

MINUTES
BEECH MOUNTAIN TOWN COUNCIL
April 8, 1997

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 Reub Mooradian, Rick Owen and Ed Waligroski. Also present were Town Manager Seth Lawless, Town Attorney David Paletta, Public Works Director Joe Perry, Police Chief Jay Hefner, Town Engineer Ed Powell and Gary Powell of Booth Communications. There were a number of interested persons in the audience.

Invocation. The meeting was opened in prayer by Pastor Hayst Harrold.

Pledge of Allegiance. Ed Waligroski led those present in the Pledge of Allegiance to the Flag.

1. *Approval of Agenda.*

The agenda was approved as submitted.

2. *Consent Agenda.*

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

- a. Minutes of the Regular Meeting of March 11, 1997.
- b. Minutes of the Special Meeting of March 21, 1997

3. *Committee Reports.*

There were no committee reports

4. *Old Business:*

- a. *Consider Transfer of Ownership of CATV System from Booth Communications to Helicon.* Mr Lawless referred to the agenda packet, which contained several pages out of the final report of the Minnesota counsel which Boone and Booth Communications had engaged to study the legal, financial and technical capabilities of Helicon. He indicated that the Town would have to hold a public hearing on the proposed transfer, and that the Town had until May 8th to either approve the transfer or object for good cause. The Town's CATV Ordinance dictates the standards which the Town requires of its cable operator indicates the Council may require a \$15,000 performance bond to insure performance of the cable company. He said he thought Helicon would be willing to meet that requirement. The Minnesota firm did not find any legal problems, but suggested a guaranty be required of either the principal or one of the other principal's corporations. They also suggested a third party financial consultant be brought in to do a full review of Helicon's finances.

David Paletta said he had found the chart showing Mr. Baum's various corporations very instructive. Essentially, the purchaser of Booth Communications is a piece of paper — the

corporate documents. Mr. Baum has created a number of corporations to protect himself, and as one gets down the chain to Helicon Group, Inc., it is so far removed from Mr. Baum that basically if problems come up the real party in interest is fully insulated from liability. Mr. Paletta said he felt the guaranty was essential, and it should come from the principal who owns everything. He said he felt the \$15,000 performance bond was irrelevant, and wondered if there were such bonds available to cover operation rather than actual construction.

Mayor Pfohl asked the Booth representative if Booth was selling all its CATV holdings to Helicon, and Mr. Powell said they were selling the interests in Watauga/Avery Counties and Anderson. They will still have cable systems in California, Florida, Michigan and two in Virginia.

Mr. Lawless said he thought the \$15,000 performance bond would be worthwhile, as the Town would lose its franchise fees if the cable company stopped operating, and perhaps it should be requested along with the guaranty. Mr. Paletta said he envisioned approving the transfer subject to the condition that there would be a guaranty. He also said he felt further information from the prospective buyers could satisfy the Town's concern that the CATV franchise would be owned by something more than a shell corporation.

Reub Mooradian said he felt the guaranty should be provided by either Theodore Baum individually, or by Helicon Corporation or Baum Investments, Inc., both being wholly owned by Mr. Baum. Rick Owen said he felt the request should simply be for a guaranty by Theodore Baum. David Paletta said he agreed that the \$15,000 performance bond should be a requirement, and that Mr. Baum could always suggest the guaranty be given by an entity other than himself.

Reub Mooradian moved Council set the date for the public hearing for 6:00 PM Tuesday, April 29, 1997, and that prior to that date the Town contact Helicon notifying them that as a condition of approval the Town would require a guaranty by the principal, Theodore Baum. Rick Owen seconded the motion and it passed unanimously. Mr. Paletta suggested the letter say the Council would entertain alternatives Mr. Baum may wish to suggest. Kakii Handley asked what would happen if the Town didn't approve the transfer within 120 days of receipt of the letter of intent, and Mr. Lawless said penalties would be imposed. Mr. Paletta said there was no problem in giving approval of the transfer subject to conditions.

4. ***New Business:***

- a. ***Consider Resolution 94-04-01 Declaring Dump Truck Surplus.*** Joe Perry stated he expected delivery of the new dump truck later in the week, and wanted to go ahead and advertise the old truck for sale. Reub Mooradian moved Council adopt Resolution 94-04-01. Ed Waligroski seconded the motion and it passed unanimously.
- b. ***Consider Tax Release.*** Mr. Lawless pointed out that, unlike most tax releases, this simply would release Archer's Inn from nine months of taxes this year, but they would be added onto their next year's taxes. Rick Owen moved the release be approved. Reub Mooradian seconded the motion and it passed unanimously.
- c. ***Consider Proposed Amendment to Chapter 28, Water & Sewer Use Ordinance.*** Mr. Lawless explained that the wording regarding connection fees for water meters should indicate that taps for meters 1" in diameter or above should be billed at \$250 plus actual cost of installation plus

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5%, and the proposed amendment would clarify this. Rick Owen moved the amendment be approved as submitted. Ed Waligroski seconded the motion and it passed unanimously.

