

**TOWN OF SEVEL DEVILS  
TOWN COUNCIL  
MINUTES – REGULAR SESSION  
October 11, 2010**

The Seven Devils Town Council met in regular session on Monday, October 11, 2010, at Town Hall. Present were Mayor Bob Dodson, Council Members Richard DeMott, and David Ehmig. Mayor Pro Tem Kathy Copley and Member Kay Ehlinger were excused from attendance. Town Manager Ed Evans and Town Attorney Rob Angle were also present. The minutes were recorded by Beth Taylor, Town Clerk.

**CALL TO ORDER**

Mayor Dodson called the meeting to order at 5:42 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. Mayor Dodson seconded the motion. The members agreed unanimously.

**APPROVE MINUTES**

Member DeMott made a motion to approve the September 13, 2010 regular meeting minutes. Member Ehmig seconded the motion. The members agreed unanimously. The minutes were approved.

**CITIZEN COMMENTS**

None

**ADMINISTRATIVE UPDATE**

Members reviewed the Administrative Update provided by Manager Evans. In response to the Update, Mayor Dodson wanted to know if the Avery County residents of Seven Devils could use the Watauga recycling center or if Avery County was going to have their own day for residents to dispose of their electronics, etc. Kay Lambert informed him and the rest of the Members that Avery County is planning on setting a day aside for their residents. She is not sure the exact date but knows it will be after Watauga's.

**CALENDAR**

None

**OLD BUSINESS**

None

**NEW BUSINESS**

**A. Independent auditors report – Town of Seven Devils and TDA**

Sharon Gillespie of Young, Miller & Gillespie reported that we have clean records and praised Debbie Powers for her excellent record keeping. They were able to finish their audit quicker because of her attention to detail and proficient work. Ms. Gillespie explained that the reason for our loss this year, as shown on page 18 of the report, is due to the ice storm last winter. On a positive note, she pointed out that we had a profit in our water fund, as shown on page 22 of the report. Town Manager Evans expressed his appreciation to both Debbie and the auditors for doing such a great job. *~CLOSED~*

**B. High Country Municipal ABC – audit report – Sara Brewer**

Sara Brewer reported that sales are down \$135, 000 this year due mainly to the economy and the revenue tax increase. They were able to give \$80, 000 to each of the three Towns (Seven Devils, Beech, and Sugar) this year. Ms. Brewer reported that the ABC Store is debt free. She updated the Members on a few of the projects that the ABC Store has participated in recently, such as providing a drunk driving simulation to seniors at a local high school, and putting together a television commercial along with Charter Cable which was aired in hopes of discouraging underage drinking. *~CLOSED~*

**C. Consider street centerline and water mapping project recommendation – Funding**

Manager Evans stated the importance of having a way to record the extensive knowledge our Public Works department has accumulated over the years. He explained to the Members that the State of North Carolina highly recommends the Town develop a water mapping system. Manager Evans referred to the proposal that the High County Council of Governments gave to the Town for review. Some of the points made in the proposal were that once this system is in place it can be updated and maintained by the HCCOG. The proposal includes providing the Town with a 34”x44” Town Base Map displaying NC Floodplain Mapping, among other things, a data CD containing a geodatabase created by ArcDesktop, as well as several other items detailed on page 2 of the proposal. The cost for this project is \$10,000. A question arose by Member Ehmig as to what the unknown future cost may be. He wants to check with other towns to see how much they have spent. Manager Evans replied that he is not sure that any other towns have had the system in place long enough to know. Manager Evans stated that if we agree to this project it will start in November, as gathering the GPS data has to be completed when the leaves are off the trees and before heavy snow sets in.

Member DeMott made a motion to approve the project. Member Ehmig seconded the motion. It was agreed upon unanimously. *~CLOSED~*

**D. Records Retention and Disposition Schedule – Resolution**

A brief statement was made by Manager Evans explaining the need to adopt the Records Retention Disposition Schedule, as in accordance with the N.C. General Statutes Chapters 121 & 132 dated May 13, 2009.

