

**TOWN OF SEVEN DEVILS
TOWN COUNCIL
MINUTES – REGULAR SESSION
June 14, 2010**

The Town of Seven Devils Town Council met in regular session on Monday, June 14, 2010, at Town Hall. Present were Mayor Bob Dodson, Mayor Pro Tem Kathy Copley, and Council Members Kay Ehlinger, David Ehmig, Richard DeMott. Also in attendance were Town Manager Ed Evans, Town Attorney Rob Angle, and Bethany Higgins, Town Clerk, who recorded the minutes.

CALL TO ORDER

Mayor Dodson called the meeting to order at 5:30 p.m.

PLEDGE OF ALLEGIANCE

Council members and citizens recited the Pledge of Allegiance.

ADOPT AGENDA

Member DeMott made a motion to adopt the agenda. Member Ehmig seconded the motion. The members agreed unanimously.

APPROVE MINUTES

A change in the May 10th, 2010 minutes was recommended as follows:

On line 2 of the May 10th minutes, the minutes should be amended as follows: “Cathy Copley should read Kathy Copley.” An additional change noted to the May 10th minutes under new business A, in which there was a motion made and passed, the following sentence should be added: “that NCDENR will draw up a agreement and will give it to Rob Angle, Town Attorney, for review.” On the first page of the June 1st Special Meeting Minutes, Member Copley noted that the minutes only reflected that public comments had been made but left out the details as to who made the comments and their content. Member Ehmig also agreed that in future minutes those details should be included.

A motion to approve the minutes as amended for May 10th and as presented for June 1st and June 3rd was made by Member Ehmig, seconded by Member Kay Ehlinger, and approved unanimously.

Mayor Dodson made a motion to open a public hearing for minority business contracts. Member DeMott seconded the motion. The members agreed unanimously.

PUBLIC HEARING – MINORITY BUSINESS CONTRACTS

Mayor Dodson directed the Town Manager Evans to open the discussion. Town Manager discussed the NC Rural Center grant condition that requires a Minority Business Contract Resolution. The reason for the resolution and the purpose of the public hearing is to make sure that whenever the Town has eminent construction contracts over \$100,000.00 that the Town provides an opportunity for minority businesses to bid. The Town Manager stressed that this was not an opportunity for minority contractors from those outside North Carolina but to those in the immediate area that could be identified via a list available to the Town. The Town Manager also broke down the racial/ethnic demographics of the Town of Seven Devils. Out of 129 full time residents counted in

