

MINUTES
BEECH MOUNTAIN TOWN COUNCIL
July 10, 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, Reub Mooradian and Rick Owen. Jim Herbert arrived at 6:20 P.M. Also present were Town Manager Seth Lawless, Town Attorney David Paletta, Police Chief Jay Hefner, Town Engineer Ed Powell, Public Works Director Riley Hatch, Intern Jonathan Hobbs and Code Enforcement Officer Don Fulkerson. There were many interested parties in the audience.

Invocation – Haste Harrold

Haste Harrold 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 moved item 7-a, Proposed Amendment to Zoning Ordinance – Section 601.04A, up to 2-a and item #5, Person's Wishing to Address Council – Murray Ginsburg, Jack Lubin and Linda Tobin, up to #3. Mayor Holland also added item 8-a, Meeting Date Changes. All agreed to accept the agenda as amended.

2. *Public Hearing – Proposed Zoning Ordinance Amendments*

Roger Bullock gave the audience an overview of the work by the Planning Board on the changes made to the Zoning Ordinance Section 601.04A. The changes give the Board of Adjustment added flexibility when hearing variance requests.

Mayor Holland closed the public hearing at 6:15 P.M.

Reub Mooradian moved to approve the changes to the Zoning Ordinance Section 601.04A as submitted. Rick Owen seconded the motion and it passed unanimously.

3. *Persons Wishing to Address the Council – Murray Ginsburg, Jack Lubin and Linda Tobin*

Mayor Holland read a statement regarding the 'manufactured home' issue and noting to the public that the Beech Mountain Code of Ordinances adopts the State Building Codes as the Beech Mountain Codes. Section 1-8 A through D of the Code of Ordinances states that all structures within the Town will comply with the building codes. Mayor Holland indicated that the home in question on Charter Hills is in compliance with the State Building Codes.

Mayor Holland went on to say that a mobile home, or manufactured home as referred to by the Housing and Urban Development department, is built to meet HUD standards while a modular home must meet state building codes. The state standards and guidelines are stricter than those of HUD. The Town Zoning Ordinances does not allow manufactured/mobile homes in any district, however the home in question is a modular home and does meet the State Building Codes. A copy of the complete statement is attached.

Mr. Murray Ginsburg of 705 Charter Hills Road, Beech Mountain, who lives 2 lots down from the modular home, addressed the Council informing them that his business is mobile homes and he could identify a mobile home or trailer when he saw one. Mr. Ginsburg indicated he did not know what could be done about the modular home in question. He would like the Council to recommend to the Planning Board that the Town have an Architectural Review Board and the Architectural Review Board develop a policy that any modular home that comes up Beech Mountain must be a multi-level home. Mr. Ginsburg felt this would stop this type of housing immediately.

Mr. Jack Lubin of 114 Columbine Lane, Beech Mountain, addressed the Council. Mr. Lubin noted that everyone was present tonight because the zoning laws lack the proper restrictions. The current zoning laws do not offer proper protection for the homes on the mountain. Mr. Lubin suggested that the issue be turned over to Roger Bullock and the Planning Board to come up with laws to prevent this. Lubin suggested the Town lobby the legislature to implement the necessary laws. Mr. Lubin also pointed out a few other issues that he felt were problems in the lax zoning ordinances the Town has, such as the right to have farm animals or to paint your home like a rainbow. These are just a few reasons why the zoning ordinances need to be turned over to the Planning Board for refinement. Mr. Lubin ended by letting everyone know that he was the former Assistant City Manager for the City of Miami Beach, Florida.

Mrs. Linda Tobin of 114 Sunset Strip, Banner Elk, addressed the Council starting by informing the Council that her background was 12 years as a Political Activist in South Miami, Florida. Mrs. Tobin addressed David Paletta, the Town Attorney, as to how the Town could go about getting North Carolina law amended to protect Beech Mountain property values.

Mr. Paletta addressed the Council and audience by noting that the focus of his law practice is municipal government and that he does represent three other towns. The issue of mobile homes is currently one of the most prominent issues being dealt with.

Mrs. Tobin explained the process South Miami, formally called a "charrette". This process involves community input of ideas using a facilitator.

Mr. Paletta noted that he had checked with the State Building Code Council which is located within the North Carolina Department of Insurance. An off the record comment indicated to Mr. Paletta that they clearly believe all the efforts by towns to get into this area are illegal because the NC DOI has exclusive jurisdiction.

