

MINUTES  
BEECH MOUNTAIN TOWN COUNCIL  
July 14, 2003

***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, Police Chief Jay Hefner, Public Works Director Riley Hatch, Building Inspector Keith Cook, Town Attorney David Paletta, Town Engineer Ed Powell and Intern Lisa Greene. There were a number of interested parties in the audience.

***Invocation*** –Charlie Burleson opened the meeting with prayer.

***Pledge of Allegiance***

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

***1. Adoption of Agenda***

The agenda was adopted as presented.

***2. Wastewater Update***

Mr. Lawless reported that Mr. Cook has issued 27 of the 83 bedrooms allotted in the Grassy Gap Plant. An allotment of 750 gallons per day would be held in reserve for the new Fire Department Sub-Station and the new Recreation Building, this would leave 5,290 gallons per day or 44 bedrooms remaining to be issued on a first come first serve basis. Mr. Cook has issued permits totaling 26 bedrooms in the Pond Creek facility, which leaves 26,880 gallons per day or 224 bedrooms.

Mr. Lawless noted that the design for the Pond Creek upgrades were almost complete and would be submitted to the state by July 31<sup>st</sup>.

***3. Consent Agenda***

Mr. Chamberlin noted a correction to the minutes with regard to the number of units proposed by developer Tom Ziol. Mr. Lawless noted e-mail had been sent with regard to this. Mr. Holland moved to accept the minutes of June 10<sup>th</sup> as amended. Mr. Chamber seconded the motion and it passed unanimously.

***4. Old Business – Proposed Agreement with Tom Ziol Regarding Utility Extension***

Mayor Owen noted that Mr. Tom Ziol had appeared before the Council asking for voluntary annexation on the condominium complex he proposed to build on the property between Charlie Burleson's office and the Works of Wood. The design was for 36 units with a total of 72 bedrooms. Mayor Owen further noted that Mr. Ziol did have the option of dealing solely with the County, leaving the Town without input regarding the style or design of the development.

Ms. Cindy Keller, representing Emerald Opportunities, questioned the density of the development and also indicated that she had been in contact with Avery County and Mr. Zioli had not been given any permits and had not had any perk test done on the property to know how large a complex he would be allowed to build if he were not annexed into the Town. Ms. Keller read a letter from Avery County to stress that the size of the complex is not yet able to be determined. Ms. Keller was concerned the development would adversely affect Emerald Opportunities development, Emerald Court, which is below Mr. Zioli's proposed condominium site.

Mr. Zioli indicated that he had spoken to the Avery County Health Department. Lee Clark of Avery County Health Department, had told him 'if it fits, it fits' leading him to believe that he did indeed have the proper footage to obtain permits for the project.

Steve Modell read a letter from contractor Andy Porter indicating that Mr. Zioli did not have a site evaluation for the project.

Mr. Zioli stated that he had not gone to the expense of having a site evaluation done by the County because he had been under the impression from the last Council meeting that they were inclined to approve the annexation he was requesting.

Mr. Chamberlin indicated that he had looked at the property and could not see how the area was large enough for the proposed units and asked if Mr. Zioli could provide the Council with a site plan showing the proposed development.

After much discussion and comments for and against the project, the Council agreed that Mr. Paletta would make the necessary changes in the contract between the Town and Mr. Zioli to allow him to proceed with the project. The Council requested that a site plan be attached to the agreement for review prior to final approval. Mr. Paletta indicated that the requested changes would be made to the proposed contract and that he would forward a copy to Mr. Zioli's attorney, Tony diSanti.

Mr. Holland recommended that the Council recess this meeting and set a time and date under 'Other Business' to review the proposed changes and site plan.

## **5. New Business**

### **a Consider Shane Lease Agreement**

Mr. Lawless reported to the Council that the agreement increased the rent from \$100.00 per month to \$150.00 for the marshalling yard property. Mr. Holland noted a typographical error in the proposal.

Mr. Chamberlin asked if there was not a lot that the Town owned that could be used for a marshaling yard to which Mr. Lawless replied that this was the most convenient, inconspicuous place currently available.

