

MINUTES
BEECH MOUNTAIN TOWN COUNCIL
October 16, 2001

CALL TO ORDER

Mayor Tim Holland called the regular meeting of the Beech Mountain Town Council to order at 6:00 P M in the Council Chamber at Town Hall. Other Council Members present were Gil Adams, Jim Herbert, Reub Mooradian and Rick Owen. Also present were Town Manager Seth Lawless, Assistant to the Town Manager Jonathan Hobbs, Town Attorney David Paletta, Chief Jay Hefner, Town Engineer Ed Powell, Public Works Director Riley Hatch and Building Inspector Don Fulkerson. There were a number of interested parties in the audience.

Invocation – Charlie Burleson

Charlie Burleson opened the meeting in prayer

Pledge of Allegiance

All present joined in the pledge of allegiance to the flag.

1. Adoption of Agenda

Mayor Holland added the Avery Park and Recreation Authority as item 5-h.

2. Consent Agenda

Reub Mooradian made a motion to accept the minutes of September 18th and September 20th meetings as submitted. Jim Herbert seconded the motion and it passed unanimously.

3. Public Hearing – Proposed Zoning Ordinance Amendments

Mayor Holland opened the public hearing at 6:05 P M. to discuss the Zoning Ordinance Amendments. Mayor Holland briefly identified the four issues, giving the audience a brief description and called for comments from the public. Hearing no comments from the public Mayor Holland closed the public hearing at 6:07 P M.

4. Special Presentation – FY 2000-2001 Audit

Accountant Luke Copeland of Holder Copeland reported to the Council that the firm was still putting together the Audit Report for 2000-2001. Mr. Copeland indicated that the Town would receive the financial statement no later than 1 week from today, October 23rd, and return on November 13th to give his report to the Council. Mr. Copeland also assured the Council that the Town would meet the state requirements of having the financial statements in by October 31st and went on to assure the Council that the Town's finances are in order.

5. *New Business*

a. Proposed Zoning Ordinance Amendments

Reub Mooradian moved to accept the proposed changes to the Zoning Ordinance. Section 401.27 defines mobile homes, Section 401.28 defines modular building, and Section 1118 regulates livestock and Section 1119 changes the regulations for new foundations. Rick Owen seconded the motion and it passed unanimously.

b. Resolution 01-10-01 – Backhoe Loan – BB&T

Rick Owen made a motion to accept Resolution 01-10-01, approving financing terms for the new backhoe loader. Jim Herbert seconded the motion and it passed unanimously.

c. Resolution 01-10-02 – T I P. Request

Reub Mooradian made a motion to approve Resolution 01-10-02, requesting improvements to the Department of Transportation on the Transportation Improvement Plan. Rick Owen seconded the motion and it passed unanimously.

d. Request to Abandon Right-of-Way - Alan Holcombe

Vice Mayor Owen made a motion to excuse Mayor Holland from the discussion due to a financial interest. Gil Adams seconded the motion and it passed unanimously.

Vice Mayor Owen informed the Council that Mr. Holcombe was requesting that the Town abandon a piece of Town Property, which has a Town right of way. Mr. Holcombe, acting as an agent for a prospective buyer, pointed out the location of the property as a cul de sac at the end of Northridge Road bounded by lot N-11, Northridge Condominiums and Mariah North I Condominium.

Charlie Burleson spoke as the manager of the Northridge Condominiums noting that the property owners had discussed this particular piece of property with two previous owners. Mr. Burleson indicated that the property owners did want the right of way issue resolved and the road to Northridge condominiums kept open.

After a lengthy discussion the Council agreed that the meeting be recessed until Thursday, October 18th at 2:00 P.M. (*this was later changed to November 1st at 2:00 P.M.*) in order to give Mr. Holcombe an opportunity to prepare an Offer to Purchase to present to the Town. The Offer is to include a Town right of way.

Reub Mooradian made a motion to allow Mayor Holland to return to the meeting. Vice Mayor Owen seconded the motion and it passed unanimously.

e. Discuss Tourism Development Authority, Occupancy Tax Bills

Mayor Holland briefly explained to the Council and audience that two bills have recently passed that would abolish the Economic Development Committee (EDC) and set up a Tourist Development Authority (TDA). The TDA must include 1/3 of it's membership representing businesses that collect the tax and 3/4 of the membership from individuals currently active in promoting travel and tourism within the Town to be appointed by the Town Council. The new bills take effect on February 1, 2002.

Jim Brooks noted that the rental companies had already contracted for winter and summer rentals at the old 3% rate and felt that it would be advantageous to get this set up as soon as possible, especially since it was income for the Town.

Mayor Holland suggested that it might be easier to wait for the end of ski season to implement the additional tax.