Mrs. Tobin asked Mayor Holland whether or not the League of Municipalities would be willing to help with such an action. Mayor Holland indicated that he did not know and Seth Lawless reported that the League of Municipalities comes up with a legislative agenda annually and pursues that agenda with their own staff lobbyists. They do not employ lobbyists to take up individual bills for individual towns. If it is a statewide bill their Board of Directors can choose to put it on their agenda.

Jim King of 103 Spring Branch Road, Beech Mountain, addressed the Council. Mr. King reported that the Town of Banner Elk had a 50 page architectural review guideline. Mr. King went over the types of guidelines that were mentioned in the document and also indicated that Banner Elk did use other town's rules and regulations as a guide for preparing their document.

Mr. Bullock reported that the Planning Board had looked into this issue at least 3 times during his tenure and at no time have they recommended aesthetic regulations to the Town Council other than on Commercial Property. Mr. Bullock did let the audience know that the Planning Board would be happy to revisit the issue and look at it from every perspective and make a recommendation to the Council.

Mr. Bill Coleman of 218 Grouse Ridge Road, Beech Mountain addressed the Council and asked permission to take issue with the way Mrs. Tobin had recommended that the Council deal with the mobile/modular issue. Mr. Coleman felt the Town should go ahead and enact the necessary ordinances, and attempt to get legal authorization later.

Mrs. Meredith Patton of 900 Charter Hills Road, Beech Mountain, a full time resident on the mountain addressed the Council to express her dislike for the modular home. Mrs. Patton suggested more severe restrictions on tree cutting to make it more difficult to have a home brought up on wheels. Mayor Holland answered by saying that the reason this modular home had been brought up on wheels as opposed to a flat bed truck was because the property owner wanted to keep as many trees as possible. A flat bed truck and crane would have required all the trees in front be removed. Bill Watson, a member of the Planning Board, quoted the Town's regulations in regards to tree removal, trees can be removed if they are within 10' of the house, less than 6" in diameter or within 5' of the driveway or anything that might endanger the structure.

Mrs. Ann Ginsburg of 705 Charter Hills Road, Beech Mountain asked why the press was not present? Mayor Holland indicated that the press was notified of our meetings and it was their choice to attend or not.

Dave Setnor of 104 Indian Trails, Beech Mountain addressed the Council. Mr. Setnor expressed his concern over the lack of zoning for businesses like the miniature golf located directly across from Town Hall.

George Gundy of 703 Charter Hills Road, Beech Mountain addressed the Council. Mr. Gundy lives next door to the property in question. Mr. Gundy remembered that the Carolina Caribbean group did have an architectural committee. His question was to the legality of that committee, and feeling it was legal, felt it gave the Town the right to deal with this matter.

Mr. Paletta responded by saying that the case law in support of architectural review committees in private neighborhoods is very strong. Mr. Paletta indicated that the group would need a private attorney to look into that aspect, especially since the developer is now bankrupt.

Mayor Holland noted that the Town could not touch the deed restrictions. That issue would have to be up to the individuals.

George Winialski of 218 Dogwood Lane, Beech Mountain, asked if any other permits had been issued for this type of home. Mr. Lawless responded that there were no permits pending.

Mr. Peter Patton of 900 Charter Hills Road, Beech Mountain, indicated that he had been told that a neighbor of his was planning to put this type of home on his lot. Mayor Holland reiterated that there were no applications for one at this time.

Mrs. Rosemary Korneich of 208 Greenbriar Road, Beech Mountain, asked Mr. Paletta if the deed restrictions that were issued by Carolina Caribbean would still be in effect. Those restrictions very clearly state that no trailers were allowed. Mr. Paletta responded by saying it was a question with arguments on both sides. In principal the deed restrictions are enforceable, so in theory, there is no problem. On the other hand, Mr. Paletta went on to tell about a court case in another town where an individual wanted to do something that was in violation of the restrictions. The court found in favor of the individual because there had been so many instances where the restrictions had not been enforced. Mr. Paletta recommended that a private attorney be consulted.