Mr. Chamberlin made a motion to enter into the agreement with Mr. Ronald Shane to lease Parcel #194120021200 for one year at a cost of \$150.00 per month. Mr. Holland seconded the motion and it passed unanimously.

b. IDA Quarterly Report

Mayor Owen noted that the Council was in receipt of the quarterly report for the Tourism Development Authority and asked if any one had any questions. Mrs. Handley asked how much of the occupancy tax was dedicated to the recreation building and was told it was 33%. There were no further questions and the report was accepted as submitted.

c. Review Ash Lane Paving Request

Mrs. Judy Rosenberg of 113 Ash Lane addressed the Council with regard to the paving of Ash Lane. Mrs. Rosenberg indicated that she represented the 9 property owners who wanted Ash Lane paved and they were requesting that the Council reduce the requirement of the 2/3 majority.

After a brief discussion Mayor Owen asked that Mr. Lawless review the list of property owners abutting the gravel portion of Ash Lane and discuss the required signatures with the Ash Lane property owners.

Mr. Adams noted to Mrs. Rosenberg that even if the 2/3 required signatures are obtained it does not guarantee that the Town will agree to pave the road.

d. Proposed Engineering Costs for Resurfacing

Town Engineer Ed Powell presented the Council with an engineering proposal for resurfacing Beech Mountain Parkway from Pine Ridge to Mariah Circle and Lake Rd. from Beech Mountain Parkway to Lake Ledge Road. The cost of service for the two projects would be \$4,900 for the design and \$2,900 to oversee construction.

Mr. Holland made a motion to accept the proposal from the Engineering Firm of Davis Martin & Powell & Associates, Inc. Pete Chamberlin seconded the motion and it passed unanimously.

e. Consider Lease Agreement with Rondinaro Broadcasting

In 1996 an agreement was made between the Town and Rondinaro Broadcasting (RBI) for the use of the old pump house near Skiloft Rd. A written lease had never been executed, and Steve Rondinaro had prepared a draft lease to Council.

After a brief discussion the Council directed Mr. Lawless to research some of the points in the original agreement and put it on the agenda for the August 11<sup>th</sup> meeting. Mr. Lawless will contact the Rondinaro's and ask that a representative attend the meeting to answer any questions the Council may have.

f. Call for Public Hearing –Proposed Amendment to Section 1112-Zoning Ordinance

Mr. Holland explained that the ordinance in it's current wording required tanks of any size to be screened. The proposed wording would exclude tanks of 100 pound capacity or less

Mr. Holland made a motion to hold the Public Hearing at 6:00 p.m. on August 11<sup>th</sup>. Mr. Chamberlin seconded the motion and it passed unanimously.

## **6. *Staff/Consultant Reports***

### **a. Town Engineer's Report.**

Mr. Powell's reported that he met on June 25<sup>th</sup> with Smith & Sons Paving and they had agreed to move the ditch. Mr. Powell indicated that he met with Bruce Smith and was guaranteed that the work would be completed to the Town's satisfaction. Mr. Powell reported that the Grassy Gap Plant improvement contracts were being executed and that a notice to proceed would be issued shortly.

In discussing the Pond Creek Plant improvements, Mr. Chamberlin asked about a centrifuge system being used as opposed to the belt press in the sludge removal process. Mr. Powell responded that the centrifuge system worked well for larger plants but it was more expensive and complicated which made it impractical for Beech Mountain.

### **b. Public Works Director's Report.**

Mr. Hatch reported: 1) The water department vacancy has been filled by Daniel Davis who transferred from the wastewater department. Gary Tipton has been hired to work in the wastewater department. Mr. Tipton has been employed by Carolina Water for 20 years. 2) Jamie Shell is the new recycling center engineer. 3) The catch basin pond at Greenbriar and Lakeledge Road will be cleaned this week, weather permitting. 4) The brick paving between the Town Hall and the Chamber of Commerce Building is scheduled for completion in a day or two. 5) The rock facing on the culvert on Beech Mountain Parkway will be completed this summer.

Ms. Keller asked why Oz Circle had not been repaired to which Mr. Hatch responded that it would be done. The road had been damaged because a bridge support was on the sewer line and had to be moved. Mr. Hatch's report was accepted as submitted.

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

### **d. Police Report**

Chief Jay Hefner gave an overview of his report noting that the gun that had been reported stolen was later found. Mr. Hefner also reported that Josh McDonald and Jeff Cox had been hired into the department. Chief Hefner's report was accepted as submitted.