Mr. Lawless recommended that the Council asks Mr. Paletta to look over the two bills, S-92 and HB-685, in order to advise the Town in the proper action to take. Mr. Lawless also took the opportunity to report to the Council on an informal meeting of business people held October 15th. The first suggestion was in addition to the members appointed, having the Town Finance Officer an additional non-voting member to keep the books. Next it was suggested to have 100% of the members to be in some type of tourism related business. Another question was whether or not the members must live in town, which is not a requirement by the legislators, or simply work for a business in the Town.

Mr. Lawless explained to the Council that HB-685, dealing with Watauga County, permits the Town, to take 2/3 of the collections for Tourism related expenditures, which includes capital improvements for tourist type facilities. The other 1/3 can be used for advertising purposes. That part of the bill sunsets after 7 years. If the Council chose to do that, it would be difficult to maintain the current amount presently spent on advertising. S-92, dealing with Avery County, mandates 2/3rds be spent on advertising, and 1/3 for other tourist related expenditures, including capital facilities.

Sherry Garris, President of the Chamber of Commerce, asked if people who serve on committees have to be residents of the Town. Mayor Holland responded that, by Ordinance, the only board or committee that has that requirement is the Planning Board.

Alan Holcombe asked why the Board of Adjustments did not fall into that category to which Mayor Holland could not answer. The Council has the right to amend ordinances as they see fit, perhaps this is one of those.

After further discussion the Council agreed to try setting up a meeting in early November to discuss the formation of a TDA.

Mr. Lawless asked that Mr. Paletta research whether or not the Town and the TDA could enter into a contract allowing the Town to take the capital portion of money off the top before submitting it to the TDA. He also asked Mr. Paletta to investigate the date the resolutions has to be passed by in order not to loose any of the current

occupancy tax. Mayor Holland asked Mr. Paletta to check as to the residency requirement for serving on the TDA as well as the other Town committees

f. Discuss Streets & Driveway Ordinance re: excavating in right-of-ways

Mayor Holland reported to the Council that for the past 30 years different contractors who build parking lots and roads go along taking boulders and rocks off the right of ways to use in their construction. The question was is there an ordinance to prohibit this action. Mr. Lawless indicated that the Town did not have one. The taking of rocks was compared to taking stop signs or cutting timber, an illegal act. After a lengthy discussion the Council asked that Mr. Paletta work with Mr. Fulkerson on wording for an ordinance. The basis of the ordinance would be to say individuals could not take or put anything on the right of way. Mr. Paletta would first see if that were appropriate, if not, he would then prepare a proposed ordinance for the Council to review. It was also noted that the fine for such a violation would be left blank until further consideration could be given to the issue.

g. Consider Contract for Services – Davis, Martin & Powell

Mr. Lawless gave an overview noting that at the recessed meeting last month a budget amendment was passed allocating \$110,000 and creating a new capital project ordinance for Wastewater Treatment Plant Improvements. That money was budgeted for design of those improvements. That is the only money budgeted to date. Following that Davis-Martin-Powell & Associates, Inc. came up with a proposed contract for those services. The contract proposal is slightly less than the amount the Town budgeted for the project.

Ed Powell informed the Council and audience that his firm would revise the study, making it into a 201 Amendment in order to get approval for state revolving loan funding.

Rick Owen asked Mr. Powell, from an engineering standpoint, if this design would not only solve our current problems, but also take into account things like future state mandated changes and regulations. Mr. Powell assured the Council that they were dealing with current regulations as well taking into consideration future regulations in our region of the state.

Reub Mooradian made a motion to accept the Contract for Engineering Services from Davis-Martin-Powell & Associates, Inc. Gil Adams seconded the motion and it passed unanimously.

h. Avery County Parks & Recreation Authority

Mayor Holland informed the Council that he was in receipt of a letter from the Avery County Manager regarding a bill that was scheduled to be introduced in the spring allowing for the establishment of a Parks and Recreation Authority. The committee would be in charge of the maintenance for the parks and recreational facilities in Avery County. The committee would consist of 9 members, two of which will be

recommended by the towns of Banner Elk, Beech Mountain and Sugar Mountain. Mayor Holland indicated that he would like to write a letter yielding to the other two towns and also to note our disapproval of the 2/3-vote situation they gave the Town. Mr. Lawless noted that there are children in the Town that do participate in the county activities thus using their facilities. He also indicated that he would be interested in serving on the committee. Rick Owen recommended that the Council submit Mr. Lawless' name. Council agreed.

6. *Staff/Consultant Reports.*

a. Town Engineer's Report.

