

MINUTES
BEECH MOUNTAIN TOWN COUNCIL
Special Meeting, November 28 and December 4, 1995

CALL TO ORDER

Pursuant to due advertisement in The Watauga Democrat edition of November 17, 1995, Mayor Fred Pfohl called a special meeting of the Beech Mountain Town Council to order at 6:00 PM in the Council Chamber at Beech Mountain for the purpose of holding a Public Hearing on the question of satellite annexation of Jackalopes View Restaurant. Other Council Members present were Tim Holland, Shiela Fletcher, Kakii Handley and Ed Waligroski. Also present were Town Manager Seth Lawless and a number of interested parties.

Mayor Pfohl explained the reason for the Public Hearing, and asked that everyone who wished to speak would limit their comments as much as possible without setting a time limit. He noted that the petition for annexation of Jackalopes View Restaurant had been certified as sufficient in accordance with N.C.G.S. 160A-58 1, having been signed by all owners of the real property in question.

He noted that each Council Member had been provided with copies of letters which had been received relative to the subject (the originals of which are filed with the official copy of these minutes).

Tony Catoe, a principal in the corporation which operates Jackalopes View Restaurant, explained the reason for seeking satellite annexation as being their desire to be able to serve alcoholic beverages in the restaurant. They had originally looked at having the entire piece of property, including Archer's Inn, annexed, but the amount of taxes which would then have to be paid would outweigh any additional revenue they might receive from serving alcohol. They are, thus, asking that only the restaurant and some parking be annexed by the Town.

Mr. Catoe noted that the property would not be receiving any Town services such as water and sewer, but would get Police patrol. They are already located within the Beech Mountain Fire District, so our Fire Department would respond to any emergency in any case. The annexation would give the Town some \$1,000 in taxes, at the present valuation, which will no doubt be raised as the size of the restaurant and its operation have been enlarged.

Mr. Catoe indicated that a number of their guests who are Beech Mountain property owners, but not able to be at the Public Hearing, had signed a petition supporting the annexation, and presented the petition containing 34 signatures to the Council (filed with the official copy of these minutes).

Erika McClung asked if the restaurant would be subject to the parking provisions of the Zoning Ordinance if it were annexed. Seth Lawless stated that the present parking would be "grandfathered" until and unless it sought a building permit for expansion, at which time they would have to provide parking under the provisions of the Zoning Ordinance.

Mrs. McClung asked if the possibility of this annexation had been presented to the Planning Board for their input, and Mayor Pfohl replied they had not been asked to study the matter.

Charlie Burleson asked if the check-in for Archer's Inn was not located in the restaurant building and, if so, would the Town receive occupancy tax for the Inn. Mr. Lawless said he was uncertain. Norma Buchanan stated the Department of Revenue takes the position that it is the point of collection which determines where occupancy taxes are paid. Mr. Burleson asked if the property was divided, and Mr. Catoe replied that it has been drawn by the surveyor but not officially divided into different parcels.

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Alan Holcombe asked what actual benefit the Town would derive from the annexation, and Mr. Lawless said the only concrete benefit would be the additional \$1,000 in ad valorem taxes. Mr. Holcombe asked if there were any Town services which would be required at a later date due to the annexation, and Mr. Lawless said the only services would be Police and Fire (who already respond to any 9-1-1 call from that location) and garbage collection, for which they would pay as other businesses do. Mr. Holcombe asked if the additional \$1,000 anticipated in taxes would pay for the additional Police patrols required, and Mr. Lawless said that would depend upon the number of patrols, which are random in nature.

Mr. Holcombe asked if the Sanitation Fund was subsidized from the General Fund, and Mr. Lawless replied that the Sanitation Fund is self-supporting. He did note that some money for equipment had come out of the General Fund, but that had been earmarked for Sanitation and set aside from the sale of the Town's garbage truck. Mr. Holcombe asked if the Fire Department received an appropriation from the Town and was told it did.

Keith Klein stated he was a new resident of Beech Mountain, but had been visiting for over ten years. He has always patronized Jackalopes, and always felt it was a part of Beech Mountain. He said he felt the owners have shown the same type of entrepreneurial spirit as Fred or any other merchant in Beech Mountain. He supports the annexation.

Norma Buchanan asked if Jackalopes would benefit any more than the other restaurants by being able to serve alcohol. Tony Catoe said he did not see where they would have any unfair advantage. It would present more of a level playing field. The brown-bagging policy would be eliminated about which, by the way, some of his guests are not happy, and they might lose their business. Alan Holcombe asked why they wanted to change their way of doing business, and Mr. Catoe explained that there have been situations with tourists in which they walk in, find they cannot get a drink or wine with dinner, and walk out. This has put the restaurant in the position of giving away drinks and wine in order to retain the customers, and if this continues, they will have to raise prices. He reiterated that Jackalopes is not a bar and will not be a bar.