A motion was made by Member Ehmig to adopt the Resolution to abide by the Records Retention and Disposition Schedule in accordance with NC General Statutes. Member DeMott seconded the motion. It was agreed upon unanimously. *~CLOSED~*

**E. Planning Board Recommendation – Planning Board Member**

Mayor Dodson made a motion to accept the Planning Board recommendation of naming Barbara Williams as their new member. Member Ehmig seconded the motion. It was agreed upon unanimously. *~CLOSED~*

**F. BOA Alternate Vacancy – Applicants**

Mayor Dodson summarized the applications submitted for the Board of Adjustment alternate vacancy. The Members discussed both candidates. Member Ehmig made a motion to appoint Carroll Berkley as the BOA alternate. Member DeMott seconded the motion. It was agreed upon unanimously. *~CLOSED~*

**G. Planning Board Recommendation – Consolidate the Zoning, Subdivision, and Construction Ordinances**

Manager Evans briefly stated the pros and cons of consolidating the ordinances. The only *con* named is the time and effort that would be needed to consolidate. Some of the pros were that consolidation would promote quality and consistency. Consolidation would promote a more user-friendly and functional document, making the ordinances easier to understand by any who had need to refer to them. Mayor Dodson asked Manager Evans to identify any of our other ordinances that should be included in this, or if it should only be the zoning, subdivision and construction. Manager Evans agreed. Planning Chair Bob Haugh commented that now would be the opportune time to do this if it is agreed upon by the Council Members.

Member DeMott made a motion to accept the Planning Board recommendation to consolidate the zoning, subdivision and construction ordinances. Member Ehmig seconded the motion. It was agreed upon unanimously. *~CLOSED~*

**H. Resolution – Water Shortage Plan**

The Town Council was presented Water Shortage Response Plan composed by Manager Evans, consistent with the items requested to be included by DENR. The Plan addressed several factors dealing with appropriate responses to declared water

shortages and penalties for failure of citizens to curtail water usage during a declared water shortage. Mayor Dodson and other Council members discussed the contents of the Plan and expressed reservations about penalties. The Plan, as presented, had significant adverse consequences for Citizens if they did not abide by the provisions of the Plan. After discussion, Mayor Dodson expressed that he was not comfortable adopting such a Plan until further investigation as to legal issues and whether or not the Plan was the best way to proceed by the Town. Additionally, Mayor Dodson expressed hesitation to adopt such a far-reaching plan without input from all five Council members. No action was taken. Manager Evans will review the document again to see if any revisions are warranted. *~OPEN~*

**I. Water Use Ordinance revision – Emergency procedures**

Manager Evans presented potential revisions to the Water Use Ordinance to make the Ordinance consistent with adoption of the Water Shortage Plan. However, since the Water Shortage Plan was not adopted at the meeting, any action on revisions to the Ordinance was deferred until the Water Shortage Plan is reconsidered.

*~OPEN~*

**J. Coal Tar Sealant Ban Recommendation from Public Safety Committee**

The Public Safety Committee met to discuss the issue of problems associated with the use of coal tar sealants. The Committee presented their findings in the form of a recommendation to the Town Council, stating that the Committee is aware that the Town of Boone recently met on the coal tar sealant issue and is planning to investigate use of the sealants and any legal issues that might arise with an attempt to ban the sealant, if warranted. The Committee also recommended that the Town of Seven Devils work with the High Country Municipal Association and the HCCOG to make the public aware of the problems associated with the use of coal tar sealants. Additionally, the Public Safety Committee recommended that Manager Evans could put an article about the issue on the Town's website.

Mayor Dodson made a motion to defer any decision on a ban, waiting to see what Boone does regarding the Coal Tar Sealant Ban. Member DeMott seconded the motion. It was agreed upon unanimously. *~CLOSED~*

**K. New member recommendation from Public Safety Committee**

The Public Safety Committee recommended Earl Pariseau as a new member of the Public Safety Committee.

Mayor Dodson made a motion to approve the appointment of Mr. Pariseau. Member DeMott seconded the motion. It was agreed upon unanimously.

*~CLOSED~*

**L. Budget Amendment**

Member DeMott made a motion to adopt the proposed budget amendment in the amount of \$10, 000. This amendment would transfer money from account 10-545-35, which is a portion of the remaining balance from the Christmas Storm of 2009, to account 10-545-37 to cover the cost of the Road Center-Line and Water Mapping Project. Member Ehmig seconded the motion. It was agreed upon unanimously.

**COMMITTEE REPORTS**

**A. Planning Board**

**B. Public Works**

Mayor Dodson asked for an update on the Water projects. Manager Evans reported that the Bid Opening for the projects will occur on October 19 at 2:00 p.m. if we have at least three bids. If we don't have at least three bids then we will advertise for one more week. Evans explained that following an award of the project to a contractor, the LGC application will be completed and mailed. He explained that the LGC is waiting on us.

**C. Public Safety Committee**

**D. Recreation Commission**

**E. ABC Board**

**F. TDA**

Mayor Dodson thanked the TDA; he has heard nothing but positive comments from people regarding the way the Town looks.

