6:10 p.m.

- XI ***Closed Session – Pursuant to NC GS 143-318.11(a)(3) Attorney Client Matters***– Upon motion by Councilman Holcombe at 6:25 p.m., seconded by Councilman Miller the Council voted unanimously to go into closed session pursuant to NC GS 143-318.11(a)(3) for Attorney Client Matters; including Beech Mountain Beech Mountain v. Milligan and Beech Mountain v. Genesis Wildlife Sanctuary. Councilman Miller motioned to exit closed session at 6:35 p.m., which was seconded by Vice Mayor Piquet. The motion passed unanimously.

XII. Other Business

a. Resolution Agreement Concerning Occupancy Tax – Councilman Miller motioned to approve a resolution agreement concerning occupancy tax with the online effective date of April 15, 2015. Vice Mayor Piquet seconded the motion and the vote passed unanimously. Resolution Agreement for Concerning Occupancy Tax is attached as Exhibit C and incorporated by reference as if fully set out within these minutes.

Proposed Legislation – Attorney Eggers stated that the draft bill that has been proposed is one that will mirror the one that the Counties have in place. Currently with the bill resides with the drafting department in the General Assembly and that the General Assembly was in a long session. Representative Jonathan Jordan is looking for a colleague to sign on as a cosponsor for the proposed bill. Mayor Owen stated that he would like to get some clarity on what this bill says since it is written on improved property. Attorney Eggers stated that the argument or idea is that if there are lots that have water and/or sewer to them then they qualify as improved property. This bill would give the Town the ability, should they choose to do so, to make assessments on lots that have Town water and/or sewer to them. Mayor Owen wondered about charging for a service that the Town is not ideally able to provide. Attorney Eggers stated that this is being proposed as a blanket bill. Manager Feierabend stated that number one, if this proposed bill passed, the Town does not need to act on this, and number two, combining lots can be advantageous for Town growth as well. Manager Feierabend stated that such a bill would provide other avenues versus only rate increases for the Utility Department whether it is this year, 5 years down the road, or 10 years down the road.

Paving – Councilman Holcombe stated that the Sugar Mountain Village Manager David Lane received a very good bid from a Tennessee company for paving. Attorney Eggers mentioned that there was one company in Tennessee that had an injunction.

XIII. Adjourn – Councilman Miller motioned to adjourn the meeting at 6:44 p.m., which was seconded by Councilman Holcombe. The motion passed unanimously. The meeting was adjourned 6:44 p.m.

Minutes approved by Town Council on May 12, 2015.

Richard H. Owen, Mayor

ATTEST:

Jennifer Broderick, CMC
Town Clerk

ATTACHMENT(S)
TO
MINUTES

EXHIBIT A – Resolution 2015-03 *'A Resolution of the Town of beech Mountain Opposing Senate Bill 369'*

EXHIBIT B – Resolution 2015-04 *'A Resolution of the Town of Beech Mountain Dealing with Small Underpayments and Overpayments of Ad Valorem'*

EXHIBIT C – Resolution Agreement for Occupancy Tax

RESOLUTION No. 2015-03

**A RESOLUTION OF THE TOWN OF BEECH MOUNTAIN OPPOSING
SENATE BILL 369**

WHEREAS, the Town of Beech Mountain is a municipal corporation and public body established under the laws of the State of North Carolina for the representation of its citizens and taxpayers; and

WHEREAS, North Carolina General Statute §105-472 provides for the allocation of sales tax between cities and counties within North Carolina; and

WHEREAS, North Carolina General Statute §105-472(b) allows a Board of County Commissioners to determine, on a yearly basis, whether such allocation is made on a per capita distribution or an ad valorem distribution; and

WHEREAS, the Town relies heavily on sales tax revenues to provide services, including those necessary to provide for the health and safety of its residents as well as the hundreds of thousands of tourists that visit Beech Mountain; and

WHEREAS, Tourist communities across the State of North Carolina will be hit the hardest by this proposed legislation; and

WHEREAS, Tourism is a recognizable industry in the State of North Carolina that provides economic stability, touching each of the State's 100 counties; and

WHEREAS, Direct tourism employment continues to grow in lodging, transportation, food service, and retail employment sectors to help serve visitors that spend billions of dollars annually; and

WHEREAS, Senate Bill 369 '*Sales Tax Fairness Act*' as filed on March 23, 2015 would take away the power of the Board of County Commissioners to determine, on a yearly basis, whether such allocation would be made on a per capita or an ad valorem distribution method and move the distribution of sales tax revenue distribution to a State disbursement that would be calculated solely on the per capita method; and

WHEREAS, the legislatively enacted sales tax allocation laws that are currently in place favorably permit each county in the State of North Carolina to determine the distribution method that is best for its community;

NOW THEREFORE, be it resolved by the Town Council of the Town of Beech Mountain, which is situated in both Avery County and Watauga County of the great State of North Carolina, strongly opposes Senate Bill 369 (S369) due to the detrimental effect this proposed bill will have on the financial health of our residents and tourists as well as the Town's ability to provide for and protect the health and safety of our residents and tourists.

Adopted this the 14th day of April, 2015.