Erika McClung said, in looking at the long-range plans of the Town, perhaps the annexation could help, especially as regards eventual involuntary annexation of other properties on that side of Town.

Paul Dietzel, the former owner of the property, spoke in favor of the annexation, noting how surprised and delighted he has been with what the new owners have accomplished. He agreed there are a number of people who would like to come in and have a drink before dinner, which puts Jackalopes at a disadvantage. He said he could see no hidden agenda which could harm the Town if they are annexed.

There being no further comments or questions from the public Tim Holland moved the Public Hearing be closed. Ed Waligroski seconded the motion, which passed unanimously. The Public Hearing was closed at 6:28 PM.

Keith Klein asked the Council for any negative aspects to the annexation. Shiela Fletcher said she had heard a number of comments regarding the fairness of Jackalopes having the advantage of alcohol sales without having to pay taxes on the entire property. Mr. Catoe pointed out the other restaurants (in Town) have water and sewer. This is impossible at his location, but he would happily give up his drainfield (and its maintenance), his pump, etc., if he could have water and sewer.

Shiela Fletcher asked about the increase in value of the restaurant he had mentioned, and he replied that they have installed new equipment and doubled its capacity. It is presently classed by Avery County as a "breakfast area" rather than a restaurant, but the county has not yet revalued the property.

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Mayor Pfohl asked if the setbacks required by the Zoning Ordinance were reflected on the survey, and Mr. Catoe said Mr. Grindstaff had assured him they were. Tim Holland asked if the necessary parking would have to be on the same parcel on which the business is located. He noted that the Town has made other people create all the required parking on the same parcel as the business. Mr. Catoe asked if the parking could be leased from the Inn, and Mayor Pfohl said that question had not been posed before. Seth Lawless pointed out that the question will not come up until and unless they get a building permit to add on to the restaurant.

Alan Holcombe said he felt enough questions have come up regarding parking, occupancy taxes, etc., that perhaps legal counsel should be consulted. He asked again how the Town would benefit by the annexation. Shiela Fletcher pointed out that the Town may gain occupancy taxes, and Mr. Holcombe said he did not believe Avery County would give up the occupancy taxes, even if the Inn was annexed also. Calder Smoot suggested a phasing-in of the whole property over time. Mayor Pfohl said that Mr. Catoe had indicated he would bring everything in if finances permit, and suggested this Council could not make such an agreement which would be legally binding upon future Councils.

Ed Waligroski pointed out that although Mr. Catoe had indicated they would not have a bar, if the property was sold we couldn't keep anybody from having a bar there. Norma Buchanan said she thought the ALE laws were such that at least 51% of profits had to come from food sales.

Mayor Pfohl asked if there were any more comments, and pointed out that Alan Holcombe had raised some questions to which the Council has no answer. Tim Holland said he would like the answer to the occupancy tax question before Council makes a decision. Kakii Handley noted the owners were eager for an answer and suggested a special meeting. Charlie Burleson said the occupancy tax question had been a problem with Archer's Inn from its adoption, pointing out that we use the taxes to advertise the Town and whenever Archer's Inn is in an advertisement we are spending tax money on something that is not in Beech Mountain.

Seth Lawless indicated the questions he had heard which need response as clarifying occupancy tax receipts relative to the point of collection; whether or not the County would lay claim to those taxes; and whether or not sufficient parking for any addition to the restaurant would have to be on the same site.

RECESS

Tim Holland moved the meeting be recessed until 6:00 PM Monday, December 4, 1995. Shiela Fletcher seconded the motion and it passed unanimously. Mr. Lawless pointed out there was a possibility that there be no clear answer to one or another of the questions, or a clear answer may take time to secure. It might even be something that would have to be done and then tested in court.

RECALL TO ORDER

Mayor Pfohl recalled the meeting to order at 6:00 PM Monday, December 4, 1996, and explained that there had been several outstanding questions from November 28th to be answered before a decision on the annexation could be made.

Seth Lawless reported that occupancy taxes would not accrue to the Town unless the Inn, itself, was within the Town limits (point of collection notwithstanding). He reported that Avery County's occupancy tax legislation indicated they could not collect occupancy tax from any rental units located in the Town of Beech Mountain or Banner Elk, so if the Inn were annexed, the payment would automatically be made to the Town. Third, the Zoning Ordinance is clear that any additional parking which might be required due to expansion of the restaurant, if it was

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incorporated into the Town, would have to be constructed on the same parcel of land as the intended use of the parking, i.e. the restaurant parcel if it was separated from the rest.