## **G. Public Safety Department**

- i. Police Report**
- ii. Fire Report**

## **H. Financial Report**

Mayor Dodson made a motion to accept the financial report. Member Ehmig seconded the motion. It was agreed upon unanimously.

## **COUNCIL COMMENTS**

Member DeMott commented that Operation Medicine Cabinet was a tremendous success. He wanted to thank Kay Lambert and Kay Ehlinger for doing such a wonderful job, as well as the Foscoe Fire Department for donating the space.

## **RECESS**

At 7:20 p.m. Mayor Dodson made a motion to recess until 5:30 p.m. Tuesday, October 26<sup>th</sup> at Town Hall. Member Ehlinger seconded the motion. The members agreed unanimously.

## **TOWN COUNCIL CONTINUATION MEETING Tuesday, October 26, 2010**

The Seven Devils Town Council reconvened at 5:30 p.m. on Tuesday, October 26, 2010 at Seven Devils Town Hall. Members present were Mayor Pro Tem Kathy Copley and Council Members Richard DeMott and Kay Ehlinger. Mayor Bob Dodson and Member David Ehmig were absent and excused. Also present was Town Manager Ed Evans, Town Attorney Rob Angle, and Town Engineer David Poore, PE. The minutes were recorded by Beth Taylor, Town Clerk.

At 5:30 p.m. Mayor Pro Tem Copley called the meeting to order.

Member DeMott made a motion to adopt the agenda. Member Ehlinger seconded the motion. The members agreed unanimously and the agenda was adopted.

Mayor Pro Tem Copley stated that she has worked studiously, along with Town Manager Evans, to get everything ready for the deadline on October 29<sup>th</sup>. It was brought to their attention today that October 29<sup>th</sup> is actually a “soft” deadline, so voting is not necessary tonight. The question was posed as to how many Members have to vote in favor. Mayor Pro Tem Copley responded that when spending Town money the majority of the Council Members, not just the majority present, have to vote in favor. With that in mind, Mayor Pro Tem Copley asked if the present Members would like to postpone the voting until the regularly scheduled November 8<sup>th</sup> meeting. Member DeMott stated that he would prefer to wait until all members are here to vote. Member Ehlinger thought that it would be better to go ahead and hear the proposal since they were already there, then after the discussion the Members could decide whether they wanted to vote or postpone. Mayor Pro Tem Copley thought waiting might allow for more citizens to be present. Manager Evans responded that we will be holding a Public Hearing on November 8<sup>th</sup> along with our regularly scheduled Council Meeting. Mayor Pro Tem Copley asked the Members if they wanted to postpone or continue with the discussion. Members Ehlinger and DeMott preferred that we would have the discussion tonight since we were prepared to do so.

Mayor Pro Tem Copley gave a re-cap of the Waterline Replacement project to bring everyone up to date on how the project got to where it is today. She explained that the Grandview Drive portion of the project was originally approved in October 2008, but that the Town Council decided there was not enough money available at that time. The Council

did not feel it would be appropriate to raise taxes in order to fund the project at the time. In the winter of 2009, when TARP money became available, former Town Manager Brad Lambert completed an application in hopes of securing the funding needed for this project. For a very long time the Town was getting vague answers from the federal government, which ultimately ended with us not receiving any TARP funds. Mayor Pro Tem Copley continued by stating that ever since Town Manager Evans has been here he has worked to secure loans from various sources for this project and other projects that were analyzed to be “priority projects” by our Public Works Department, our Town Engineer – David Poore, the Public Works Committee, and Manager Evans. Evans continued looking for funding for projects through local banks. For a number of reasons, such as the banks were not lending, or they offered high interest rates, or terms or payoff schedule that were unacceptable to the Town, he had little success in securing an acceptable loan. Evans also checked on potential funding from the USDA to fund the project, which appeared as though it may be a good funding opportunity until it was discovered that 100% of the loan must be paid back through the Enterprise Fund. Finally, in the September 2010 meeting, Evans explained to the Council the opportunity to seek Build America Bond funding through RBC Bank, and that he had talked with the Bank and the Town had been tentatively approved for a loan of \$633,810.00, consistent with the estimated price of the priority projects. The projects that were included in the estimate were Grandview Drive, Chinkapin Drive, Wayside Court, and Hanging Rock Villas. The loan would be for 10 years, but can be paid back early without penalty. She asked Manager Evans to clarify the interest rate that the Town has secured with RBC Bank. After double checking, Manager Evans supplied that the effective interest rate is 3.4905%. Mayor Pro Tem Copley stated that keeping the interest rate in mind, and knowing that the current federal reimbursement for the Build America Bond is 35% now and will probably drop in 2011, we are moving to get the LGC (Local Government Commission) our package so they can review it and decide if they would approve funding for the project. On October 19, the Town had a public bid opening to review the bids. The meeting for tonight (October 26) was scheduled because we thought we had to vote tonight in order to get the LGC loan package to them by the 29<sup>th</sup> (what we now know to be a soft deadline). Mayor Pro Tem Copley explained that the LGC will meet on December 2<sup>nd</sup> and we should be informed on about approval on December 3. Mayor Pro Tem Copley concluded that this is the picture of where the Town is, what has been done, and what we have left to do.