### **e. Quarterly Financial Report – Sally Rominger**

The financial report was accepted as submitted.

f. Town Manager's Report.

Mr. Lawless reported the following: 1) The Capital Improvement Plan (CIP) would be ready for the August meeting. 2) Mr. Rocky Nelson, Watauga County Manager, had requested a meeting to update the Town on the ambulance issue. The meeting was scheduled for Wednesday 16<sup>th</sup> at 2:00 p.m. at the Town Hall. 3) Mr. Lawless reported that he would attend the Parks and Recreation Trust Fund meeting on Friday July 18<sup>th</sup> at the New River State Park in Ash County. Out of 19 applicants the Town's Recreation Building was number 3. The Trust Fund was allocating money for 11 or 12 projects. The Visitor Center project will be closed out soon, the brick area is being worked on, the air conditioning has been installed and some minor electrical work has also been completed. The Stoney Brook Development off Pine Ridge Road was scheduled to be on the August Planning Board agenda. The developers were planning to start with 8 lots and even though they could not hook up to the sewer system until 2005 they were interested in getting started on the project. Mr. Chamberlin asked about the latest HH5 test results from the finished water supply. Mr. Lawless indicated that he did not have them in front of him and that all of the latest laboratory results would be discussed at the next Water & Sewer Team meeting scheduled for 10:00 a.m. Thursday July 16<sup>th</sup>. The Managers Report was accepted as submitted.

g. Mayor Owen noted that the tax collection was at 99.34%. The Tax Collector's report was accepted as submitted.

h. The Building Inspector's Report was accepted as submitted.

**7. Other Business**

Ms. Keller asked about getting speed limit signs in the Emerald Mountain area - lowering the speed limit to 20 miles per hour.

Mr. Adams asked if it would be possible to reduce the speed limit to 15 miles per hour on the gravel roads in the Town. The Council will discuss this at a later date.

After a brief discussion Mr. Holland made a motion to post 20 m.p.h. signs on the paved section of Oz Road. Mr. Chamberlin seconded the motion and it passed without dissent.

Mr. Holland asked if the Golf Cart Committee could meet July 29<sup>th</sup> at 2:30 p.m. All agreed.

**8. Adjournment**

Mr. Holland moved to recess the meeting until 2:00 p.m. on Tuesday July 29<sup>th</sup>. Mr. Adams seconded the motion and it passed unanimously.

## **Reconvened July 29, 2003**

Mayor Rick Owen reconvened the July 14 Town Council meeting at 2:05 p.m. in the Council Chamber. All Council Members were present, as well as Town Manager Seth Lawless, Building Inspector Keith Cook, Town Attorney David Paletta, Town Engineer Ed Powell and Intern Lisa Greene. There were a number of interested parties in the audience.

### ***1. Old Business – Proposed Agreement with Tom Ziol Regarding Utility Extension and Annexation.***

Mayor Owen noted that Mr. Tom Ziol had appeared before the Council on two other occasions asking for voluntary annexation on the condominium complex he proposed to build on the property between Charlie Burleson's office and the Works of Wood. The development, currently outside Town limits, was not bound by any of the Town Ordinances.

The engineering firm of Davis, Martin & Powell had prepared a site plan, which the Council had requested, showing the 6 buildings with access from Beech Mountain Parkway. Town Attorney, David Paletta, had prepared a contract between the Town and Mr. Ziol, which included the R-3 Code the Town required for a condominium complex located within the Town limits. Mr. Paletta indicated that Mr. Ziol's attorney, Tony diSanti, had received a copy of the contract.

Mayor Owen further noted that the Council was aware of the opposition to the proposed development. Mayor Owen then asked the Council if they had any questions for Mr. Ziol.

Mr. Chamberlin indicated that he had driven over Hickory Nut Gap Road and looked back on Beech Mountain and it was his opinion that the new development would not be any more obtrusive to the area than any of the other buildings in the surrounding area. Mr. Chamberlin then indicated that he felt it in the Town's best interest to have control of the development and for it to have the 2-story design.