the 2000 Census, two are self declared as “other race”: one Native American and one Mexican; therefore, the High Country Council of Government realizes the Town has a diversity issue when only considering race. However, minority businesses can also include female owned businesses. The Town Manager has recommended a percentage goal of 3% which would require the Town to broaden their reach. The Town Manager took questions from the Town Council members. Member Copley asked if this was a formal contract and the Town Manager affirmed, and replied that the responsibility is on the Town to invite minorities via pre bid conferences using updated minority business lists. Mayor Pro Tem Copley pointed to the formal minority business contract language, in which describes that “the guidelines are going to specify actions that must be taken...” and she inquired as to who implements and makes certain that the pre bid conference to orient contractors will meet the requirements. Town Manager replied that the responsibility was on Town Administration to ensure pre bid conferences adequately instruct minority businesses in bidding requirements including the administrative responsibility to obtain an updated list of minority contractors. Town Manager stressed we are not required to hire minorities, but the Town must use reasonable efforts to solicit bids from such parties. The floor was then opened up for public comments. Citizen Barbara Young, Seven Devils lot owner, 484 Tynecastle Highway, Banner Elk, NC asked a question about how long the Town would advertise for bidding opportunities to minorities. The Town Manager responded that he was not certain how long the advertisement period was required for solicitation of bids from minorities, but that NC General Statutes pertaining to such notice would be followed. Mayor Dodson asked if the request for minority bidding also applied to the storm debris contractor, and the Town Manager replied that it did not, but would only apply to construction contracts over \$100K. Citizen Al Gersing, Seven Devils lot owner, 484 Tynecastle Highway, Banner Elk, NC asked if *all* contracts were advertised, and the Town Manager said for this purpose, in order to meet the minority business contract for the NC Rural Center grant, all construction contracts over \$100,000 would be advertised in at least one newspaper of general subscription/circulation, in this case, *The Watauga Democrat*. The Town Manager also clarified that minorities have an opportunity to bid on all contracts, and that it is not limited to a percentage of contracts. Citizen Bob Bridges, 147 Deepwood Court, Seven Devils, NC 28604 asked how the Town would solicit and screen so many minority business applicants, and if this would increase the Town’s administrative costs. Town Manager said that the lists were limited to local areas such as Charlotte and Hickory with the intent of awarding contracts to these local minority business owners and would therefore keep the Town’s solicitation costs down. Citizen Earl Pariseau, 132 Meadowview Court, Seven Devils, NC 28604, asked if the Town’s solicitation efforts of minorities would include Disabled Vets and the Handicapped. The Town Manager could not definitely state that it included Disabled Vets, but remembers the contract addressing Handicaps, but that that the Town would be following all general statutes, rules and regulations in their minority bidding efforts. Citizen Brad Lambert, 430 Wildcat Rocks, Seven Devils, NC 28604 asked the Town Manager to clarify the wording in the contract, “...verifiable percentage goal for participation” versus awarding at least 3% of contracts to minority contractors. The Town Manager replied that it was not a requirement to award 3% of contracts to minority businesses, but should strive to do so as long as there was no other reason to disqualify minority contractors, and that the Town was committing to awarding a minimum of 3% of the contracts to minorities who met all the other requirements. Member Copley clarified that, as required by the state, the Town must award a contract to the **lowest, most responsible** bidder(s) for the total project.

Mayor Dodson then made a motion to close the public hearing portion of the Minority Business Contract discussion. Member DeMott seconded the motion. The members agreed unanimously.

The floor was then opened by Mayor Dodson for citizen comments.

CITIZEN COMMENTS

Citizen comments were taken after the Administrative Update. Kay Lambert, 430 Wildcat Rocks Rd., Seven Devils, NC reminded the public about the 7th Annual SafetyFest on July 3, 2010 with all proceeds going to the Fire and Public Works Departments. Earl Pariseau, a member of the High Country Association of REALTORS, remarked that he and others are concerned about the \$50.00 fines for expired real estate sales signs in light of tough economic conditions. He asked the Council to consider discarding the fines if the Town could not provide better notice. Julia Heinlein of Antler Realty commented about the Seven Devils real estate market conditions revealing that there are 70 houses for sale, 19 of which are condos, and so far this year there have been two sales, versus 15 sold in 2009. She relayed that several real estate companies have gone out of business or taken outside jobs to survive and she requested that the Council consider reducing the \$15/sign permit fees to \$5/sign, and the \$50 expired sign penalties to \$10.00. Citizen Barbara Young proposed to the staff and Town Council that a moratorium be put on sign permits and to consider the administrative time/costs that go into enforcing the sign ordinance versus the revenues that are collected until a set time as determined by an economic benchmark, like FY 2007, when sign permits were up. She clarified to the Members that she was only looking for fees and penalties to be suspended, not to change the actual sign requirements. Citizen Larry Manning, 277 Four Diamond, Seven Devils, NC 28604 asked if the storm debris pickup covered by the FEMA funds was on schedule, and the Town Manager affirmed that it was. Citizen Anne Fontaine, 127 W Rocky Top, Seven Devils, NC 28604 said she was still waiting on the contractor to pickup her storm debris. She also agreed with the other REALTOR comments about doing away with the sign permit fees. The Town Manager then addressed the individual public comments about the sign ordinance and said that until recently, the sign ordinance had not been enforced very enthusiastically, and how last year he had picked up 55 signs that did not have permits. He stressed that the staff does not make the rules and that as Zoning Administrator, he is charged with the responsibility of enforcing the sign ordinance. As a courtesy, he had staff send a letter and make a calls to all the real estate agents who had signs without permits giving them a grace period to renew or apply for a new sign permit before the \$50 penalty would be applied. He received no objections from anyone at that time, and that the Town Council and Town Manager had met previously to discuss the sign ordinance dilemma. The Town Manager stated his concern that too many real estate signs posted could actually deteriorate an area's property values. Town Manager, responding to a question by Citizen Barbara Young, asking for clarification whether directional signs were allowed to which he replied that only real estate signs were permitted. He also admitted that poor enforcement in the past had led to some signs being expired for over three years. He does not think that it should be the responsibility of the Staff to notify sign applicants of expiration dates, or provide spreadsheets since they are given a copy of the sign permit with the sign expiration date circled and hi-lighted In response to the sign fees, he believes that the costs of getting a sign permit is much less than other communities' requirements to have sandblasted real estate signs. Mayor Dodson asked for Council comments. Member DeMott noted that the Council has also felt the economic pinch and that many expenses were cut to meet the budget. Member Copley asked a real estate professional to estimate how many fees were paid in the last year to have a better understanding of the economic burden. A couple of real estate agents estimated somewhere between \$200-\$300.00/year. Member Ehmig asked the real estate professionals how much the signs cost to erect on Sugar and Beech, and Citizen Heinlein said it cost a lot more to put a sign in those communities versus Seven Devils.