Ed Powell reported the following: 1) The jockey pump has been installed for the Slopes Subdivision and is working well. 2) The tennis courts at the Buckeye Lake Recreation Facility are almost completed. Court I quoted a price of \$2,500.00 for an additional gate into the courts, noting that they do not put in two gates for two courts inside one fence. 3) The paving company, Smith & Sons, plans to start paving next week with two crews. Mayor Holland asked about the addition of the paving of the parking spaces at Perry Park on Tamarack Road. Mr. Powell indicated that he would get a quote. Paul Piquet asked about the need for more paving noting that he felt asphalt was not aesthetically pleasing, especially in a park setting. Jim Brooks indicated that he was one of the individuals who asked about the paving because of snow pushing in the winter and the gravel coming down on the paving. 4) The basketball court at Lake Coffey is completed and the basketball court at Buckeye will be ready for play tomorrow when the goals get put up.

b. Public Works Director's Report.

Riley Hatch reported that the recycling center operator had quit, hopefully a replacement would be found shortly. The closing hours are still in effect. Mr. Owen asked if the sewer camera process had been completed on Jackpine to which Mr. Hatch responded that it was as well as all the roads coming into it. A few minor problems were found and repaired. The report was accepted as submitted.

c. Town Attorney's Report. Mr. Paletta asked that he to be excused from the November Council meeting due to a conflict with a lawsuit. The Council excused Mr. Paletta from the meeting.

d. Police Report.

Chief Hefner went over the police report ; 1) The burglary was an electrician working at the home took some pills. 2) Some building materials were taken from a job site and the Town is working with the Blowing Rock police because they have had a number of job site burglaries. 3) A 32' extension ladder that was reported stolen has been returned, it was borrowed. 4) A bad check in the amount of \$5,200.00 was written to the Pinnacle Inn and Country Club for dues. 5) The trespassing was someone staying in a house, no damage was done, and the police have a description of the vehicle the

people were driving. 6) The weapons case is in reference to someone having brass knuckles in a vehicle. The report was accepted as submitted.

e **Town Manager's Report.**

Seth Lawless reported; 1) We have not heard on the request to lift the moratorium on the Pond Creek Plant 2) We should have some word by the end of the week in regards to the Disaster Declaration on the flood of August 11th. 3) Rio Grand Fence Company has given the Town a quote on putting up a fence at Buckeye. This is for a 4' high fence around the ball field with a 12' gate to allow vehicles entrance. 4) The basketball court at Lake Coffey is ready. 5) The camera crew has completed taping the highest prioritized collection system basin, #225, in Grassy Gap. A copy of the tape will be sent to Hobbs, Upchurch and Associates, P.A. so they can let us know the cost to do the engineering on that basin. 6) October 31st is Halloween. The Town is working with Ski Beech, Four Seasons Inn and the various businesses that will stay open. Invitations have been sent out, please let us know if anyone was missed. 7) Channel 2 is up and running again. This is for community services messages. 8) The web site has the tax map information on it. 9) Tax bills should go out next week.

f **The Finance, Tax Report and the Building Inspections Report were accepted as submitted.**

7. *Other Business*

There was no other business.

8. *Recessed*

There being no further business to come before the Council, the meeting was recessed at 8:15 P.M. until Thursday, November 1, 2001 at 2:00 P.M. upon a motion by Reub Mooradian, seconded by Rick Owen. All agreed.

Reconvened – 11-1, 2:00 P.M.

Mayor Holland reconvened the regular meeting of October 16th at 2:00 P.M. Present were Vice Mayor Rick Owen, Council Members Gil Adams, Jim Herbert and Reub Mooradian. Also present were Town Manager Seth Lawless, Jonathan Hobbs, Public Works Director Riley Hatch, Building Inspector Don Fulkerson and Tax Administrator Missy Norwood. There were a number of interested parties in the audience.

Mayor Holland called for a change in the Agenda; Item #4 - To discuss building permit and wastewater issues was moved to #1.

1. *Discuss Building Permit and Wastewater Issues.*

Mayor Holland reported to the Council and audience that the Town had received official notification from DENR that the Town could issue 20 – 4 bedroom or 27 – 3 bedroom permits.

This is for 10,000 gallons per day in to the Pond Creek basin and DENR will review the moratorium issue after 6 months.

Seth Lawless posed the question on how to inform the public, noting that fairness to everyone was of utmost importance to the Town. Mr. Lawless suggested that the Town do a mailing to all the property owners asking that they submit applications or notices of intent to apply for a permit and hold a lottery if more people apply than the allotted number of permits. Another issue will be whether or not there will be any exceptions or priority given to individuals who have an unusual concern or a public health threat that makes it in the best interest of the community to allot them a permit.

After a lengthy discussion Reub Mooradian made a motion to send out letters to all the property owners notify them of the lifting of the moratorium on the Pond Creek facility. The property owners would be asked to notify the Town building inspector, Don Fulkerson, by December 1st, 2001. Interested parties also must complete a building permit application by January 1, 2002. Gil Adams seconded the motion and it passed unanimously.