Mayor Pfohl asked if there were any questions or comments from the audience or Council. Reub Mooradian asked if anyone had calculated how much occupancy tax would come to the Town if the Inn were annexed, and Mr. Lawless said someone from Archer's Inn had mentioned a figure of \$500,000 as gross rentals, which would mean \$15,000 in occupancy tax if accurate.

Tim Holland moved the request for annexation of Jackalopes View Restaurant be denied. Ed Waligroski seconded the motion and it passed unanimously.

Mayor Pfohl noted the Council would be happy to consider annexation of the entire property if the owners desired to make such a request.

ADJOURN

There being no further business to come before the Council, Tim Holland moved the meeting be adjourned. Kakii Handley seconded the motion and it passed unanimously. The meeting was adjourned at 6:07 PM.

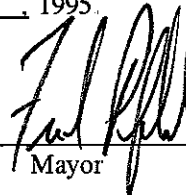
Respectfully submitted,



Barbara L. Mooradian
Town Clerk

BLM/hs

Minutes approved by Town Council on December 12, 1995.



Mayor

ATTEST:



Town Clerk

MINUTES
BEECH MOUNTAIN TOWN COUNCIL
Organizational Meeting, December 4, 1995

CALL TO ORDER

Pursuant to due advertisement in The Watauga Democrat edition of November 17, 1995, Mayor Fred Pfohl called a special meeting of the Beech Mountain Town Council to order at 6:08 PM in the Council Chamber at Beech Mountain for the purpose of electing a Mayor and Vice Mayor to serve for the following two years.

Before proceeding further, Mayor Pfohl thanked both Kakii Handley and Tim Holland for their valued service as Council Members for the past number of years, and expressed his enjoyment of having worked with them. Seth Lawless expressed much the same sentiment on behalf of the Town staff. Shiela Fletcher and Ed Waligroski both thanked the departing Council Members for their assistance over the past two years.

Barbara Mooradian, a Notary Public, administered the oath of office to Reub Mooradian and Rick Owen so they could take part in the process.

Reub Mooradian nominated Fred Pfohl for Mayor. Ed Waligroski seconded the nomination and Mr. Pfohl was elected by acclamation.

Reub Mooradian nominated Shiela Fletcher for Vice Mayor. Ed Waligroski seconded the motion and Ms. Fletcher was elected by acclamation.

Mayor Pfohl asked the Council's pleasure about acting as representatives for the various out-of-Town meetings, and it was decided to try a rotating roster so that no one individual had to attend all meetings. Ed Waligroski said he would like to continue to represent the Town with Region D Council of Governments.


Mayor Pfohl asked the Council to think about whether or not to hold a retreat in the spring some time. Seth Lawless offered assistance to any Council Member at any time.

Reub Mooradian said he intended to bring up the possibility of paying the members of appointed committees the same per diem the Council is paid for attending meetings.

ADJOURN

There being no further business to come before the Council, Ed Waligroski moved the meeting be adjourned. Shiela Fletcher seconded the motion and it passed unanimously. The meeting was adjourned at 6:35 PM.

Respectfully submitted,



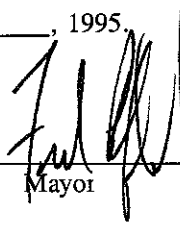
Barbara L. Mooradian
Town Clerk

BLM/hs

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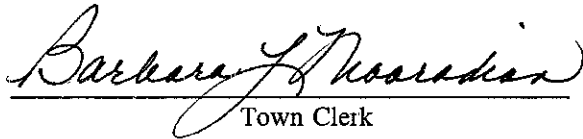
December 4, 1995

Minutes approved by Town Council on December 12, 1995.



Mayor

ATTEST:



Town Clerk

MINUTES
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December 12, 1995

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 Shiela Fletcher, Reub Mooradian, Rick Owen and Ed Waligroski. Also present were Town Manager Seth Lawless, Town Attorney David Paletta, Town Engineer Ed Powell, Public Works Director Joe Perry and Chief of Police Jay Hefner. Present in the audience were Tim Holland, Kakii Handley, Bill Sposato, Cindy Keller and Jim Bower.

Administration of Oaths of Office, Mayor and Council - Judge Alexander Lyerly.

Mayor Pfohl thanked Judge Lyerly for coming out on a winter night, and for all that he does for the community. Judge Lyerly administered the oath of office to Mayor Pfohl and the Council Members.