Mayor Dodson asked for final public comments. There were no further comments noted.

ADMINISTRATIVE UPDATE

The Town Manager reported for the Citizens' awareness, that the Town had changed banks to BB & T. He reported that the Town of Seven Devil's Public Safety Department was the recipient of a police department equipment grant in the amount of approximately \$7,000 thanks to the efforts of Fire Chief Powell. The Town Manager gave an update on ice storm debris removal – FEMA: The Town has received their first FEMA payment of approximately \$13,700.00, and that FEMA has notified the Town that there will be no more disbursements during FY 10, with the next disbursement by the state of NC, as trustees, in FY 11. Mayor Pro Tem Copley asked what type of administrative action plan was in place to ensure that all last minute storm related debris pickups would be made by the contractor before the FEMA deadline such as a final drive through. The Town Manager responded that the last scheduled day for ice storm debris pickup was on Friday, June 25th 2010, and he also reminded the Citizens that only storm debris would be picked up by the contractor. If the debris was from regular yard work with labor provide by the homeowner, the Citizen should call Town Hall who will issue a work order for the Public Works to come by and pick up **as limited to one truckload/yard debris/homeowner**. Mayor Dodson allowed Citizen Haugh to ask for clarification by the Town Manager about how much money could be expected from FEMA for the storm debris pickup. Town Manager said that the check for \$13,700 has already been deposited, and the rest of the guaranteed FEMA funding would be dispersed during FY 2011. Mayor Dodson asked for final member comments. Member DeMott asked when the stumps would be picked up and the Town Manager said that he had directed the contractor to wait on collecting the stumps until the end as it would be more efficient for the contractor to use his excavator at one time.

OLD BUSINESS

None.

NEW BUSINESS

A. Oath of Office – Bethany Higgins as Town Clerk. Mayor Dodson administered the Oath of Office to Bethany Higgins, Town Clerk.

B. Adoption of the Fiscal Year 2010-2011 Budget Ordinance. Mayor Dodson reported that the Budget Ordinance Public Hearing was held last Tuesday, June 7th 2010 as required by statute. Before the Adoption of the Budget came for a vote, Mayor Pro Tem Copley brought the Council's attention to the Water Ordinance, page 9-1, graph 1, under 9-1, labeled Penalties Defined, as read, "The Town of Seven Devils may levy a fine for violation to the Water Ordinance as specified in the Annual Operating Budget Ordinance" but, she pointed out, no fines were specified. Mayor Dodson agreed fines should be specified and that the Town does not need to change the enforcement if we comply with what the Water Ordinance says. The Council and Town Manager discussed \$50 to be levied per day for violating the Water Ordinance based on the Zoning Ordinance. No members remember levying fines for Water Ordinance violations. Mayor Pro Tem Copley proposed that the Council vote to pass the Budget Ordinance pending the Council determining the amount of fine for violation of the Water Ordinance which would give time for further research. The Town Manager then asked the former manager Brad Lambert about the history of the Water Ordinance. Citizen Lambert recalled that in the summer of 2008, the Town imposed water restrictions based on what the State required at that time.