Richard H. Owen, Mayor

Attest:

Jennifer Broderick, Clerk

RESOLUTION No. 2015-04

A RESOLUTION OF THE TOWN OF BEECH MOUNTAIN DEALING WITH SMALL UNDERPAYMENTS AND OVERPAYMENTS OF AD VALOREM

WHEREAS, the North Carolina General Statute 105-357(c) authorizes the governing body of a taxing unit to, by resolution, permit its tax collector to treat small underpayments of taxes as fully paid and to not refund small overpayments of taxes unless the taxpayer requests a refund before the end of the fiscal year in which the small overpayment is made; and

WHEREAS, a "small underpayment" is a payment made other than in person, that is no more than one dollar (\$1.00) less than the taxes due on a tax receipt; and

WHEREAS, a "small overpayment" is a payment made, other than in person, that is no more than one dollar (\$1.00) greater than the taxes due on a tax receipt; and

WHEREAS, the tax collector shall keep records of all underpayments and overpayments of taxes by receipt and number and amount and shall report these payments to the governing body as part of the settlement; and

WHEREAS, this resolution that makes this authorization applies to taxes levied for all previous fiscal years;

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Beech Mountain, North Carolina, charges its tax collector to act accordingly within the boundaries of the law as stated in the North Carolina General Statutes 105-357(c) until repealed or amended by resolution of the Town of Beech Mountain; and

BE IT FURTHER RESOLVED that the tax collector is hereby authorized to treat small underpayments as defined above as being payment in full, and not refund small overpayments as defined above, unless the taxpayer requests a refund before the end of the fiscal year in which the small overpayment is made; and

BE IT FURTHER RESOLVED that the tax collector shall keep records of all underpayments and overpayments of taxes by receipt and number and amount and shall report these payments to the governing body as part of the settlement of the tax collector at the end of the fiscal year.

Adopted this the 14th day of April, 2015.

Richard H. Owen, Mayor

Attest:

Jennifer Broderick, Clerk

RESOLUTION AGREEMENT

This Resolution Agreement ("Agreement") is entered into by and between Orbitz, LLC, Trip Network, Inc., TVL LP (f/k/a Travelocity.com LP), Expedia, Inc., Hotels.com L.P., and Hotwire, Inc. (individually "OTC" and collectively "OTCs"), and the County of Watauga and towns of Banner Elk, Beech Mountain, Blowing Rock and Seven Devils (collectively "the Taxing Jurisdictions"), effective the 20th day of April 2015.

WHEREAS, the OTCs contend that amendments to N.C. Gen. Stat. §§ 105-164.4(a)(3), 153A-155(c), and 160A-215(c) enacted by Session Law 2010-31, § 31.6 ("the Amendments") are unconstitutional under the United States Constitution and the North Carolina Constitution and in violation of the federal Internet Tax Freedom Act, as amended;

WHEREAS, the Taxing Jurisdictions contend that the Amendments are lawful and that they have the right to collect occupancy taxes under the terms of the Amendments;

WHEREAS, the parties desire to resolve their dispute without litigation;

WHEREAS, the parties further desire to resolve all past potential occupancy tax liability of the OTCs since 1 January 2011 to the Taxing Jurisdictions and to adopt a mutually agreeable reporting and remittance methodology on a prospective basis; and

WHEREAS, the parties desire to enter into this Agreement to accomplish the above.

NOW IT IS HEREBY DETERMINED AND AGREED:

1. This Agreement will resolve the OTCs' dispute with the Taxing Jurisdictions regarding the Amendments and all past potential occupancy tax liability to the Taxing Jurisdictions for occupancy of accommodations facilitated by any OTC commencing between 1 January 2011 and 20 April 2015 and for occupancy of accommodations facilitated by any OTC commencing thereafter pursuant to reservations made between 1 January 2011 and 20 April 2015.
2. The Taxing Jurisdictions acknowledge that this Agreement contains Tax Information, as defined in N.C. Gen. Stat. § 105-259, and its provisions are therefore subject to the disclosure prohibitions of N.C. Gen. Stat. § 105-259, N.C. Gen. Stat. § 153A-148.1, and N.C. Gen. Stat. § 132-1.1.
3. Registering for occupancy tax purposes or payment of occupancy tax does not constitute a concession that the OTCs are engaging in business within any locality in North Carolina or a concession that the OTCs are subject to any other tax or license in North Carolina.
4. For occupancy of accommodations facilitated by any OTC pursuant to reservations made on or after April 20, 2015 that are subject to the occupancy tax of any of the Taxing

Jurisdictions ("Watauga County/City Occupancy Taxes"), as last amended prior to the date of this Agreement, each OTC will remit Watauga County/City Occupancy Taxes on the gross receipts derived from such rentals, as defined in N.C. Gen. Stat. § 105-164.4(a)(3), as last amended. Each OTC will report and remit all such Watauga County/City Occupancy Taxes through the following methods, at the option of each OTC:

(i) Accommodation Provider Remit: All Watauga County/City Occupancy Taxes will be reported and remitted to the providers of the accommodations in accordance with N.C. Gen. Stat. § 153A-155(c) and N.C. Gen. Stat. § 105-164.4(a)(3), as last amended.

