

MINUTES
BEECH MOUNTAIN TOWN COUNCIL
July 8, 2002

CALL TO ORDER

Mayor Rick Owen 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, Pete Chamberlin, Tim Holland and Dr. Ed Waligroski. Also present were Town Manager Seth Lawless, Town Engineer Ed Powell, Police Chief Jay Hefner, Public Works Director Riley Hatch, Town Attorney David Paletta, Building Inspector Keith Cook and Tax Administrator Missy Norwood. There were a number of interested parties in the audience.

Invocation – Charlie Burlison opened the meeting in prayer.

Pledge of Allegiance

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

1. *Adoption of Agenda*

The agenda was adopted as submitted.

2. *Consent Agenda*

Mr. Holland noted a typographical error in the minutes of the June 11th regular meeting. Mr. Adams moved to accept the minutes as corrected. Mr. Holland seconded the motion and it passed unanimously.

3. *New Business*

a. Request for Easement – Beech Mountain Club

Brian Barnes, General Manager of the Beech Mountain Club, indicated that the request was to clear up the issue of the Club's pump house being on Town property and to install a water line that would tie Santis Lake, property of B.M.R.I., to the pump house. The Beech Mountain Club would pay all costs involved with the easement work, including the survey.

Mr. Chamberlin moved to accept the Club's proposal. Mr. Holland seconded the motion and it passed unanimously.

Mr. Powell pointed out that any work done on the dam had to be inspected by the State Safety Engineers. Mr. Powell indicated that he would call Wayne Hoilman, B.M.R.I. General Manager, to discuss the matter with him.

b. Offer to Donate .08 acres on Grassy Gap Creek Road – Carlene Welsh

Mayor Owen made reference to the letter that the Town had received from attorney Andrea N. Capua asking that the Town accept a small portion of land on Grassy Gap

Creek Road containing a cemetery plot. After a brief discussion the Council determined this would not be large enough to benefit the Town as a cemetery site.

Mr. Holland made a motion to decline the offer to donate the .08 acres on Grassy Gap Creek Road. Dr. Waligroski seconded the motion and it passed unanimously.

c. Request for Traffic Control Changes – Alan Brister

Mr. Alan Brister addressed the Council to suggest that the Town replace the stop sign with a yield sign, at the Charter Hills Road & Beech Mountain Park intersection.

The second issue was Mr. Brister's proposal to erect stop signs on Grassy Gap Loop Rd. where the golf cart crossings exist. He felt this would improve the safety of the golf cart drivers. Mr. Brister went on to say that the stop signs could be covered up in the winter when no golfers were present.

Mayor Owen and Mr. Holland felt that Beech Mountain Parkway was a state maintained road and were uncertain the state would allow a yield sign to be placed at that intersection. A brief discussion resulted in the Council choosing to take no action on the matter.

Mayor Owen then addressed the golf cart issue stating that he felt it was the responsibility of the golf cart operator to stop, not the vehicular traffic on the road. Mayor Owen did indicate that he and another councilman had looked at the area and perhaps a visible sign to warn traffic of the golf cart crossing painted on the road would help. Mr. Barnes, speaking on behalf of the Club, indicated that they would willingly paint the golf cart warning on the road, with the Town's permission.

Mayor Owen asked that Mr. Lawless and Mr. Hatch work with the Club on this project.

5. *Staff/Consultant Reports.*

a. Town Engineer's Report.

Mr. Powell reported that he and Mr. Hatch looked at the road paving projects. Mariah Circle had suffered the most damage from the heavy rains that hit the area last week. Smith & Sons Paving has started working on the storm damage repairs. The Grassy Gap Wastewater Treatment plant improvements are still on standby because of the Fish and Wildlife Resources who have not responded with regards to the 201 Amendment. Engineering plans are still progressing with Grassy Gap effluent relocation even though the 201 Amendment has not been accepted.

b. Public Works Director's Report.

