

MINUTES
BEECH MOUNTAIN TOWN COUNCIL
October 11, 1994

CALL TO ORDER

Mayor Fred Pfohl called the regular meeting of the Beech Mountain Town Council to order at 6:00 PM. Other Council Members present were Tim Holland, Kakii Handley, and Shiela Fletcher. Also present was Town Manager Seth Lawless, Town Attorney David Paletta, Town Engineer Ed Powell, Public Works Director Joe Perry and Code Enforcement Officer Don Fulkerson. There were also a number of interested spectators in the audience.

Audit Report - Luke Copeland

Mayor Pfohl introduced Luke Copeland of Holder, Copeland and Associates, to give the audit report for the preceding fiscal year. Mr. Copeland referred to the management letter, which indicated the audit did not disclose any violations of laws or regulations by the Town; that they are satisfied that the internal accounting procedures are adequate and that all transactions have been recorded properly; the cash reserves of the town are invested in low risk investments; the tax collection rate is 98.12%, an increase over the previous fiscal year; that expenditures were held below budget which reflected good work by the Council, staff and Finance Officer. He went on to state that, as in prior years, the obligations of the Town have been paid on time and that revenues increased over the prior year. In all, the audit resulted in a very "clean" opinion.

Public Hearing - Proposed Smoke Detector Ordinance

Mayor Pfohl called the public hearing regarding a proposed smoke detector ordinance to order pursuant to publication of a public notice in the September 26 and October 3, 1994 editions of The Watauga Democrat. Tim Holland gave a summation of the proposal to date, indicating that the proposed ordinance is based upon Boone's ordinance, and had been requested by the Fire Department. Boone enacted their ordinance to protect the large number of college students who reside in rental properties, and since Beech Mountain has a great number of transient inhabitants as well, it seemed prudent to require smoke detectors in properties which they would be renting. The proposed Beech Mountain ordinance would also include fire extinguishers.

Mayor Pfohl indicated that the proposed ordinance was in no way meant to be discriminatory in nature, but rather to save lives and protect properties. The rental units are being targeted simply because they are often occupied by people who are unfamiliar with the heating systems and homes, in general, in which they are staying. He pointed out that the proposed ordinance does not call for annual inspections of the homes but, rather, a simple affidavit to be completed by the homeowner or his agent annually, indicating that the smoke detectors and fire extinguishers are in working order. Ray Hansen asked what would happen if a homeowner did not submit the affidavit, and the provisions of enforcement were read to the audience. Ellen Anderson asked about homeowners who are not in rental systems, and Mayor Pfohl indicated there would be an announcement of the ordinance in the MountainEar, and perhaps a mailing to all homeowners.

Philip Buchanan asked about possible liability incurred by a rental agent who inspects the homes and signs an affidavit indicating the items are in working order, then they malfunction and cause some injury. David Paletta explained that the standard of liability for rental agencies is negligence. In order to be negligent, the agent would have to sign the statement that the equipment is in working order when, in fact, no effort has been made to test the equipment. Tim Holland pointed out that all the affidavit is certifying is that the equipment is working on the day

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the affidavit is signed. Ellen Anderson pointed out that the proposed ordinance did not indicate that the owner's agent could sign the affidavit, and it was agreed that that needed to be added before adoption.

Norma Buchanan asked if the requirement for a fire extinguisher could be reduced from 5 lb. to 2½ lb., but Tim Holland explained that a 2½ lb. extinguisher lasted only a matter of three to four seconds and, in fact, the Fire Department actually recommended a 10 lb. extinguisher. John Hoffman noted that a number of people had been concerned about the cost of providing the equipment, but he had checked with an insurance company which indicated that there could be a savings of \$40 to \$50 in premiums in the first year if the items are in place. Anyone having a rental home could probably write off the cost as a business expense, as well.

Mayor Pfohl pointed out that before the Town could enact the ordinance a bill would have to be passed by the Legislature in Raleigh, which does not meet before January. Therefore, the actual adoption of the ordinance would not be until some time after state approval.

There being no further questions or comments from the audience, the public hearing was declared closed at 6:23 PM.