- d. ***Consider Purchasing Fence for Recycling Center Area.*** Mr. Lawless distributed pictures of the proposed location for solid fencing, and referred to the cost estimate contained in the agenda packet. Reub Mooradian said he was concerned about what the solid fence was going to look like, and hoped the Town would not make an ugly area uglier by trying to screen it. Mr. Mooradian moved approval of the expenditure of \$5,875 for purchase and construction of the fencing, but added he would like to have some input as to its aesthetics. Ed Waligroski seconded the motion and it passed unanimously.
- e. ***Consider New Confined Spaces Safety Policy.*** Mr. Lawless referred to the updated procedures for confined spaces which had been prepared by Joe Perry as a result of OSHA's recommendations. Reub Mooradian indicated he had read the entire document the previous night and thought it was a marvelous piece of work. He commended Mr. Perry on getting the document put together and moved Council accept it as presented. Rick Owen seconded the motion and it passed unanimously.
- f. ***Consider Flower and Grounds Maintenance Agreement - Larry Parent.*** Mr. Lawless noted that a similar agreement had been executed last year, but the suggested agreement is more comprehensive than the last. Last year the EDC had approved \$1,100 out of occupancy tax monies for flower maintenance, and the Town had budgeted for the remainder. He went over the proposed agreement in detail. Ed Waligroski asked about liability insurance, and Mr. Lawless said Mr. Parent did not have it, and asked Mr. Paletta what liability the Town would have if Mr. Parent got hurt while working on Town property. Mr. Paletta said, from reading the agreement, he is an independent contractor and he did not see any liability exposure to the Town.
- Reub Mooradian suggested the Town pay the lawn and Town Hall maintenance portion of the agreement out of the General Fund, and look to the EDC to supply the monies for the flower maintenance portion. Mr. Lawless noted the flower portion is \$1,950. The EDC has agreed to budget \$1,000, but he said he felt certain they would agree to the additional monies since they had based their commitment on last year's agreement. Reub Mooradian moved the lawn maintenance plus the \$647 quoted for Town-provided materials be paid out of the General Fund, with the remainder to come out of occupancy tax monies. Ed Waligroski seconded the motion and it passed unanimously.
- g. ***Consider Tree Maintenance Proposal from Taylor Rees.*** Mr. Lawless noted he had asked Mr. Rees to provide a bid for a one-year contract and a three-year contract for spraying Town trees. On the three-year contract the Town would save \$100 per year. Ed Waligroski moved the Council approve the three-year contract. Rick Owen seconded the motion and it passed unanimously.
- h. ***Consider Budget Amendment.*** Mr. Lawless said the Amendment would have to be redone, based upon the Council's decision regarding Mr. Parent's contract, but he would like to get approval for the \$5,100 recommended by the EDC for the Mountain Bike Festival. Rick Owen moved that portion of the Budget Amendment be approved. Ed Waligroski seconded the motion and it passed unanimously.

i. **Discussion of Wastewater Violations.** David Paletta said he would prefer to discuss this item in a closed session. It was, therefore, deferred until a closed session at the end of the meeting.

j. **Consider Resolution 97-04-02 Declaring Police Vehicle Surplus.**

and
k.

Consider Commitment for 1997/98 FY Police Vehicle Purchase. Mr. Lawless explained that it appeared desirable to go ahead and purchase a second 1997 Jeep through State contract, which would not be delivered until FY 97/98. Chief Hefner noted the frame is broken on the 1993 Blazer, and the 1992 is also in need of replacement. Reub Mooradian moved Council approve Resolution 97-04-02 declaring the 1993 Blazer surplus and approve the ordering of a second 1997 Jeep, after delivery of which the 1992 Blazer would be declared surplus. Ed Waligroski seconded the motion and it passed unanimously.

6. **Staff/Consultant Reports:**

a. **Town Engineer's Report.** Mr. Powell reported the contractor is at work on the Grassy Gap Wastewater Treatment Plant expansion. Bids will be ready for Council on the paving of Christie Way by their May meeting.

b. **Public Works Director's Report.** Joe Perry reported that a gentleman who lives on Sugar Maple Lane had been instrumental in getting the Town to build a waterfall at the old water treatment plant site and requested input from Council with suggestions as to further beautification of the area.

c. **Town Attorney's Report.** Mr. Paletta had no report.

d. **Chief of Police's Report.** Chief Hefner had no report.

e. **Town Manager's Report.** Mr. Lawless reminded Council that the deadline for the N.C. League of Municipalities Regional Meeting is Friday, April 18th. Fred Pfohl and Rick Owen stated they would attend with Mr. Lawless.

7. **Other Business.** Mayor Pfohl said the MountainEar would be coming out soon with a plea for volunteers, not just for flower barrels, but hiking trails, picnic areas, overlooks, parks, lakes, etc. He also reminded those present that April 19th would be Mountain Cleanup Day and urged their participation.

Closed Session.

Ed Waligroski moved the Council go into closed session under the provisions of N.C.G.S. 143-318 11(a)(3) to preserve the attorney-client privilege in consultation with the Town Attorney, and (6) to consider the performance of a public employee. Reub Mooradian seconded the motion, which passed unanimously, and the Council went into closed session at 8:03 PM. The Council came out of closed session at 9:10 PM.

