

Town of Maggie Valley
Regularly Scheduled Board of Aldermen Meeting
January 19, 2010
5:30 p.m.

MINUTES

Members Present: Mayor Roger McElroy, Aldermen: Colin Edwards, Saralyn Price, and Scott Pauley.
Members Absent: Alderman Phil Aldridge
Staff Present: Manager Tim Barth, Attorney Chuck Dickson, Captain Jason Moody, Planning Director Nathan Clark, Festival Director Audrey Hagar, Public Works Director Mike Mehaffey, and Town Clerk Vickie Best
Others Present: 14 people were in attendance

1. **Meeting Called to Order.**

Mayor McElroy called the meeting to order at 5:37 p.m. in the Town Hall Boardroom.

**ALDERMAN EDWARDS MADE A MOTION TO REMOVE ITEM 3B FROM
THE AGENDA.
MOTION CARRIED UNANIMOUSLY.**

2. **Consent Agenda**

- a. Year to Date revenues and Expenditures.
- b. Quarterly Investment Report.
- c. FY 2009-10 Schedule of Ad Valorem Taxes Receivable..
- d. Tax Releases and Refund.
- e. Correction and Approval of Minutes for the December 7, 2009, December 15, 2009, December 21, 2009 and January 6, 2010 meetings.

**ALDERMAN PRICE MADE A MOTION TO APPROVE THE CONSENT
AGENDA AS PRESENTED.
MOTION CARRIED UNANIMOUSLY.**

3. **a. Public Hearing on Annexation of Traveler's Rest, Inc. Bruce Rouse, Parent Parcel #8606-63-9529 and all parcels therein, (49.67 acres).**
b. Consideration of Ordinance No. 678 to annex Traveler's Rest, Inc. Bruce Rouse, Parent Parcel #8606-63-9529 and all parcels therein, (49.67 acres).

Mayor McElroy opened the public hearing at 5:39 p.m.

Attorney Patsy Brison with Roberts & Stevens Attorneys at Law, representing Bruce Rouse with Traveler's Rest, addressed Council stating that she, on Mr. Rouse's behalf,

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has filed for injunctive relief. Attorney Brison objected to Council conducting a public hearing on the annexation until after the hearing scheduled for February 22, 2010. The injunction prohibits the town from moving forward with the annexation to include the public hearing.

Ms. Brison presented Council with a packet of information. Attorney Brison directed Council to look at the Planning Board minutes for February 7, 2008. Under the heading of Discussion of New Jonathan Creek Subdivision: Bruce Rouse. At that meeting Planning Director Nathan Clark explained that the development would be outside the three (3) mile requirement for satellite annexation. Attorney Brison added that there was nothing stated about signing an annexation agreement. The Town then received a special exception from N.C. Legislators enabling Maggie Valley to satellite annex outside the standard three miles. The petition agreement was not a volunteer petition. Attorney Brison also stated that the agreement would only be for the (approximate) thirteen (13) acres that are subdivided; not the entire acreage.

Attorney Brison asked that Council prove, in writing, that Maggie Valley can provide the same services as in the corporate limits. Traveler's Rest Inc. has vested rights. The subdivision is not subject to the Town's subdivision requirements.

Attorney Brison advised Council not to proceed and to take the entire matter off the agenda until the courts make their decision.

There were no other comments offered from the audience.

The public hearing was closed at 6:52 p.m.

4. a. **Public Hearing on Annexation of Deutsche Bank/National Trust, 44 Golfview Drive, Parcel #7697-80-2620, (0.5193 acres).**
 - b. **Consideration of Ordinance No. 679 to annex Deutsche Bank/National Trust, 44 Golfview Drive, Parcel #7697-80-2620, (0.5193 acres).**

Attorney Jack Kersten representing both the Maggie Valley Country Club and the Bank that has taken ownership of the home stated that the five-bedroom home does not have an adequate septic system. Maggie Valley Country Club has allowed the bank to connect to municipal sewer via the Club's system. It is a requirement of the Town to annex properties connecting to municipal sewer. The bank is concerned about expending funds to extend the sewer and then not being annexed. Attorney Kersten felt that Council had two choices, annex or allow the home at 44 Golfview Drive to connect to the Town's sewer without annexation.