Presentation of Plaques, Tim Holland and Kakii Handley.

Mayor Pfohl presented plaques of appreciation to retiring Council Members Tim Holland and Kakii Handley and thanked them for their service to the Town.

1. *Adoption of Agenda.*

Ed Waligroski moved the agenda be approved as submitted. Rick Owen seconded the motion and it passed unanimously.

2. *Consent Agenda.*

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

- a. Minutes of Regular Meeting November 14, 1995.
- b. Minutes of Special Meeting November 28 and December 4, 1995
- c. Minutes of Organizational Meeting December 4, 1995.

3. *Committee Reports.*

Ed Waligroski reported on a potential problem facing the region, and the state in general, regarding homeless people being brought in from other states to live in our shelters, since one only needs to be in the State of North Carolina for 24 hours to qualify for welfare. This could put a huge drain on our resources, and Region D may be spearheading a letter writing campaign to try and alleviate the problem. It seems that this rule can be changed administratively rather than through legislation, and he will report more after the next Region D meeting.

Kakii Handley reported that Watauga County Recreation's scholarship fund has been mostly used for pre-school children, acting more as a baby sitting program. They are investigating whether or not there are other agencies which could handle this aspect, allowing the Recreation Committee's scholarships to be used

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sports activities, such as paying the costs of children's participation in the football, baseball or basketball programs offered.

4. *New Business:*

a. *Appoint Committee Members.*

(1) *Planning Board.* Ed Waligroski moved that Bill Watson and Ed Lotz be reappointed for three year terms on the Planning Board. Shiela Fletcher seconded the motion and it passed unanimously.

(2) *Board of Adjustment.* Reub Mooradian moved that Norm Smith be reappointed for a three year term on the Board of Adjustment, and that Sherry Garris, Kakii Handley and Paul Piquet be appointed for one year terms as Alternate Members. Rick Owen seconded the motion and it passed unanimously.

(3) *Economic Development Committee.* Reub Mooradian moved that Rick Miller be reappointed for a three year term on the Economic Development Committee. Rick Owen seconded the motion and it passed unanimously.

b. *Consider Donation of Watauga Acreage Tract WW.* Seth Lawless reported that the owner of acreage totalling approximately 1½ acres located off Charter Hills Road below the guard rail, had offered to donate the property to the Town. All Watauga County taxes are paid through 1995, and approximately \$173 is outstanding to the Town. Shiela Fletcher moved the Town accept the donation. Ed Waligroski seconded the motion and it passed unanimously.

c. *Consider Agreement on Sports Car Hill Climb (Resolution 95-12-01).* Mayor Pfohl noted that this was an event Jim Rickard had been working on, and that David Paletta had looked over the agreement between the Town, the Department of Transportation and the Central Carolina Region Sports Car Club of America. Resolution 95-12-01 would authorize the Town Manager to enter into the agreement, which sets forth each party's responsibility before, during and after the event. Reub Mooradian moved the resolution be adopted. Shiela Fletcher seconded the motion and it passed unanimously.

d. *Set Date for Public Hearing on Establishment of Verifiable Goal for Minority Participation in Construction Contracts.* Seth Lawless pointed out that the State had encouraged municipalities to set verifiable goals for minority participation in construction contracts. This was brought to his attention when the Town put in an application for a low interest loan for expansion of the Grassy Gap wastewater treatment plant. This would require the Town's identifying some minority-owned businesses and opening communication with them. It won't come into play very often, only applying to construction projects over \$100,000. He had checked with Watauga and Avery Counties and Boone, and they had set a goal of 3%. Mayor Pfohl set 6:00 PM Tuesday, January 9, 1996 as the date and time for the public hearing on the matter.

e. *Consider Audit Contract - Holder, Copeland and Associates.* Seth Lawless indicated that Holder, Copeland and Associates, who have done the Town's audit for the past number of years, had requested an additional \$500 over their previous contracts, mainly due to the grant which the Town received from the Appalachian Regional Commission. The grant requires additional

monitoring and forms, which will require additional work on their part. Shiela Fletcher moved that the audit contract be accepted as presented. Ed Waligroski seconded the motion and it passed unanimously.

5. ***Staff/Consultant Reports.***

- a. ***Town Engineer's Report.*** Ed Powell reported that the Town has applied for a low interest loan from the State to expand the Grassy Gap wastewater treatment plant as required by the Special Order by Consent. The Division of Environmental Management has moved extremely slowly, and the Town has not yet received the information upon which the design of the plant expansion will be based. The town probably won't be considered for a loan during this funding period. If the Town misses an SOC deadline due to inaction by the State there will be no penalty.