Mayor Pro Tem Copley mentioned that the Council had a great deal of discussion about the solicitation of the bids and the requirement of notifying minority contractors. She further clarified that the Town has worked to meet our obligation to notify minority contractors of the opportunity to make a bid if they so desired. She stated that Town Engineer Poore saw to it that the bid was submitted to three organizations that would take care of minority advertising, and they are: Associated General Contractors, F.W. Dodge Report, Hispanic Contractors Association of the Carolinas, and two more publications. Mayor Pro Tem Copley pointed out that Iron Mountain was our only minority bidder.

#### Bid Summary:

Spur Construction LLC, Waynesville, NC	Eaglewood Inc. Denver, NC	Iron Mountain Construction Co., Inc. Mountain City, TN	Payne, McGinn, Cummins, Inc. Travelers Rest, Sc	Max Prestwood Water & Sewer, Inc. Lenoir, NC	Bryant's Land & Development Industries, Inc. Burnsville, NC
\$492,302.50	\$505,933.44	\$523,014.00	\$577,198.34	\$582,410.00	\$601,134.00

Mayor Pro Tem Copley proceeded to read the summary of bids (chart above) from the handout provided to the Members. Spur Construction, LLC from Waynesville, NC was the lowest bid coming in at \$492,302.50 for the project. According to the letter given to the Members from Town Engineer David Poore, Spur Construction was not fully responsive as they did not submit the Evidence of Authority to Sign, Qualifications of Superintendent and a List of Subcontractors, all of which were required for this bid, referenced as articles 7.01-A, 7.01-G, and 7.01-F respectively. Since the lowest bidder was not fully responsive, the Members also considered Eagle Wood, Inc. of Denver, NC, as they were the second lowest bid coming in at \$505,943.43. Eagle Wood did submit all required information with their bid.

Mayor Pro Tem Copley brought to the Members attention that the enclosed copy of Article 19 gives an outline of what the Town's rights and obligations are when choosing a bidder. Mayor Pro Tem Copley wanted clarification on who was going to be doing the work, Eagle Wood or Eggers Construction Company, if the Town chose them. In response, Town Engineer Poore stated that Eagle Wood would be financially responsible; Eggers Construction is the sub-contractor that would do the work that the Town would then supervise. He also informed the Members that each of the companies bidding would be using minority contractors with a portion of the work. He further went on to say that he has checked references for both Spur and Eggers. The two references for Spur stated that they were capable but had some safety issues such as working too fast and taking short cuts. Additionally, Town Engineer Poore commented that Spur employees needed their supervisor to be present. It was also made known by vendors that Spur had cash flow problems in the past. Town Engineer Poore informed the Members that he has never worked with Spur in the past and therefore cannot give a personal account. As for Eggers, according to Town Engineer Poore, four out of five references said that Eggers does good work, they have no money problems, and are safe and dependable. He spoke to Rick Owens at Beech Mountain who confirmed that Eggers actually saved them money in the past and that Eggers does not take shortcuts without approval from a town, and then, only in the best interest of a town. Town Engineer Poore mentioned that he has worked with Eggers twice before and both projects have been good. Mayor Pro Tem Copley wanted to know what the fifth reference had to say. Town Engineer Poore clarified that he was only able to speak with four out of the five that he tried to call. No one had anything negative to say about Eggers. Mayor Pro Tem Copley wanted Town Engineer Poore's opinion on what we should look for when making this decision. In response, he stated that we should look for a good end product and to make sure the Town doesn't have to provide any additional support or expense. Mayor Pro Tem Copley asked Town Engineer Poore to clarify then, if what we are looking for is financial stability. His response was yes. Mayor Pro Tem Copley pointed out that if we went with Spur we would have to consider the impact all the travel would cause to the project since the company is in Waynesville. The hope is to start in the spring before all the summer residents return.