Mayor Pro Tem Copley made a motion that the Council establishes a fine for violation of the Water Ordinance to be \$50/day in accordance with the Water Use Ordinance. Member DeMott seconded the motion. Before the vote, Mayor Dodson asked if the Council was going to put the fine in the fee structure within the Annual Operating Budget Ordinance, and called for the Council to find any other fees and penalties that should be included in the fee structure. Mayor Pro Tem Copley then suggested to strike the language from the Water Use Ordinance and replace with “the Town of Seven Devils may levy a fine for violation of the Water Use Ordinance” instead of “as specified in the Budget Ordinance.” This would allow for fines to change rather than be locked in by a set amount while avoiding the requirement to change the ordinance. Mayor Dodson suggested listing the fine under Penalties Defined 9-1 within the Water Use Ordinance. Town Manager instructed the Council to determine a fine and specify it within the Water Use Ordinance. Mayor Dodson made a suggestion to postpone approving the Water Use Ordinance unless a decision could be made.

Mayor Pro Tem Copley moved to withdraw her motion to establish a fine for violation of the Water Ordinance. Member DeMott seconded the motion. The Members agreed unanimously.

Mayor Dodson asked for a motion to approve the Budget Ordinance. Mayor Pro Tem Copley made a motion to approve the Budget Ordinance for FY 2010-2011. Member DeMott seconded the motion. The Motion carried unanimously by the Members (5-0).

C. Budget Amendment Fiscal Year 2009-2010. The Town Manager confirmed to Mayor Pro Tem Copley that the Council should expect a final Budget Amendment for FY 10 when the final tallies are in at the July Town Council Meeting, and that the Budget Amendment was consistent with previous years in regards to the largest changes taken place, including the ones that the Council are aware of being skewed and of which he is handling now. Basically the amendments are attempting to bring the figures in line with the Town’s actual experience.

Mayor Dodson asked for a motion to approve the Budget Amendment. Member DeMott made the motion. Member Kay Ehlinger seconded the motion. The Motion carried unanimously by the Members (5-0).

D. Resolution to Establish a Verifiable Percentage Goal for Participation by Minority Business in the Awarding of Construction Contracts.

Mayor Dodson asked for final discussion from the Members before a Motion was made to adopt the Resolution. Member DeMott moved to approve the motion. Mayor Pro Tem Copley seconded the motion. Upon further discussion that the Members were OK with Town Manager’s recommendation to set the verifiable percentage goal at 3%, the Motion carried unanimously by the Members (5-0).

E. Proposed Changes to Water Use Ordinance. The Town Manager brought the Members attention to the proposed changes to the Water Use Ordinance. In the first few pages, the only changes were the dates. On page 4-1, under 4.3, (2) which included striking the language “...after the Town of Seven Devils has issued a building permit” because the Town no longer issues building permits. In (4), same article, the language was changed to “homeowners...shall be billed at the rate established in the annual operating budget ordinance” to make it consistent with other fees, and secondly because it previously said, “one half of the minimum rate” which would have increased the