Bernice Setnor of 104 Indian Trail let the Council know that the first day the modular home was put up she was in shock. She indicated that the Town better do something legally by going to the Legislature or by suing someone. Mrs. Setnor indicated that she did not want to see a lot of modular homes on this mountain feeling it would hurt the property owners by decreasing values and also give bad publicity to the Town. She did note that she thought the two story modular homes look fine. Mrs. Setnor also suggested putting out a lot of publicity letting people know that the property owners were very angry about modular homes and that they were not going to like the neighbors that erect these homes.

Mayor Holland indicated that the Town would do something, but cautioned on what is done. He noted the mountain has a number of very fine modular homes that have been built. Mrs. Setnor recommended a moratorium on these homes until something can be done.

Bill Watson addressed the Council next. Mr. Watson is a member of the Planning Board and also a contractor who works on the mountain. His home is down from the modular home and he does not like it, however there is nothing that the Town can do to stop them. He pointed out that at least 1/3 of the homes on Beech Mountain are modular homes that came up on wheels. All the topsiders, even the home he lives in. The deck homes are 3 story modular homes. He stated that he would like someone to

point out how to stop it, but felt it was not possible. He did let the audience know that the individual across from Mr. Patton had been talking to him for a number of years about putting a home on his lot, and Mr. Watson felt a modular home would be an upgrade from what he would probably put up.

Mrs. Tobin repeated what she was hearing from everyone in the audience was "stop modular homes". From the conversation she had with the manufacturer of the modular home in question, he explained that they have a very strong lobby in the state legislature. Mrs. Tobin felt it was not possible to get a moratorium today on modular homes, however she took the opportunity to ask the Council to pass something tonight. There is a feeling in the community that this Council has already decided to go a certain path. She asked that they not adjourn without some action being taken.

Mr. Ginsburg explained that the Carolina Caribbean restrictions have not been enforced in 20 years. He contacted a private attorney, Charles E. Clement, to ask what would be involved in a lawsuit against the person who put up the modular home. Mr. Clement indicated that it would be a lot of work and cost from \$5,000 to \$30,000. Mr. Ginsburg said he did not look forward to a lawsuit, but he felt the Council could put a temporary moratorium on single level modular homes and then research this to see what action could be taken.

Judy King of 103 Spring Branch Road, Beech Mountain addressed Mr. Watson indicating that his home did not look like a modular home or a mobile home. She is not against modular homes, however she is against doublewides up on the mountain.

Mr. King requested that the Council empower the Planning Board to recommend an ordinance that would be acceptable at meetings that are open to the public. Those items that can be passed locally should be and the items that cannot be should go to the legislature under the League of Municipalities.

Mayor Holland stated that he had already talked to Mr. Bullock about sending the issue to the Planning Board. Mayor Holland felt that the Council was not ready to do a moratorium tonight. Mr. Lawless informed the Council that a building moratorium had to come in the form of amendment to the zoning ordinance from the Planning Board.

Mr. Rick Miller asked that everyone take a look out the side window and they would see a gray house with black shutters, it is a modular home.

Mayor Holland indicated that the Planning Board would be asked to meet more than the once a month, as scheduled. Mr. Lawless noted that meeting dates were posted on the web site and would be on channel 2 once it is repaired.

Mayor Holland called for a break at 7:30 P.M.

4. *Consent Agenda*

Mayor Holland called for changes in the June 7th, and the June 12th minutes. Rick Owen moved to accept the minutes of June 7th and June 12th as amended and the

minutes of June 19th and June 26th as submitted. Reub Mooradian seconded the motion and it passed unanimously.

5. Committee Reports

There were no Committee Reports.

6. Old Business – Visitor's Center Bid Tabulations

Mr. Lawless reported that no bids were received for the second consecutive advertising period. The architect, Joe Pavelchak, has been working with one contractor who may submit a bid. Another bid opening will be set within 7 to 14 days.

7. New Business

a. Grouse Ridge POA Request

Mayor Holland informed the public of a request by the Grouse Ridge Property Owners Association for stop signs at the intersection of Spring Branch Road, Lower Grouse Ridge Road and Upper Grouse Ridge Road.

Mr. Lawless noted that the speed of the traffic has increased with the paving of the road in that area.

Reub Mooradian moved to approve the instillation of a stop sign coming off Spring Branch Road/Lower Grouse Ridge Road. Jim Herbert seconded the motion and it passed unanimously.