Council was concerned about annexing the property while sewer access remains a distance away. If annexed, then sewer becomes too much of a hardship to obtain, the property owner would look at the Town to provide sewer access. Maggie Valley cannot allocate the amount of funds needed to run sewer to one home.

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The Town of Maggie Valley will inspect the installation and in the future take over maintenance of the line.

There being no further comments from the floor the public hearing was closed at 6:00 p.m.

**ALDERMAN EDWARDS MADE A MOTION THAT ITEM B (ANNEXING THE PROPERTY) BE TABLED UNTIL AFTER THE SEWER LINE IS INSTALLED AND INSPECTED BY THE TOWN.
 MOTION CARRIED UNANIMOUSLY.**

5. a. **Public Hearing on a Zoning Ordinance Text Amendment to regulate Electronic Gaming Operations.**
 b. **Consideration of Ordinance No. 680 to amend the Zoning Ordinance in order to regulate Electronic Gaming Operations.**

Mayor McElroy opened the public hearing at 6:01 p.m. as advertised.

Planning Board Chairman Billy Brede addressed Council explaining that the Planning Board had two meetings on the issue and discussed electronic gaming machines in detail. The proposed zoning amendment does not prohibit the machines, but does control where they can be placed. The Planning Board suggests that a fee of \$2,400 be set for each machine. This fee is in line with many other municipalities across the state. The Planning Board is in support of the amendment.

Alderman Edwards agreed with the ordinance, but had concerns about the high fee. "This could create a hardship for the service stations that may only have a couple of machines."

Council stated how much they appreciate the Planning Board and how dedicated the members are to the future of the valley.

**ORDINANCE NUMBER 680
 TOWN OF MAGGIE VALLEY
 AN ORDINANCE REGULATING ELECTRONIC GAMING OPERATIONS**

BE IT ORDAINED by the Board of Aldermen of the Town of Maggie Valley:

Section 1. That the following definition be added to the Commercial-1 General Business Definitions in the Maggie Valley Zoning Ordinance:

Electronic Gaming Operation:

A business enterprise, whether principal or accessory, where persons utilize electronic machines, including but not limited to computers and gaming terminals, to conduct games of odds or chance, including sweepstakes, and where cash, merchandise, or other

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items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds. Electronic Gaming Operations do not include operations associated with the official North Carolina Lottery.

Section 2. That the following requirements be listed under the Permitted Use List in the Commercial-1 District in the Maggie Valley Zoning Ordinance:

Electronic Gaming Operation provided that:

- (1) The establishment must be a minimum of one-thousand (1,000) feet from any other organization engaged in an electronic gaming operation business.
- (2) The establishment must be a minimum of one-thousand (1,000) feet from any established religious institution/synagogue, school, daycare center/home; library and public park.
- (3) One-thousand (1,000) square feet of indoor retail floor space needed per machine.

**ALDERMAN PRICE MADE A MOTION TO APPROVE THE ZONING BOARD
 AMENDMENT AS PRESENTED.
 MOTION CARRIED UNANIMOUSLY.**

The fees will be discussed at the February Council meeting.

6. a. Public Hearing on a Zoning Ordinance Text Amendment regarding Non-Conforming Uses.
- b. Consideration of Ordinance No. 681 to amend the Zoning Ordinance to address non-conforming uses.**

Mayor McElroy opened the public hearing at 6:14 p.m.