Citizen George Ehlinger wanted to know how the work would be paid out. Town Engineer Poore replied that it would be paid monthly as work is done, less the 5% we hold back for retainage. Mayor Pro Tem Copley stated that we have to ask the following questions about the company we decide to go with:

- Are they financially solvent?
- Do they produce high quality results?
- Are they self-motivated?
- Have they done similar work with others?

She concluded that it sounds like Eggers provides all that, while Spur doesn't. Town Engineer Poore confirmed her assessment.

Mayor Pro Tem Copley wanted Town Attorney Rob Angle and Town Engineer Poore to clarify Article 19 so the Members are clear as to what our obligations were. Town Engineer Poore then read the hand out of Article 19 to the Members. In summary, the Town would be within its rights to reject the bid from Spur, due to the fact that their bid did not meet all requirements. Town Attorney Angle asked Town Engineer Poore if there have been any similar instances where a rejected bid filed any law suits. Town Engineer Poore responded that to the best of his knowledge, there have not been any instances where suits were filed. At this point Manager Evans expressed his concern that if a company would leave out three of the seven requirements on the bid, he was concerned about their "attention to detail" and wondered what kind of work would they produce? Town Attorney Angle pointed out that it is much easier to hold a local company accountable. Mayor Pro Tem Copley wanted to confirm with both Town Attorney Angle and Town Engineer Poore that the Town is on firm legal ground if we decided not to consider Spur due to the fact that they did not meet all the bid requirements. Both stated yes, we are on firm legal ground to do that. Member DeMott stated that locals make it much easier, as hiring outside workers is often problematic. Mayor Pro Tem Copley stated she spoke with Rick Owens, Mayor of Beech Mountain, and he confirmed that Eggers has always done good work. Manager Evans interjected that according to Steve Smith, Finance Officer at Banner Elk, "You can't do better than Eggers."

Mayor Pro Tem Copley asked for a motion to be made naming which contractor to accept. Member Ehlinger made a motion to accept Eagle Wood/Eggers Construction. Member

DeMott seconded the motion. It was agreed upon unanimously that the Town go with Eagle Wood/ Eggers for the Waterline Project.

Manager Evans stated that he will forward the Notice of Award form to all the Council Members this week for review. After some discussion it was decided that a motion needed to be made authorizing either the Town Manager or Mayor to sign the Notice of Award form without having to hold another meeting. Mayor Pro Tem Copley asked for a motion to be made authorizing Manager Evans to sign the form. Member DeMott made the motion. Member Ehlinger seconded the motion. It was agreed upon unanimously to authorize Town Manager Evans to sign the Notice of Award form.

Town Attorney Angle wanted to know if there was a way we could do another, smaller project, with the \$125,000.00 that was under budget. After much discussion ensued, a recommendation was made by Mayor Pro Tem Copley that Manager Evans, Town Engineer Poore and Public Works director Kevin Aldridge discuss the options the Town has and bring their recommendations to the next Town Council meeting. She asked that along with the recommendations they include the details and steps we can take without slowing down the Waterline Project.

Manager Evans pointed out that the bank is fine with using the extra money for an additional project, as long as the Town supports it with collateral. Town Attorney Angle wanted to clarify the Town wouldn't necessarily be required to "put up collateral" that it would most likely be UCC "Uniform Commercial Code" which secures personal property rather than a deeded trust on real property. Evans explained he was merely using the terminology used by the bank.

Town Engineer Poore stated that there is already a list of sixteen water infrastructure projects from which the Town could choose. Mayor Pro Tem Copley expressed she would like to see the Devils Lake work done. She also stated that it would be helpful if, when the list of priority projects from Public Works is presented, it would also include the first page of the Blind Road analysis that indicates the order in which "strictly road issues" came up. Mayor Pro Tem Copley summarized that Town Engineer Poore and Manager Evans would bring their recommendations to the next Town Council meeting. Member DeMott commented that this is an opportune time to get things done that need getting done. After no additional comments were made, Mayor Pro Tem Copley asked if there was a motion to adjourn. Member DeMott made a motion to adjourn. Member Ehlinger seconded the motion. It was agreed upon unanimously. The meeting was adjourned at 6:24 p.m.

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Bob Dodson, Mayor  
October 11, 2010 Minutes

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Kathy Copley, Mayor Pro Tem  
October 26, 2010 Minutes

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Beth Taylor, Town Clerk