2. ***Discussion – Creation of a Tourism Development Authority and Issue Related to SB 92 and HB 685.***

Mr. Lawless briefed the Council on the questions Mr. Paletta had answered from the October meeting starting with the fact that the new Legislation is an amendment to the Legislation adopted in 1987 that first authorized the Town to levy an occupancy tax. Mr. Lawless went on to inform the Council that the authorization that was contained in the original bill of 1987 expires on January 31, 2002.

Mr. Lawless also reported that two months prior to the creation of the TDA and the levy of any new tax a public hearing must be held at which time resolutions must be adopted creating a TDA and authorizing the new tax. Mr. Lawless indicated that, according to Mr. Paletta, the TDA was to be a component part of the Town, not private. The Council will make the decision on whether or not the members will have to be residents of the Town.

The Council had asked Mr. Paletta whether or not the Town could take the amount designated for capital outlay off the top before remitting to the TDA – the Town cannot. One idea to accomplish that would be for the TDA to contract with the Town for that part of their function, which is to provide tourist related capital facilities, much like it could contract with the Chamber of Commerce to provide advertising and promotion.

Mayor Holland indicated that the Council had two major questions: 1) When to start the tax and 2) The make up of the TDA.

After a brief discussion Rick Owen made a motion to pass all necessary resolutions allowing for the February occupancy tax of 3% to be collected in Avery and Watauga County and for the additional 3% being levied on April 1, 2002. Reub Mooradian seconded the motion and it passed unanimously.

Mayor Holland called for a discussion on the make up of the TDA with the Council agreeing that the membership would be set at five (5) individuals directly involved in the travel and

tourism industry. Mayor Holland then called for a vote on whether or not an individual could serve on the TDA and not live within the Town limits. The vote was 4 to 1 with Mr. Mooradian being the nay vote, Rick Owen, Gil Adams, Jim Herbert and Mayor Holland voting yea.

Reub Mooradian made a motion to have the Council accept the TDA nominations through December 11th with the Council establishing a date and time to interview those nominated. Mr. Owen seconded the motion and it passed unanimously.

3. *Consider the Transfer of Right of Way near Northridge Road.*

Vice Mayor Rick Owen made a motion to excuse Mayor Holland from the discussion due to a financial interest. Mr. Adams seconded the motion and it passed unanimously.

Vice Mayor Owen informed the Council and audience of an Offer to Purchase for \$2,000 for property located at the end of Northridge Road. The offer is contingent upon the agreement of Northridge Villas Condominium Owners Association to the relocation of the disputed descriptive easement and also upon the agreement of the Town to relocate the disputed descriptive easement. The offer is also contingent upon the sale of lot N-11.

After a brief discussion the Council asked that the realtors provide the Town with a survey showing a right of way deeded for the Northridge Condominium Association. Mr. Mooradian noted that there was no need for the Council to take any action at this point.

Mr. Lawless pointed out that this purchase would require advertisement and also noted that there was always the possibility of an upset bid.

Mr. Mooradian moved to bring Mayor Holland back into the meeting. Mr. Adams seconded the motion and it passed unanimously.

4. *Consider a Change Order for Pavement Replacement – Storm Damage*

Mayor Holland presented the change ordered on the 2001 Paving Project. The original paving estimate was \$116,165, the adjusted price will be \$137,960 which will include the storm repairs to Tamarack Road, Charter Hills Road, Lakeledge by Greenbriar, Hornbeam Road, Village Road, Skiway, Skiway Circle and Christy Way by Beech Mountain Parkway.

Mr. Mooradian moved to approve the addition of Perry Park (only in front of the old Water Plant) and Sunset Park to the paving. Mayor Holland seconded the motion and it passed unanimously, with Mr. Adams noting that his vote was a reluctant yea.

5. *Other*

Mr. Adams asked that the Council revisit the hours that the recycling center is currently open which is 9:30 A.M. to 2:30 P.M. After a brief discussion it was agreed that Riley Hatch would open the center upon arrival in the morning, 7:30 A.M., and it would be open but unmanned for the first 2 hours.

Adjourn

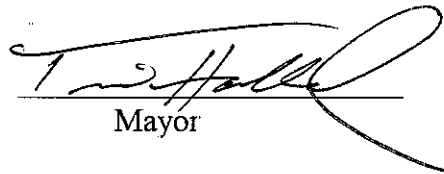
There being not further business to come before the Council, the meeting was adjourned at 4:40 P.M. upon a motion by Reub Mooradian, seconded by Rick Owen All Agreed

Respectfully submitted,

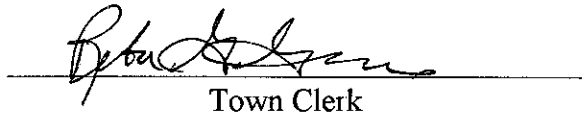
Reba G. Greene
Town Clerk

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Minutes approved by Town Council on November 1st, 2001.


Mayor

ATTEST:


Town Clerk