Riley Hatch reported 1) Lake Road and West Pond Creek are two of the roads that sustained the most storm damage. 2) Lightning damaged the pumping station for the Pinnacle Inn and Summit and repairs are being made. 3) The recycling center employee, Ray Ledford, has nearly reached his limit on hours and will be taking off some time and will return for Christmas. The center will remain open and the staff will keep watch on it. Shawn McGuinness, who is out due to an injury, will be able to fill in at the center as soon as he is released from workers compensation for limited duty. 5) All of the recycling for June was accepted.

Mr. Burluson asked about the repairs for Lake Ledge Road by Lake Coffey to which Mr. Powell reported that it was on the list to be repaired.

Mr. Holland asked who's responsibility it was to maintain driveway culverts to which Mr. Hatch responded that it was the Towns and he was working on getting the damaged ones repaired.

Mr. Chamberlin asked about the flooding on the Parkway by Frazier's. Mr. Lawless indicated that he would contact the D.O.T. maintenance engineer immediately to let them know that the problem still existed.

Vern Holland commended Mr. Hatch on the appearance of the recycling center.

Mr. Hatch's report was accepted as submitted.

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

Chief Hefner noted that there had been two larcenies. One was an attempted entry and the other was an entry into a home while the owners were asleep. Cash was taken from a purse in the latter incident. There were two vandalism reports, one to a driveway sign and the other occurred when a trailer backed into a vehicle resulting in \$100 worth of damage. Chief Hefner also notified the Council that lightning had struck the 911 System and the damage has been repaired. The report was accepted as submitted.

- e. Town Manager's Report.

Mr. Lawless reported the following: 1) Acknowledgment and thanks were given to Eva Jones for planting the flowers around the Town sign. 2) Mr. Lawless reminded the Council that he would be in Raleigh at the Environmental Management Commission on the 11th to appeal the D E N R. fine levied in June 2001. 3) The Long Range Planning Committee will meet on July 25th at 10:00 a.m. in the Council Chambers. 4) The August Council meeting will be on the 2nd Monday, August 12th. 5) The Planning Board is studying the manufactured home zoning district issue as well as regulations for retaining walls and availability fees. The Planning Board will hold their next meeting at Buckeye Park at 9:00 a.m. on August 7th. 6) The annual Drinking Water Report is available in the clerk's office and the Wastewater Treatment Report will be available next month. 7) The 2004-2010 Transportation Improvement Plan draft is available for review in the Managers office. 8) The agenda packet contained information on the Rural Land Trust, the Beech Mountain Bog and a four year summary of new home construction. 9) The MountainEar will be going out in August, article suggestions are welcome. 10) The Town web site (www.townofbeech.com) has the budget posted for review. 11) The Town has a part time intern, Ashley Wooten, who is scheduled to start work on July 15th. The Village of Sugar Mountain and the Town will have his services on alternating weeks. The main task that Mr. Wooten will be working on is the Hazard Mitigation Plan. 12) Hobbs, Upchurch & Associates have the plans and specifications on the Grassy Gap Collection System Lines completed and will deliver them on Wednesday, July 10th. A bid opening date will be set after the plans are reviewed. 13) A greenway seminar will be held in Boone at the Cooperative Extension office on Monday, July 15th.

Mr. Lawless also gave an update on the building inspection lottery noting that the Town had 6 permits, 2 of these were applied for with a lower number of bedrooms than originally requested, this allowed an additional permit to be issued. There is only 1 bedroom available

- f. The Tax Report, Financial Report and Building Inspections Report were accepted as submitted.

6. **Other Business**

- a. Mayor Owen reported that according to the comparison for new homes built over the last four years, the average has remained the same despite the sewer moratorium
- b. Mr. Cy Robbins of 130 Briarwood Lane asked that the staff names be placed on the agenda by their respective reports. Mr. Owen indicated that he would see that that is done.
- b. Mayor Owen asked about the stop signs that had not been changed from the metal to the sand blasted signs. Mr. Lawless reported that there were approximately 6 that needed to be changed and the money had been budgeted for the project.

7. **Adjournment**

Mr. Holland moved for adjournment at 7:00 p.m. Mr. Chamberlin seconded the motion and it passed unanimously.

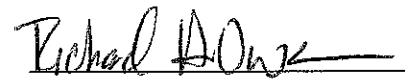
Respectfully submitted,

Reba G. Greene
Town Clerk

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Minutes approved by Town Council on August 12, 2002.