As a result of the closed session, the Town Council took the following action: Upon a motion by Ed Waligroski, seconded by Rick Owen, Council voted unanimously to pursue the Administrative Hearing on the assessed wastewater fines. Also, upon a motion by Reub Mooradian, seconded by Ed Waligroski, the Council voted unanimously to reimburse Seth Lawless for tuition expenses for one course he is currently taking at ASU. They

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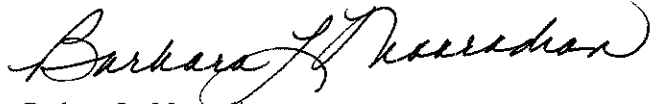
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also voted to reimburse Mr Lawless for up to one course per semester, provided Mr Lawless keep the Council updated on classes he is taking The reimbursement would NOT cover books or expenses other than tuition.

ADJOURN

There being no further business to come before the Council, the meeting was adjourned at 9:15 PM.

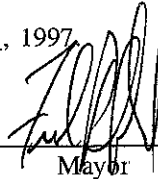
Respectfully submitted,



Barbara L. Mooradian
Town Clerk

BLM/hs

Minutes approved by Town Council on May 13, 1997



Mayor

ATTEST:



Town Clerk

MINUTES
BEECH MOUNTAIN TOWN COUNCIL
Special Meeting, April 29, 1997

CALL TO ORDER

Pursuant to notice duly published in the April 11, 1997 edition of The Watauga Democrat and the April 17, 1997 edition of The Avery Journal, Mayor Pfohl called a special meeting of the Beech Mountain Town Council to order at 6:00 PM Tuesday, April 29, 1997. Other Council Members present were Shiela Fletcher, Reub Mooradian, Rick Owen and Ed Waligroski. Also present were Town Manager Seth Lawless, Public Works Director Joe Perry and Code Enforcement Officer Don Fulkerson. There were several members of the public present.

1. ***Public Hearing, Proposed Transfer of Cable TV Franchise.***

Mayor Pfohl opened the Public Hearing and asked Mr. Lawless to give background information on the transfer of the cable franchise. Mr. Lawless reported that soon after the last regular meeting of the Town Council, Helicon and Booth organized a meeting between themselves and Watauga County, the Town of Boone, the Town of Blowing Rock and the Town of Beech Mountain to discuss concerns related to the proposed transfer. At that meeting Helicon stated, as reported by Mr. Lawless, its reasons for not wanting to provide a guaranty by one of the other corporations owned by Theodore Baum. Instead, Helicon proposed that the purchasing corporation be The Helicon Group, L.P., a corporation owning other cable systems and with substantial assets. This would be instead of the original proposal that HPI Acquisitions Company, L.L.C., a relatively new corporation with limited assets, be the purchaser.

Mr. Lawless also reported that the Council had reviewed the proposal and had no objections. Additionally, the Town of Boone and Watauga county had recently approved the transfer based on identical circumstances.

The Mayor asked for comments from the audience. There being none, he closed the Public Hearing.

2. ***Consider Resolution 97-04-03 Consenting to the Assignment of the Cable Television Franchise.***

Upon a motion to approve the transfer of the cable television franchise to The Helicon Group, L.P. made by Mr. Mooradian, seconded by Shiela Fletcher, the motion passed unanimously.

3. ***Other Business.***

a. ***Request for Permission to Encroach upon Town Easement.*** Jim Brooks sought permission to encroach upon a non-potable water line easement owned by the Town to construct a parking pad at CR-91. After reviewing the survey plat and asking several questions of Mr. Brooks, the Town Council, upon a motion by Mr. Mooradian, seconded by Rick Owen, approved use of the easement for part of the parking pad.

b. ***Town Cemetery.*** Kakii Handley asked that the Council consider constructing a chapel as part of their cemetery plan. Mayor Pfohl stated, with agreement of the rest of the Council, that any such proposal should be part of the final recommendation of the committee composed of Mrs. Handley and Mr. Steineger.

c. ***Garbage Bin Specifications.*** Mrs. Handley addressed a question regarding the reason no grandfather clause had been applied to old garbage bins. Neither the Council or staff knew why

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it had not been included, but promised to find an answer prior to the next regular meeting.

ADJOURN

There being no further business to come before the Council, the meeting was adjourned at 6:21 PM

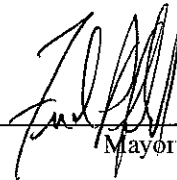
Respectfully submitted,



Seth Lawless
Town Manager

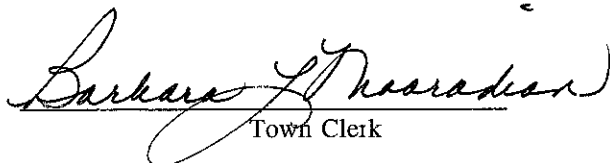
BLM/hs

Minutes approved by Council on May 13, 1996.



Mayor

ATTEST:



Town Clerk