Rick Owen, for the record, noted that we have intersections that are more dangerous than this one that the Council agreed not to put up stop signs due to the fact that the Town did not want any more signs. Mr. Owen indicated that he had driven past this area and felt that their request was the danger to the entrance to the parking lot for the condominium. The parking lot entrance, in his opinion, had blind spots due to their landscaping. Mr. Owen felt their problems were not with the intersection flow of traffic, it is within the in and out of their parking lots.

c. Consideration of Budget Amendment

Mayor Holland informed the audience that this was in reference to the Cliffs tank removal and reducing station, Cliffs booster station abandonment and Slopeside booster station improvements. The project was budgeted in 2000/2001 but not completed. Rick Owen moved to approve the Budget Amendments. Reub Mooradian seconded the motion and it passed unanimously.

d. Offer to Donate – Ramona Bullock

After a brief discussion Reub Mooradian moved to accept the donation of property and to also accept the financial responsibility. Jim Herbert seconded the motion and it passed unanimously.

e. Meeting Dates

Mayor Holland called for a recess of the July 10th meeting until Tuesday, July 24th at 3:00 P.M. for the purpose of opening bids for the Visitors Center and the Mariah Circle property owners' petitions they have collected, as well as any other business.

The Council also changed the September and October meetings to the 3rd Tuesday; September 18th at 6:00 P.M. and the October 16th at 6:00 P.M.

8. Staff/Consultant Reports.

a. Town Engineer's Report.

Ed Powell reported that the Upper Pinnacle Ridge project would be receiving materials on Thursday, July 12th. Mr. Powell went to Emerald Mountain to look over Oz Road and Oz Circle; the developer is in the process of having the widening of the road, as indicated by the contract. Mr. Powell also indicated that he did anticipate receiving 3 bids for the 2001-2002 paving.

b. Public Works Director's Report.

Riley Hatch reported on the following: 1) The recycled products report was not available from G.D.S., therefore those figures are missing from the monthly report. 2) The crews have been doing a lot of spot clearing on the roads. 3) They have over 1500 manholes located. 4) There was a water problem with a surge valve at Ashwood hung open, that had to be replaced. The crew worked until 2:00 A.M. to repair the problem.

Mayor Holland asked why the crew working for Mountain Electric, seemed to be chipping the debris from the uphill side and leaving everything on the downhill side? Mr. Lawless informed the Council that Mtn. Electric was responding to complaints from the individual property owners.

Mr. Mooradian asked if it would be possible to get a few more dumpsters at the recycling center for the remainder of the summer? Mr. Pete Chamberlain suggested the Town borrow one from Beech Towers. Mr. Owen suggested using one from Ski Beech. Mr. Hatch will look into the matter.

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

d. Police Report. Chief Hefner gave a brief overview of the report noting that the larceny case was still open with no leads. The fraud was a credit card case currently under investigation. The vandalism was damage to siding and a window.

- e. Town Manager's Report. Seth Lawless took the opportunity to thank Mr. Hatch and his employees for coming up to repair the water problem. Mr. Lawless went on to report on the following: 1) Governor Easley has released the local government reimbursements that were withheld from the previous year's budget. That amount for the Town is about \$8,000. The reimbursements for the current year are still up in the air. This may be replaced with a sales tax, but the League is advocating that no local government receive less money than they had been receiving. The House and Senate both have budgets and they are working to consolidate the two. 4) Mr. Lawless reported that we do have a completed contract with Court I along with payment and performance bonds. 5) The MountainEar will be published soon, please submit article ideas to the office. 6) The Chamber of Commerce is planning to hold a membership meeting for proposed bylaw changes on August 14th at 11:00 A.M. here at Town Hall. 6) The 1% 401(k) that was included in the budget, we had 7 employees making contributions, that has now increased to 18. 7) Lastly, Mr. Lawless asked about the water tank from the North Pinnacle Ridge area. The Council agreed that arrangements be made to dispose of the Tank in whatever way most benefits the Town.
- f. The Financial Report, Tax Report and the Building Inspections Report were accepted as submitted.

9. Other Business

There was no other business.

10. Executive Session

Upon a motion by Rick Owen, seconded by Reub Mooradian, the Council entered into Executive Session at 8:15 P.M. under the provisions of NCGS 143-318(a)(3) to consult with the Town Attorney. The Council came out of the closed session at 8:30 P.M. No action was taken.