The proposed Zoning Ordinance Amendment:

**ORDINANCE NUMBER 681
 TOWN OF MAGGIE VALLEY
 AN ORDINANCE AMENDING THE MAGGIE VALLEY ZONING ORDINANCE
 TO REFLECT A TEXT AMENDMENT TO NON CONFORMING USES.**

BE IT ORDAINED by the Board of Aldermen of the Town of Maggie Valley that the current text under nonconforming uses be replaced by the following:

Nonconforming Use

It is the intent of this section to discourage the survival of nonconforming uses and to prohibit their enlargement, expansion or extension. Any building, structure or use of land existing at the time of the enactment of this article or any amendment thereto may be continued subject to the following provision. They shall not be:

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- (1) Changed to another nonconforming use
- (2) Enlarged or extended except in conformity with this article
- (3) Reestablished after discontinuance for ninety (90) days
- (4) Rebuilt, altered or repaired after damage exceeding fifty (50) percent of its tax value immediately prior to damage

Council had several questions. What effect will the amendment have on businesses that close seasonally? If a bar closes, may it be sold and reopen as a bar? What would be the effects on Ghost Town and the Stompin Grounds be?

Again Chairman Billy Brede stated that the Planning Board gave this great thought and had in-depth discussions. The amendment will protect the town from non-conforming uses to continue once they are closed for more than 90-days or destroyed up to 50% of the tax value. There will be no impact on existing permitted businesses.

Director Clark explained that this would apply to night clubs not being able to reopen or sold for the same use (as a night club).

Alderman Price asked that Council receive a list of permitted uses before making a decision on non-conforming uses.

Tammy Wight, owner of the Clarkton Motel, questioned the reason this issue has been brought up.

Attorney Dickson had made this suggestion over a year ago in an effort to tighten up and clarify the non-conforming uses in Commercial 1.

Danny Mitchell, owner of a local motel addressed Council stating that he did not agree with the government telling people what they can do with their own land.

Kyle Edwards, owner of the Stompin Grounds, agreed adding that the town is going to run into problems telling people what they can and cannot do.

Dwight Blankenship, owner of the Alamo Motel, stated that people come to Maggie Valley to rest and have a good time. Soco Road is dead as it is, why create additional hardship on business owners?

Alderman Pauley agreed that the public and Council need to be clear on what impact this amendment would have on the business community.

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Director Clark provided the example of having a dog kennel in the Commercial 1 district. If the kennel has 12 cages, it could not add cages. If the kennel went out of business, for more than 90-days, it could not reopen as a kennel.

Mayor McElroy closed the hearing at 6:34 p.m.

**ALDERMAN PAULEY MADE A MOTION TO TABLE ORDINANCE 681 UNTIL MORE INFORMATION CAN BE OBTAINED.
MOTION CARRIED UNANIMOUSLY.**

7. **Consideration of Resolution No. 10-2 honoring Rosemary Caldwell Evans.**
**ALDERMAN PRICE MADE A MOTION TO APPROVE RESOLUTION NO. 10-2 HONORING ROSEMARY AND THAT A FRAMED COPY IS PRESENTED TO THE FAMILY AND A COPY TO BE DISPLAYED IN TOWN HALL.
MOTION CARRIED UNANIMOUSLY.**

8. **Consideration of entering into an agreement with McGill Associates P.A. to prepare the construction plans for the Old Still Road sewer project.**
The Town received a grant from the NC Rural Center for one-half the cost to run gravity sewer and remove a pump station located at Old Still Road. The total cost is estimated to be \$87,300. The Town and the NC Rural Center would contribute \$43,650 each.

**ALDERMAN EDWARDS MADE A MOTION TO ENTER INTO THE AGREEMENT FOR THE OLD STILL ROAD SEWER PROJECT.
MOTION CARRIED UNANIMOUSLY.**

9. **Consideration of entering into an agreement with McGill Associates P. A. to prepare a sewer Capital Improvements Plan.**
The Town received grant funding from the NC Rural Center to develop a Capital Improvements Plan for the Sewer System. This plan will identify the major capital improvements that the Town will face in the next ten (10) years. By having the plan in place, receiving grant funding for sewer projects will be more favorable. The cost of the plan is \$18,000. The NC Rural Center will provide \$12,000 and the Town will be responsible for the remaining \$6,000.