Public Hearing - Proposed Amendment to Subdivision Regulations

Mayor Pfohl called the public hearing regarding a proposed amendment to the Subdivision Regulations to order pursuant to publication of a public notice in the September 26 and October 3, 1994 editions of The Watauga Democrat. Seth Lawless explained that the Planning Board recommended a change to allow developers of new subdivisions to erect road signs which differ from Beech Mountain's standard signs if they receive prior approval from the Planning Board. Le O'Neal asked whose responsibility the maintenance of the signs would be once the developer has sold all his property and left the area, and Mr. Lawless replied that the wording recommended indicated the Town would replace the signs with typical Town signs if they are allowed to fall into disrepair.

Mayor Pfohl noted that the only subdivision in which this question has arisen is Emerald Mountain and Cindy Keller was asked if all future signs in the development would be the same as that erected for Misty Hollow, which she affirmed.

There being no further questions or comments from the audience, the public hearing was declared closed at 6:30 PM.

Public Hearing - Proposed Blasting Ordinance

Mayor Pfohl called the public hearing regarding adoption of a proposed blasting ordinance to order pursuant to publication of a public notice in the September 26 and October 3, 1994 editions of The Watauga Democrat. Seth Lawless stated that the purpose of the ordinance is to heighten awareness of blasting throughout the Town by requiring a simple permit be obtained from the Police Department before conducting any blasting activity. The permit would allow blasting only between the hours of 8:00 AM and 5:00 PM. Since the proposed ordinance had been drafted, a suggestion had been made to require the individual doing the blasting to post proof of liability insurance to protect any third party which might be harmed by the activity. This would be accomplished by submission of an insurance certificate to the Code Enforcement Officer, in much the same way that contractors already keep their certificates on file.

There being no further questions or comments from the audience, the public hearing was declared closed at 6:35 PM.

Public Hearing - Proposed Amendment to Zoning Ordinance

Mayor Pfohl called the public hearing regarding a proposed amendment to the Zoning Ordinance to order pursuant to publication of a public notice in the September 26 and October 3, 1994 editions of The Watauga Democrat. Seth Lawless noted that the Board of Adjustment had requested that the Zoning Ordinance be amended to exempt certain satellite dishes from the requirement for a Conditional Use Permit, and the Planning Board had submitted the proposed amendment. Ellen Anderson suggested that the wording be changed to require the dish be installed on the structure, and indicated the Board of Adjustment had suggested 18" satellites be exempt, but that the wording had been changed to 24". Reub Mooradian said he did not see a major difference between 18" and 24" aesthetically, and the larger size would give a little more flexibility. Don Fulkerson pointed out that the exemption of the smaller dishes would not prohibit installation of the large variety, but they would simply continue to require a Conditional Use Permit.

There being no further questions or comments from the audience, the public hearing was declared closed at 6:42 PM.

Public Hearing - Voluntary Annexation, Emerald Forest

Mayor Pfohl called the public hearing on the question of voluntary annexation of three lots in the Emerald Mountain development to order pursuant to publication of a public notice in the September 30, 1994 edition of The Watauga Democrat. Seth Lawless referred to a petition for annexation received at the previous Council meeting, at which time the Council directed the Clerk to investigate the sufficiency of the petition. The Clerk's certificate of sufficiency is included in the agenda packet, and the Planning Board has looked at the preliminary plan and discussed fire protection, road construction and water and sewer provisions. The property is currently undeveloped and contains less than two acres.

There were no questions or comments from the audience, therefore the public hearing was declared closed at 6:45 PM.

1 *Adoption of Agenda*

The agenda was approved as submitted.

2 *Consent Agenda*

Tim Holland moved adoption of the Consent Agenda. Shiela Fletcher seconded the motion and the following items were approved unanimously:

- a. Minutes of Regular Meeting of September 8, 1994.
- b. Minutes of Tour DuPont Meeting of September 28, 1994

3 *Committee Reports*

There were no committee reports.

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4 Old Business:

- a. **Consider Adoption of Resolution 94-10-01 Requesting the General Assembly Enact a Bill Enabling the Town to Pass a Smoke Detector Ordinance.** Tim Holland moved that the resolution be adopted by the Council, with the understanding that the eventual ordinance would include the wording in Section 3 that a 10 lb. extinguisher is recommended, and in Section 10 that would allow the agent of an owner to complete the required annual affidavit. Shiela Fletcher seconded the motion and it passed unanimously.
- b. **Consider Adoption of Amendment to Subdivision Regulations.** Seth Lawless read aloud the suggested wording of the amendment. Tim Holland questioned whether or not allowing differing street signs was a good idea. Mayor Pfohl said he thought it would add individuality and that he had faith in the Planning Board to keep out unattractive signs. Reub Mooradian suggested that the Code Enforcement Officer encourage new developers to use the standard Beech Mountain signage at the time they present their preliminary plans. Kakii Handley moved that the ordinance be amended as proposed. Shiela Fletcher seconded the motion and it passed unanimously.
- c. **Consider Adoption of Chapter 40, Blasting Ordinance.** After general discussion and agreement that a clause requiring proof of liability insurance was desirable, it was decided to table consideration of this ordinance until the next Council meeting on November 8, 1994.
- d. **Consider Adoption of Amendment to Zoning Ordinance.** David Paletta was asked to provide proper wording to allow the erection of 24" satellite dishes on structures without prior receipt of a Conditional Use Permit. Mr. Paletta suggested "No Conditional Use Permit required for a satellite dish that is (a) no greater than 24" in diameter, (b) attached to the building structure and (c) placed no higher than the highest point of the structure." Kakii Handley moved that the ordinance be amended using Mr. Paletta's wording. Tim Holland seconded the motion and it passed unanimously.
- e. **Consider Adoption of Chapter 40, Annexation of Emerald Forest.** Kakii Handley moved that the property be annexed effective November 1, 1994. Shiela Fletcher seconded the motion and it passed unanimously.

5 New Business:

- a. **Consider Accepting Donation of lot RW-356.** Seth Lawless indicated that the taxes on the lot are paid through 1993, and that the valuation is \$2,000. Tim Holland moved the Town accept the donation. Kakii Handley seconded the motion and it passed unanimously.
- b. **Consider Adoption of Audit Report.** Shiela Fletcher moved that the audit report be accepted as prepared by Holder, Copeland and Associates. Tim Holland seconded the motion and it passed unanimously.
- c. **Consider Adoption of Resolutions 94-10-02 and 94-10-03.** Mr. Lawless explained that the state had created a number of economic development regions throughout the state to work with the Department of Commerce. Initially six of the seven counties in Region D had been omitted from any economic region, and these resolutions were to ask the Commissioners of both Avery and Watauga Counties to request inclusion of their counties in the western economic region, which

includes Buncombe County. Tim Holland moved the Council adopt both resolutions. Kakii Handley seconded the motion and it passed unanimously.

- d. *Consider Budget Transfer, Underground Storage Tank Project.* Mr. Lawless explained that when the underground fuel tanks were dug up no leaks had been found. However, there had been some slight spillage from when they had been filled which had caused contamination of some of the soil. When the replacement project was bid, no consideration had been made for the installation of a bed to prevent any spillage from leaking into the ground. Also, the original gas pumps had not been equipped with automatic cutoffs in case of someone hitting them, and this was deemed necessary to install. The requested budget transfer of \$2,240 00 would come out of the contingency line item into construction and, therefore, require no additional monies be budgeted for the project. Shiela Fletcher moved the transfer be approved. Tim Holland seconded the motion and it passed unanimously.
- e. *Consider Request to Contract with State Treasurer's Department for Actuarial Study.* Mr. Lawless stated he wished to present the option of joining the state retirement plan, instead of the ICMA retirement plan to the Council and staff. However, before such an option can be presented to the staff or Council, certain information needs to be gathered for a study by the state, the cost of which would be approximately \$850. Mr. Lawless sought approval of the expenditure of this amount out of the professional services line item. Mayor Pfohl asked if Mr. Lawless thought the state plan might be an improvement over the current plan, and Mr. Lawless said he thought it might. Tim Holland said he believed this was something the Town needed to investigate, and moved the Council approve the \$850 expenditure. Shiela Fletcher seconded the motion and it passed unanimously.

6. *Staff/Consultant Reports:*

- a. *Town Engineer's Report.* Ed Powell reported that the Charter Hills resurfacing should be completed shortly, weather permitting.

The contractor anticipates delivery of the Summit water tank the first week in November, at which time he will place it on the existing pad.

Regarding the underground storage tank replacement project, since there were some petroleum products in the dirt around the old tanks, the Town is awaiting word on the proper disposition of the dirt. An underground water monitoring well might be required, and the EPA may require the Town to transport the dirt for detoxification or, more economically, allow the Town to aerate the dirt and allow evaporation of the petroleum residue. Kakii Handley asked what costs might be involved, and Mr. Powell said that a worst case scenario would require the expenditure of approximately \$2,500.