Mr. Holland, noting that he had expressed his feelings at the last meeting, again reiterated that he also felt it was in the Town's best interest to annex the proposed development into the Town.

Mr. Adams asked if Avery County had indicated to Mr. Ziol that he could build the condominium complex. Mr. Ziol made reference to a letter he had from a soil engineer indicating that there "should be" ample space. Mr. Adams then asked if the plans would be amended to have the 20' spacing between building to which Mr. Ziol agreed.

Mr. Holland asked if the density met with the Town Code. Mr. Lawless indicated that the Town would require a 3-acre tract to house 72 bedrooms. After a brief discussion, it was deemed that the road right of way that Bob Cantrell was willing to include in the land sale would increase the development site to 3 acres.

Mr. Chamberlin asked about the parking spaces to which Mr. Powell indicated that the Town would require 72 spaces and the proposed plan would be scaled down to that amount.

Mr. Holland felt it appropriate for the Council to give Mr. Ziol their decision.

Mayor Owen agreed that the Council has had ample discussion and input from the public; however, Mayor Owen asked if the Council would entertain additional comments from the audience of a new and relevant nature. Council agreed to entertain additional public comments.

Mr. Ken Ballenger of 239 Sawmill Branch Road asked if the Town would have a contract to which Mayor Owen indicated that they would have an agreement for the property to be annexed in return for water and sewer services. The lift pump would be at the expense of the developer and the Town would not have any expense. Mr. Ballenger also asked if a 'performance bond' would be obtained for the Town. After lengthy discussion it was pointed out that the Town would not require a performance bond because it was not a liability to the Town if the condominiums were not completed.

Mr. Lee O'Neal of 220 Birchwood Lane asked about the annexation of the property prior to construction. Mayor Owen replied that the proposed agreement required Mr. Ziol to petition for annexation.

Ms. Cindy Keller of Emerald Opportunities voiced her concerns about the development and asked that the Council pick a number between 12 and 24 units, not the 36 as proposed. Ms. Keller felt that a more tasteful development would increase the value of the units making up for the fewer number.

Mrs. Betty Modell expressed her concerns about the density of the proposed development and the fact that the Town was not asking for a performance bond.

Mr. Phil Buchanan of Buchanan Realty noted that the majority of the lots on Beech Mountain exceeded the density with homes having 4 bedrooms on 1/3 acre lots.

Further discussion resulted in Mr. Paletta noting that the contract he had proposed was for the water hook up to take place when all 6 buildings (36 units) were completed. Mr. Ziol indicated that his intent was to complete 1 building prior to starting another and he also noted that he would not have footers for one building started prior to the completion of the one being built. Mr. Ziol further reiterated that the landscaping would not be neglected.

Charlie Burleson asked if the sewer lift station would be adequate for the complete development to which Mr. Ziol indicated that it would. Mr. Lawless further noted that there would be a 1 year guarantee after the completion of the system.

Mr. Dick Wakeman asked why the Town shouldn't get a performance bond and once again Mayor Owen indicated that the only Town facility was the proposed sewer lift station and force main, both of which would be completed and guaranteed prior to any Town utilities being provided to the developer.

Bob Cantrell pointed out that he felt the problem with the development was that Emerald Opportunities had planned a gated community; however, they had built their road next to his property line without giving thought to the development of his property.

Mr. Chamberlin requested that the site plan include landscaping details.

Mr. Holland interrupted the discussion relating to Mr. Ziol's proposal to make an announcement that the scheduled Golf Cart Committee meeting would be postponed until Friday the 1st at 8:00 a.m. The discussion of Mr. Tom Ziol's development was continued.

Further discussion resulted in the Council requesting that Mr. Ziol prepare a plan for six (6) two (2) story buildings with six (6) units per building and reduced parking of 2 cars per unit, increased space of 20' between buildings, show the easement for the force main and pump station, an easement to the roadway of 45 feet and a landscaping plan. The Council also requested that a property description be presented that included at least three acres.

## **8.     *Adjournment***

Mr. Chamberlin moved to recess the meeting until 6:00 p.m. on Tuesday August 5<sup>th</sup>. Dr. Waligroski seconded the motion and it passed unanimously.