The road construction on Skiloft Road has been halted due to weather, and will be resumed in the spring. Mayor Pfohl asked if there would be any additional expense due to the delay, and Mr Powell replied there would not.

- b. ***Public Works Director's Report.*** Joe Perry had no report.
- c. ***Town Attorney's Report.*** David Paletta had no report.
- d. ***Chief of Police's Report.*** Chief Hefner reported there is an opening for a Dispatcher, and one Dispatcher is on maternity leave. Things will be tight through the holiday period, but he and Captain Dunn will be filling in.
- e. ***Town Manager's Report.*** Seth Lawless reported that the oldest truck in the Public Works fleet blew its engine Saturday. It has been down since then, and the staff has decided to replace the motor at a cost of \$1,800. The truck is in the Capital Improvements Plan for replacement in the next fiscal year, but they feel that if they replace the engine it can kept in service longer. The motor should be delivered the following day.

He reported the Town has subscribed to the InterNet, since there is a node site that Skyline Telephone has installed. The cost is \$20 per month for ten hours. Several staff members are looking through that to see what is on it and what we can use. Any Council Member is encouraged to look into it at any time they need research on something.

Mr. Lawless indicated it seemed doubtful that the Town would receive a low interest revolving loan, since there are \$30 million in requests for \$500,000 in available loan funds. There are several strikes against the Town, one being that it charges for water and sewer on a declining rate schedule, which the State discourages. The staff will be looking for other sources to assist in the wastewater plant expansion and will report to the Council.

Mr. Lawless reported that, due to a computer error, the payroll line item on the financial report is incorrect. The problem has been fixed, but was not done prior to making up the agenda packets.

The Town has met the budget on tap fees and service fees, so any building permits issued in the

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late winter through the end of the fiscal year will bring in more revenue than originally anticipated.

The Town has been notified it will be receiving approximately \$70,000 in disaster relief funds, so that will help replenish the fund balance.

Mr. Lawless closed by saying he wanted to publicly thank the staff, Town Attorney and Town Engineer for all their help. The Town has had an excellent year even in view of some circumstances encountered, and he thanked everyone for pulling together when needed. He wished the Council a Merry Christmas and Happy New Year, and thanked them for their support throughout the year.

- f. ***Financial Report, Tax Report and Building Inspections Report.*** Copies of the reports were received without questions or comments.

6. ***Other Business.***

Mayor Pfohl suggested Council Members consult with the Tax Administrator, or other staff members, when faced with complaints or questions. Quite often the complainant has misinformation, and a discussion with the staff member can clear things up.

Mayor Pfohl encouraged the Council to think of things they might want to see implemented by the Town, such as staggered terms as Reub Mooradian had suggested. He noted that Kakii Handley encouraged the Council to continue to think about a Town cemetery.

The Mayor asked the Town Manager and Public Works Director to put a report together on projects which are in the works to bring all Council Members up to date. He noted that the Council had held a planning retreat last year, and asked the Council to consider whether or not they wanted to do that again.

Ed Waligroski asked that Council consider a garage which would allow all Town equipment to be stored indoors during inclement weather. Joe Perry indicated the staff had plans to use the property which had been purchased from the Club behind Action Realty.

Seth Lawless said he and Joe Perry had been having discussions with the Frisbie family about extending water down Elderberry Ridge Road to serve several lots which they want to develop outside of Town. The proposal is similar to that entered into on the North Pinnacle Overlook project, wherein they would purchase the material and the Town would install it.

Mayor Pfohl indicated that Mayor Tate in Banner Elk wanted to have a meeting in the future to discuss disposition of the property between the two towns, considering extraterritorial zoning for Beech Mountain along NC 184.

ADJOURN

There being no further business to come before the Council Ed Waligroski moved the meeting be adjourned. Shiela

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Fletcher seconded the motion and it passed unanimously. The meeting adjourned at 7:00 PM.

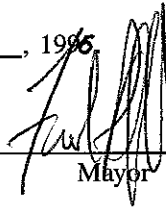
Respectfully submitted,



Barbara L. Mooradian
Town Clerk

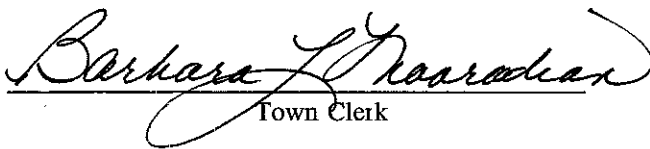
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Minutes approved by Town Council on January 9, 1996



Mayor

ATTEST:



Town Clerk