- b. *Public Works Director's Report.* Joe Perry reported that the new motorgrader had been received for which the Public Works Department thanks the Council. Kakii Handley asked what had been the cause of the most recent water leak and how much water had been lost. Mr. Perry replied that it had been a broken bolt in the coupling, which had resulted in a 100,000 gallon water loss. Mrs. Handley asked if this type of break might be an ongoing one, and Mr. Perry said to expect one to four annually, as the mains are ageing.

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- c. ***Town Attorney's Report.*** Mr. Paletta had no report for open session, but indicated he had one small item concerning a claim to be discussed in Executive Session.
- d. ***Chief of Police's Report.*** Chief Hefner was not present, and Mr. Lawless indicated there was nothing unusual to report.
- e. ***Town Manager's Report.*** Mr. Lawless reported on his anticipated absences from the office due to meetings and seminars.

Mr. Lawless indicated that Newland had requested Beech Mountain compost their sludge at our facility. Of course, permission would have to be granted by the Department of Environmental Management and Newland would have to certify the contents. He indicated the Town could easily accommodate their sludge, and we could charge a reasonable fee for the function. Le O'Neal asked if there would be any commercial chemicals present in their sludge, and Mr. Perry indicated it would be totally domestic sewage. Kakii Handley moved that the Town provide this service. Tim Holland seconded the motion and it passed unanimously.

Mr. Lawless indicated that Mr. Perry had found a good deal on a pressure washer, the cost of which would almost equal that in the capital outlay plan for a Freeon recovery system. Mr. Perry asked to swap the pressure washer for the recovery system, and the consensus of the Council was approval.

Mr. Lawless reported on meetings which he had held with both rental agencies and commercial business owners on recycling. He reported that the Planning Board will hold a special meeting on the subject later this month, following which the attendees will be asked to return to comment on the plan devised. This is a subject which will be addressed at the planning retreat in November.

Mr. Lawless announced that Thelma Harris had submitted her intent to retire effective January 13th, and reported on her condition following surgery.

- f. ***Financial Report, Tax Report and Building Inspections Report.*** Reub Mooradian asked if Don Fulkerson's report could be changed to reflect actual new homes permitted during current and past calendar years.

7. *Other Business.*

Larry Barnhorst indicated the recycling center really needed to be better maintained, and Mr. Lawless indicated the Town would try to keep it cleaner. The question of signs for the center is one which is to be addressed in the plan on which the Planning Board is working. Mayor Pfohl said the Town is investigating another, perhaps more convenient, location for the recycling center, and also looking at the possibility of taking plastics.

Chris Macdonald asked about the littering problem, and Mr. Lawless said he had ordered additional signage. Mayor Pfohl asked anyone who notes someone littering take down the license number so they can be contacted.

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Ray Hansen asked about alternative traffic signage for his street and Mr. Lawless said he was looking into the possibility.

Mr. Barnhorst asked what had happened regarding the possible limiting of recreational vehicles on the mountain and Mayor Pfohl indicated the Council had declined to further restrict them following the recommendation of the Planning Board.

Mrs. Barnhorst asked if the signs which are on Kat's could be removed and Don Fulkerson said he would request that be done.

Chris Macdonald asked if there were not some way to prevent the graffiti from being sprayed on the roadway prior to the Tour DuPont, and it was noted that the sprayers are not the Tour DuPont people, themselves, but rather "groupies" who follow the tour.

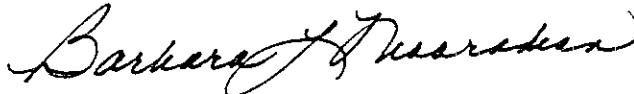
8. *Executive Session.*

Tim Holland moved the Council go into executive session under the provisions of N.C.G.S. 143-318.11(a) (3) and (5), to consult with the attorney regarding a possible claim against the Town, and to discuss the possible acquisition of property. Kakii Handley seconded the motion and it passed unanimously. The Council went into executive session at 7:45 PM. The Council came out of executive session at 8:15 PM.

ADJOURN

There being no further business to come before the Council the meeting was adjourned at 8:17 PM.

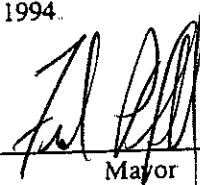
Respectfully submitted.



Barbara L. Mooradian
Town Clerk

BLM/hs

Minutes approved by Town Council on November 8, 1994.



Mayor

ATTEST:



Town Clerk