ATTEST:


Mayor


Town Clerk

MINUTES
BEECH MOUNTAIN TOWN COUNCIL
SPECIAL MEETING
July 25, 2002

CALL TO ORDER

Mayor Rick Owen called the special meeting of the Beech Mountain Town Council to order at 10:10 a.m. in the Council Chamber at Town Hall. Other Council Members present were Gil Adams, Pete Chamberlin, and Dr. Ed Waligroski. Also present were Town Manager Seth Lawless, Police Chief Jay Hefner, Town Public Works Director Riley Hatch, Building Inspector Keith Cook and Town Attorney David Paletta. There were a number of interested parties in the audience.

Mayor Owen informed the audience that the purpose of the meeting was to review the issue of the closing of Lady Slipper Lane.

Mr. Paletta indicated that he had reviewed the deed that the Town received from the Beech Mountain Property Owners Association relating to roads. Mr. Paletta felt that the first question that must be asked was 'is Lady Slipper Lane a public road or a private road'? Mr. Paletta went on to define a public road as one that the Town received Powell Bill funds for maintaining, or Powell Bill monies. The Town does not maintain, nor does it receive Powell Bill funds from the state for Lady Slipper Lane.

Mr. Paletta pointed out that what constitutes a road is subject to interpretation, and that there were already differing legal opinions on this matter.

Mr. Paletta reported that Mr. Fairless' claim to ownership of the property across from his home on GH-29 was 'by adverse possession'. Mr. Paletta went on to say he felt Mr. Fairless' claim was very weak because his adverse possession did not begin until he blocked off the road. If it is determined that this is a Town road no property owner can adversely own a Town road. Mr. Paletta then posed the question, "who has the standing to challenge Mr. Fairless' claim". From Mr. Paletta's point of view the property owners had a stronger legal standing to challenge the road closing. Mr. Paletta also informed the audience that they most likely had Title Insurance from the purchase of their property. The insurance would cover the legal expenses of such a challenge.

Mayor Owen called for questions from the Council. Mr. Holland asked about the public safety issue, access by fire and rescue personnel to which Mr. Paletta indicated that public safety had no legal bearing. However, if the court were to find that the Town had standing to be in court it could be a factor in a judge's mind as to the safety of the property owners.

Mr. Holland then asked about the adverse possession from the majority of owners who had used the road for 20 + years without a problem. Mr. Paletta indicated that he had not thought of it from that point of view.

Mr. Lawrence Price, who's interest was as a prospective property owner on Lady Slipper Lane, noted that exclusivity was one of the adverse possession requirements and Mr. Fairless had never exclusively used that property. Mr. Price went on to indicated that hostile, open, active, continuous and exclusive were the 5 requirements for adverse possession and indicated that Mr. Fairless would be thrown out of court on summary judgement with no claim. Mr. Paletta agreed with Mr. Price

Dr. Waligroski asked about title insurance and access to the property from Pine Ridge Road. Mr. Price suggested Title Insurance Companies might refuse the claim since an alternate access existed.

Mr. Paletta noted that that would be an argument against the property owners and his experience with title insurance companies would have him believe that they would be willing to accept the claim. Especially since the houses and parking was oriented toward Lady Slipper Lane.

Mr. Chamberlin indicated that it sounded to him like the Town's position was weaker than the property owners to which Mr. Paletta agreed.

Mr. Paletta explained that one of the options would be for the Council to adopt a resolution accepting this road and having the wording in such a way that it would not be the Town's responsibility to maintain the road.

Nancy Bennett of 419 St. Andrews Road, GL-89, indicated that they had built their house in 1972 and had used the road from the beginning. Mrs. Bennett reiterated her belief that the road was public since it had been deeded to the Town and it has continuously been used to access the properties in question. Mr. Paletta explained that it was in her favor that she had built in 1972 when the developer, Carolina Caribbean Corporation, was still active.