\$15.00/month minimum charge to well users that the Town Council had previously agreed to leave unchanged. In article 4.3, (3, 5, and 9) the word “quarterly” has been replaced with “monthly.” The 3rd parenthesis in article 4.4 titled Adjustments, the phrase “greater than the amount of 18,000gallons” has been replaced with “greater than the amount of 6,000 gallons” to reflect the quarterly to monthly billing schedule. The biggest change is 4.4 (4) which was added to be consistent with Town Council’s previous decision of capping accounts where you have substantial leaks which now states, “any water account which is charged an amount greater than \$5,000 in any month due to a verified leak which is subsequently repaired as evidenced by the repair receipts, is eligible to have the monthly water charge capped at \$5,000.00 provided that the account holder installs a private cut off valve on the customer side of the meter within two feet of the water meter that shall be protected from the elements in a suitable manner...” This additional language makes the ordinance consistent with (5) and the \$5,000.00 cap mentioned in (4). In (5), it was recommended to clarify the phrase, “in the event of a leak between the meter and the property owner’s private cut off valve that is within two feet of the meter, a reduction to the per month average for the past twelve months may be sought by the owner.” The Town Manager suggested striking what is there now and changing it to read, “a reduction to the per month average for the past twelve months...” The Town Manager asked the Members if they agreed with the latter language being clearer than the former language. Member discussion ended with unanimous agreement with the Town Manager’s aforementioned change. On page 7-1, under Water Extension, a change was made to the second sentence to read, “Where water is not available, the property owner shall build and maintain a private well” replacing an awkward sentence structure. The word “that” has replaced the word “which” in 7.1.3. On page 7-2, page 1, date changes only. On 8-2, article 8.3.2, under voluntary measures, (2), for clarity, the sentence was rephrased to “limit lawn and garden watering to that necessary for plants to survive.” 8-4, 8-5, and 9-1 was date changes only. After further Member discussion, the following changes were suggested: Mayor Pro Tem Copley wanted clarification on the phrase “the Town” on page 2-1, last item, 2.7, (1). She suggested , that in this case, the Town should be replaced with the word “Mayor.” The Mayor suggested “The Town” be changed to “Council.” The Mayor and Mayor Pro Tem Copley agreed unanimously to the change. Under 4.4 adjustments, Mayor Pro Tem Copley requested striking “shall present his claim in person or in writing” and replace with “shall present his claim in writing.” She additionally requested under 4.4, (3), that if the water bill is high but below \$5,000, if the Town is adjusting their bill, which resulted from a leak on the customer’s side of the meter, that the customer be required to install a private cut-off valve to receive the adjustment. A brief discussion followed by the Members. Citizen Brad Lambert recalled that the policy of the Town Manager of adjusting high water bills was addressed in earlier adaptations of the Water Use Ordinance. Mayor Pro Tem Copley relayed that it was not in the version that Town Manager updated in 2007. The Town Manager said he will have to go back and look at other revisions to see the last time that provision was addressed. Mayor Pro Tem Copley wondered why within conservation of water, voluntary, #6, the Council required a special “high pressure nozzle” on hoses. Under mandatory restrictions, 8-3, (1), in reference to allowing everyone in town to water between certain hours on certain days, Mayor Pro Tem Copley wanted to know if it would pose a problem. Page 8-4 under 8.5.2, (7), under mandatory restrictions, “water shall be turned off at any properties where not occupied for three or more consecutive days” seemed impossible to enforce. Mayor Pro Tem Copley proposed to move this provision from mandatory restrictions stage III to State I Water Shortage Guidelines voluntary measures with the revised provision to read, “Turn off water at any property not occupied for three or more consecutive days.” The Town Manager explained the reason that the water turn off provision was mandatory was to put the responsibility for high water bills on the customer if due to a leak on the customer side. Mayor Pro Tem Copley agreed to add the \$50 penalty to 9.1. A request for clarification by

Mayor Pro Tem Copley regarding 9.2 under appeals, of the wording “various requests” as it seemed related to the Board of Adjustments or zoning. Mayor Dodson pointed out that “variance requests” are limited to the “purposes of this ordinance” as addressed in 9.1 under penalties. To eliminate confusion, it was decided by the Members to add in 9.2 the phrase, “...the Town Council shall hear and decide all appeals, requests for variances to this ordinance, and requests for interpretations.” Mayor Dodson asked for final comments. The Members unanimously agreed to postpone adopting the proposed changes to the Water Use Ordinance until the next Town Council Meeting. Mayor Pro Tem Copley ended the discussion with asking the Town Manager to provide a provision that addresses the policy language of the Town Manager having the discretion to adjust bills. Town Manager proposed to change the wording from “anything over one cent per gallon” to “one cent per gallon with a verified leak, verified repair and the addition of the language as in 4, referring to the Town Manager’s discretion.