11. Recessed

There being no further business to come before the Council, the meeting was recessed until Tuesday, July 24, 2001 at 3:00 P.M. upon a motion by Reub Mooradian, seconded by Rick Owen. All agreed.

Reconvened – 7-24, 3:10 P.M.

Mayor Holland reconvened the regular meeting, recessed until July 24th at 3:00 P.M. Present was Mayor Holland, Vice Mayor Rick Owen, Council Members Gil Adams and Reub Mooradian. Also present were Town Manager Seth Lawless and Intern Jonathan Hobbs.

Mayor Holland called the meeting to order at 3:10 P.M. and called for the first order of business.

- a. Seth Lawless reported to the Council that the Visitor's Center issue had been rescheduled for August 7th. The architect, Joe Pavelchak, felt the next bid opening date would have two responses. The Council will be presented with the bids at the August 14th meeting.

- b. Jim Reed of 208 Mariah Circle, Unit #33, presented the Council with 33 signed petitions requesting the paving of Mariah Circle. There are 46 property owners; the requirement was for a 2/3 majority – 31 signatures. Mr. Reed noted that he did anticipate petitions from 2 other property owners. Reub Mooradian made a motion directing the Clerk to certify the Mariah Circle petitions. Rick Owen seconded the motion and it passed unanimously.

Mr. Lawless informed the Council that Thursday, August 9th was the bid opening date for the improvements to Oz Road, Oz Circle, Tamarack Road and Grassy Gap Loop Road. Mr. Lawless noted that if 3 bids are received on the 9th, the Council could award the contract at the August 14th Council meeting. The Town Engineer, Ed Powell, will ask the successful bidder to add Mariah Circle as a change order to the contract. At the same meeting the Council will be able to review the certificate from the clerk and direct the improvement of the road.

- c. Mr. Lawless reported that he had informed the president of Grouse Ridge Racquet Club, Mr. Royal, that the Council had approved one stop sign. Mr. Royal requested the stop sign be put on the other road across from the spot the Council had agreed upon. Mr. Lawless indicated that he had polled a few of the Council members with regards to this request. Mr. Owen reiterated his feeling that the reason for their problem was the landscaping which blocked the view from the lower exit. Mayor Holland noted that they did have another exit. Mr. Adams was inclined to have no other stop sign at that intersection and would have not voted in favor of the motion at the last meeting. Mayor Holland said he was in favor of rescinding the motion made on July 10th allowing the stop sign. Rick Owen made a motion to rescind the stop sign voted on at the July 10th meeting. Gil Adams seconded the motion. Reub Mooradian directed the Town Manager to recommend to the Grouse Ridge Racquet Club Association that they trim back the growth blocking their driveway view. The motion passed unanimously.
- d. Mr. Owen reported to Mr. Lawless that there were 2 metal stop signs, one at the intersection of Rhododendron Drive and Teaberry Trail and the other at Poplar Drive and Jackpine Road.
- e. Mr. Lawless reported that Court I had given him an estimate on the basketball court the Town was building at Lake Coffee in conjunction with the Beech Mountain Club. Their estimate was \$9,300, this does include the lifetime warranty goals. After a brief discussion Mr. Mooradian recommended that Mr. Lawless contact the Club to see if they are receptive in paying an additional amount in order not to delay the project.
- f. Mr. Lawless gave an update on the Cemetery land issue. Of the 8 offers to purchase the Town has sent out only one has been returned, LG-110. We have one property owner who wants to come and negotiate the price, Mr. Lawless noted that he felt that person was going to ask that the road assessment be added to the selling price. Mr. Vernon Kelly has indicated that he is willing to sell his 3 lots to the Town, but also wants to renegotiate the price. After a brief discussion the Council agreed to wait for the other property owners to respond to the offers that were mailed out.

Adjourn

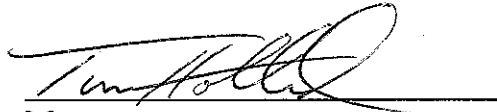
There being not further business to come before the Council, the meeting was adjourned at 3:33 P.M. upon a motion by Reub Mooradian, seconded by Rick Owen. All Agreed.

Respectfully submitted,

Reba G. Greene
Town Clerk

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Minutes approved by Town Council on August 14, 2001.


Mayor

ATTEST:


Town Clerk