Mr. Price indicated that he felt whether or not Lady Slipper Lane was a road from beginning to end was not the real issue, the issue in his mind was is it a road from Pine Ridge Road to the closed access area between lots 29 and 81. The Town's position, in his opinion, is that these individuals are citizens of the Town and that is a public access. If Mr. Paletta were to say that it was up to the property owners to challenge the road issue, not the Towns, he would contend that the Town could face a liability issue if emergency vehicles were delayed in getting to one of the homes.

Mr. Price then addressed the quit claim deed, which Mr. Fairless had recorded in 1993. The deed stated that Mr. Fairless, in favor of his wife, quits any claim to that identified parcel and

in the year 2000 transferred the quit claim deed by warranty into a trust. In essence the Fairless' do not own the property in question.

Mr. Paletta indicated that he was in agreement with the statements of Mr. Price with the exception of the Town being liable should an emergency occur.

Mrs. Bennett asked if the Beech Mountain Club had a right of way to the road. Mr. Paletta indicated that the Club did have a right of way all around the golf course.

Mr. William Troutman, GH-90, 221 Grassy Gap Loop Road, indicated that he and his wife own the first lot to Lady Slipper Lane off Grassy Gap Loop Road. Mr. Troutman asked what action would be taken if he decided to close his access sealing the property owners of Lady Slipper Lane in. Mr. Paletta indicated that it would be relevant, but not create a liability for the Town. The question still being who is the proper party to enforce the rights of the property owners and Mr. Paletta felt it would be the property owners not the Town.

Mrs. Andri Troutman, GH-90, 221 Grassy Gap Loop Road, asked what the law in North Carolina was with regards to land locked property to which Mr. Holland indicated that the property owners could each access their property from Pine Ridge Road.

Mrs. Marcia Evans of GH-86, 109 Lady Slipper Lane, pointed that as tax payers the quality of life intended by the developer had been affected. Mr. Evans felt it was clear that the developer intended for their property access to be off of Lady Slipper Lane.

Mr. Holland pointed out that the Town agrees that the property owners have a right to use Lady Slipper Lane, the point of the meeting was to determine who would be best to challenge the issue, does the Town have a standing to help the property owners.

Mr. Price felt that the property in question was between Lot GH-81 and GH-29, not the entire road and that would be the only portion that the Town would have to declare a road to resolve the issue.

Mayor Owen indicated that he was interested in a long term solution covering the entire road.

Mr. Richard Evans felt that when the 911 system was implemented, the plat should have been updated to record Lady Slipper Lane.

Mrs. Evans asked if the property owners could petition the Town to make Lady Slipper Lane a Town road. Mayor Owen indicated that they could indeed do that, however it was not necessary, as the purpose of the meeting was to find a way to resolve the issue.

Mayor Owen asked if Mr. Paletta would like to confer with the Council in Executive Session. Mr. Paletta felt that would only be necessary should the Town decide to take action.

Mayor Owen asked if it would be possible for the Town to accept the right of way 30 years after Carolina Caribbean offered it to the Town. Mr. Paletta responded by saying it would be better if the Town limit their position to the specific area in question and if the Council chose to go forward, his recommendation would be to adopt a resolution recognizing it as a road.

Mr. Holland made a motion at 11:30 a.m. to go into Executive Session. Dr. Waligroski seconded the motion and it passed unanimously.

The Council returned from Executive Session at 12:00 noon with Resolution 02-07-01. Mr. Holland read the resolution. Upon a motion by Mr. Chamberlin, seconded by Gil Adams, the resolution passed unanimously.

Mr. Evens asked when the road would open to which Mayor Owen responded that the property owners would know when it happened.

ADJOURN

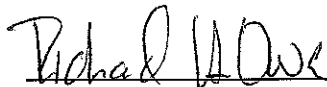
There being no further business to come before the Council Mr. Holland moved to adjourn the meeting. Mr. Chamberlin seconded the motion and it passed unanimously. The meeting was adjourned at 12:05 p.m.

Respectfully submitted,

Reba G. Greene
Town Clerk

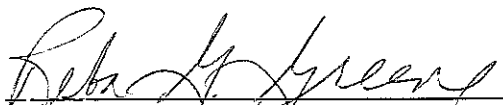
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Minutes approved by Town Council on 8/12, 2002.



Mayor

ATTEST:



Town Clerk