The Town Clerk asked for a motion to adopt the \$50.00 penalty fee by amending the Water Use Ordinance within 9.1. Mayor Pro Tem Copley made the motion. Member DeMott seconded the motion. The Motion carried unanimously by the Members (5-0).

COMMITTEE REPORTS

A. Planning Board

B. Public Works – Mayor Dodson reminded the Members that the next Public Works Meeting is Wednesday, June 15th at 10 AM.

C. Public Safety Committee – Mayor Dodson reminded everyone about the July 3rd, 2010 7th Annual SafetyFest. Kay Lambert confirmed BBQ would be sold by the pound like last year. She also said that Public Safety is more than SafetyFest and is involved with 911 addressing, Red Cross Emergency Shelter efforts, and pursuing a second exit off the mountain. Earl Pariseau will submit a report to the Safety Committee for eventual Town Council approval regarding adding more members to the Committee for the July 3rd, 2010 meeting.

D. Recreation Commission

Mayor Dodson asked for a motion to remove inactive Recreation Commission Member Mark Garrett with Anne Fontaine as his replacement. Mayor Pro Tem Copley made the motion. Member Kay Ehlinger seconded the motion. The Motion carried unanimously by the Members (5-0). Anne Fontaine accepted.

A brief discussion by the Members regarding the standardization of rules and procedures for Committees such as how many members make up the committees, the term of its members, and other limitations addressing how many members from the Town Council should be allowed to serve on a committee. Member Ehmig commented that when a majority of Council members belonging to a Committee such as Public Works vote, a conflict of interest may exist or an appearance thereof. The Members agreed unanimously to take Mayor Pro Tem Copley’s suggestion to outline the model rules and procedures for the remaining Committees identified as Public Works and Public Safety.

E. ABC Board

F. TDA – Mayor Pro Tem Copley reminded the TDA that two meetings ago, the Council had requested that the Recreation Commission become an Ad Hoc Committee, and for a status update on TDA joint efforts with Watauga County on broadening issues beyond Watauga County, and for the TDA to provide the Council with a better understanding of how and where

the TDA is spending 2/3 of their revenues for marketing. She asked the members to discuss this at the next July 3rd, 2010 Town Council meeting. Member Kay Ehlinger would relay the Council's request to the other TDA members. Town Manager mentioned that the parking areas around Town Hall would need paving estimated at \$19,500.00 and the TDA has expressed an interest in providing \$8,000 in revenue toward the project. Mayor Pro Tem wanted to know if the remaining \$11,500 would come from a Budget Amendment. Town Manager answered that most likely the expenditure for re-paving the Town Hall parking areas would be in FY 12.

G. Public Safety – Police and Fire reports. The Town Manager said that the Police and Fire Reports would be submitted together at the next Town Council meeting in July since the Fire Report was not ready by the previous Friday's reporting deadline.

H. Financial Report

A motion to accept the Financial Report was made by Member DeMott, seconded by Mayor Pro Tem Copley, and approved by the members unanimously.

TOWN COUNCIL COMMENTS

Member DeMott complimented the Town Manager's work ethic and dedication to his position while faced with severe weather conditions and personnel changes. Member DeMott made a motion to approve a 3% merit raise for the Town Manager effective July 1, 2010. Mayor Dodson seconded the motion. The members agreed unanimously.

In closing comments, Member Copley reminded the Town Manager that the Council was still waiting on a list of goals with projected completion dates, and he replied that he would provide the list.

ADJOURN

At 7:42 p.m., by general consent, Mayor Dodson made a motion to adjourn.

Bob Dodson, Mayor

Bethany Higgins, Town Clerk