(ii) Partial Direct Remit: All Watauga County/City Occupancy Taxes will be partially reported and remitted to the providers of the accommodations for further remittance to the Taxing Jurisdictions and partially reported and remitted directly to the Taxing Jurisdictions. Specifically, the portion of the Watauga County/City Occupancy Taxes not reported and remitted to the providers of the accommodations in accordance with N.C. Gen. Stat. § 153A-155(c) and N.C. Gen. Stat. § 105-164.4(a)(3), as last amended prior to the date of this Agreement, must be reported and remitted directly by the OTC to the Taxing Jurisdictions.

(iii) Full Direct Remit: All Watauga County/City Occupancy Taxes not reported and remitted to the providers of the accommodations in accordance with N.C. Gen. Stat. § 153A-155(c) and N.C. Gen. Stat. § 105-164.4(a)(3), as last amended prior to the date of this Agreement, will be directly remitted by the OTC to the Taxing Jurisdictions.

(iv) Each OTC will give advance notice to the Taxing Jurisdictions of its selected option(s) in each instance.

(v) If registering for occupancy tax purposes or paying occupancy tax, each OTC will use its best efforts to do so by May 20, 2015.

5. The Taxing Jurisdictions will not issue any assessments to any OTC for Watauga County/City Occupancy Taxes for occupancy of accommodations facilitated by any OTC commencing between 1 January 2011 and 20 April 2015 or for occupancy of accommodations facilitated by any OTC commencing thereafter pursuant to reservations made between 1 January 2011 and 20 April 2015.
6. The OTCs agree that the Taxing Jurisdictions have the authority and jurisdiction to audit for purposes of Watauga County/City Occupancy Taxes. Upon request, each OTC will provide to the Taxing Jurisdictions data and documents, or reasonable access to records, for audit purposes.

7. The parties acknowledge that each side takes a different view of the facts and law related to the matters encompassed by this Agreement. The parties agree that this Agreement is based on the parties' desire to compromise their disputes and is not an indication that either side has expressed agreement with the other side's view of the facts or law. This Agreement does not constitute a concession, agreement or admission by any of the parties as to the correctness or applicability of any legal or factual contention by any other party.
8. The parties agree that the Agreement is for the benefit of, and an agreement expressly between, the parties hereto. This Agreement may only be amended by written agreement by all parties hereto. Any such amendment shall be attached hereto. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
9. This Agreement shall be governed by the laws of North Carolina. Each party has cooperated in the drafting and preparation of this Agreement, and it shall be construed according to the plain meaning of its language and not for or against any party.
10. By signing this Agreement, all parties certify that they have read and agreed to all the terms hereof and that they have authority to enter into this Agreement.
11. This Agreement (including each of the rights and obligations set forth herein) shall be binding upon, and inure to the benefit of, the respective present or former, successor, direct or indirect family members, parents, subsidiaries, affiliates, agents, representatives, officials, insurers, employees, officers, directors and shareholders of the undersigned parties. Additionally, any reference in this Agreement to any of the parties shall be a reference to the present or former, successor, direct or indirect, family members, parents, subsidiaries, affiliates, agents, legal representatives, insurers, employees, officers, directors, and shareholders of those entities.
12. Each of the Taxing Jurisdictions and each OTC acknowledge that they: (a) have consulted with legal counsel about the Agreement; (b) they are entering into the Agreement voluntarily and with an understanding that each of the Taxing Jurisdictions is releasing all of its claims for Watauga County/City Occupancy Taxes against the OTCs for occupancy of accommodations commencing between 1 January 2011 and 20 April 2015 and for occupancy of accommodations commencing thereafter pursuant to reservations made between 1 January 2011 and 20 April 2015; (c) they have the authority to enter into this Agreement; (d) no other persons or entities have or have had any interest in any claims that are now being released; and (e) they have not sold, transferred, or assigned their claims to any other person or entity prior to entering into this Agreement.

ORBITZ, LLC

By: _____

Print name: _____

Title: _____

Date: _____

TRIP NETWORK, INC.

By: _____

Print name: _____

Title: _____

Date: _____

TVL LP (f/k/a TRAVELOCITY.COM, LP)

By: General Partner, Travelocity.com LLC

By: _____

Print name: _____

Title: _____

Date: _____

EXPEDIA, INC.

By: _____

Print name: _____

Title: _____

Date: _____

HOTELS.COM L.P.

By: _____

Print name: _____

Title: _____

Date: _____

HOTWIRE, INC.

By: _____

Print name: _____

Title: _____

Date: _____

COUNTY OF WATAUGA

By: _____

Print name: _____

Title: _____

Date: _____

TOWN OF BANNER ELK

By: _____

Print name: _____

Title: _____

Date: _____

TOWN OF BEECH MOUNTAIN

By: _____

Print name: _____

Title: _____

Date: _____

TOWN OF BLOWING ROCK

By: _____

Print name: _____

Title: _____

Date: _____

TOWN OF SEVEN DEVILS

By: _____

Print name: _____

Title: _____

Date: _____