### **Reconvened August 5, 2003**

Mayor Rick Owen reconvened the recessed meeting from July 14<sup>th</sup> and July 29<sup>th</sup> at 6:00 p.m. in the Town Hall meeting room. Other Council Members present were Gil Adams, Pete Chamberlin, Tim Holland and Dr. Ed Waligroski. Also present were Town Manager Seth Lawless, Director of Public Works Riley Hatch, Town Attorney David Paletta, Town Engineer Ed Powell and Intern Lisa Greene. There were a number of interested parties in the audience.

## **2.     *Old Business – Proposed Agreement with Tom Ziol Regarding Utility Extension and Annexation.***

Mayor Owen noted that Mr. Tom Ziol had appeared before the Council on three other occasions asking for voluntary annexation on the condominium complex he proposed to build on the property between Charlie Burleson's office and the Works of Wood.

Ed Powell of the engineering firm Davis, Martin & Powell presented the Town Council and audience with 4 site renderings of the proposed development. Each of the plans had the required setbacks and spacing between the buildings. The parking had been reduced to 2 parking spaces per unit, as requested by the Council at the July 29<sup>th</sup> meeting. The renderings showed an additional purchase of property from Charlie Burleson increasing the site to 4.575 acres.



Mr. Adams asked why the Council was not presented with a plan showing the development of the original proposed site including the road easement.

Mr. Zioli responded by saying that he felt the additional property would lessen the density and satisfy the Council and the opposition to the development of the property.

After much discussion, the Council felt their request for exhibits A and B were not met. These exhibits were necessary as attachments to the contract between the Town and Precision Mountain Homes, LLC. Councilman Adams asked Mr. Zioli if he had purchased the additional acreage from Charlie Burleson that was indicated on the site plan. Mr. Zioli said that he had not. Mr. Adams followed up with a question about Mr. Zioli's desire to put additional units on the Burleson property if it were added to the development site. Mr. Zioli indicated that it was certainly a possibility.

The Council spent several minutes reviewing the site plan, specifically the impact that the Burleson property and its potential removal as part of the site had on the plan.

Mayor Owen asked for clarification on the proposal. Mr. Zioli produced a 1998 survey that showed the property he had under contract with Bob Cantrell. The survey indicated that it was two tracts totaling approximately 3.7 acres. Mayor Owen asked if the 3.7 acres from Mr. Cantrell was the site for 36 units, or if Mr. Zioli planned any additional structures. Zioli stated that the 3.7 acres from Cantrell would host only the 36 units originally proposed.

Mr. Chamberlin made a motion to permit no more than 30 units. Mayor Owen called for a second to the motion and hearing none the motion died.

Seth Lawless suggested that the agreement be accepted in principal, with Mr. Zioli required to submit an accurate Attachment A prior to the contract being executed. David Paletta advised that no action be taken until an accurate boundary map that matched a proposed site plan was delivered to the Council, Attorney and staff with adequate time for review.

Mr. Lawless asked if Mr. Zioli had any questions regarding the proposed contract that Mr. Paletta prepared. Mr. Zioli indicated that there were a few items he would like to change. 1) Eliminate the performance bond or other security requirement, 2) permit the installation of a septic system for the first building while the sewer improvements were under construction, and 3) grant him some flexibility to "tweak" the building locations during construction. The Council discussed the septic tank issue in detail and all agreed that the sewer improvements must be completed and deeded to the Town prior to the provision of any Town utilities.

Attorney David Paletta advised the Council that he had prepared a contract based upon the Town's requirements of the developer, and recommended that all matters be made as clear as possible. He stated that vagueness in any aspect of the contract might make it unenforceable. Ed Powell stated that he was working on a grading plan that would give a better indication of the building locations. Tim Holland suggested that the grading plan be considered as Exhibit B.

Mr. Paletta requested that Mr. Ziol and his attorney, Tony diSanti, present their proposed contract with exhibit A and B prior several days prior to its formal consideration at a Council meeting.

8. *Adjournment*

Mr. Chamberlin moved to adjourn the meeting at 8:15 p.m. Dr. Waligroski seconded the motion and it passed unanimously.

Respectfully submitted,

Reba G. Greene  
Town Clerk

Minutes approved by Town Council on August 11, 2003.

ATTEST:

Reba G. Greene  
Town Clerk

Richard W. Owe  
Mayor