**ALDERMAN PRICE MADE A MOTION TO ENTER INTO THE AGREEMENT WITH MCGILL ASSOCIATES FOR A SEWER CAPITAL IMPROVEMENTS PLAN.
MOTION CARRIED UNANIMOUSLY.**

10. **Consideration of amending the cell phone policy.**
There are Town employees that are required to carry cell phones 24/7 i.e. Chief Sutton, Public Works Director, Police Captain and the Detective. The new policy would allow

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those using a cell phone to make/ receive personal calls, if kept to a minimum. The Town will pay for the cell phone and the cell phone policy with Verizon Wireless.

Finance Director Wheeler has obtained a governmental rate from Verizon Wireless.

Alderman Price felt the new policy should be implemented. If an officer is working an accident/investigation he should be able to call home to make sure his kids are picked up from school, etc.

An audit will be conducted for the phones that go over the minute limit the policy allows.

Finance Director Wheeler provided Council the IRS guidelines. Council chose to adopt the new policy for cell phone use.

**ALDERMAN PRICE MADE A MOTION TO ADOPT THE NEW CELL PHONE
POLICY.
MOTION CARRIED UNANIMOUSLY.**

11. Consideration of retaining Mark Pinkston with Van Winkle Law Firm to represent the Town in bankruptcy proceedings.

The request is to be able to retain Attorney Pinkston to be used during bankruptcy proceedings only. Attorney Pinkston is a bankruptcy specialist. The Town would be billed for time only. Haywood County uses the same attorney for their collection of taxes during bankruptcy proceedings.

**ALDERMAN EDWARDS MADE A MOTION TO APPROVE THE REQUEST TO
HIRE MARK PINKSTON FOR BANKRUPTCY PROCEEDINGS.
MOTION CARRIED UNANIMOUSLY.**

12. Consideration of changing the number of Parks Recreation and Festival Advisory Committee members from seven plus one alternate to five plus one alternate.

Reducing the number of members would help the committee to have a quorum.

**ALDERMAN PAULEY MADE A MOTION TO REDUCE THE NUMBER OF
MEMBERS TO FIVE FULL MEMBERS AND ONE ALTERNATE MEMBER TO
MAKE IT EASIER FOR THE COMMITTEE TO FUNCTION.
MOTION CARRIED UNANIMOUSLY.**

13. Consideration of the Town participating in the cost of the pedestrian bridge project on Moody Farm Road.

The Moody Farm Road Sidewalk project has two components. The Sidewalk project component has been awarded. The second component is for two (2) pedestrian bridges. The project was projected to be approximately \$300,000. The lowest bid for the bridge

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project came in at \$598,235. The MPO has additional stimulus funding, but it is uncertain how much additional funding will be needed from the Town.

In order to proceed with awarding the contract, NCDOT has asked that the Town commits up to \$100,000. The commitment will give NCDOT the assurance that the project will be completed.

The Town has 1.4 million dollars committed to the project through stimulus funding. Mayor McElroy felt that it would be reprehensible if the Town were to lose a \$1.5 project for Maggie Valley over \$100,000. Running sidewalks will not become any cheaper in years to come. It would be wise to make the allocation and continue forward. The remaining Council members were uncertain about moving forward when all of a sudden without warning the Town is suppose to allocate an additional \$100,000. Council asked if they could change their minds and back out of the agreement. Council also asked if these funds could be allocated without the chance of having to raise taxes in the coming year.

Once the contract is signed, Council can not recant. By allocating these funds, the tax rate will not be affected. Due to time constraints with the State, there is just a window of time for Council to say yea or nay.

**MAYOR MCELROY MADE A MOTION TO APPROVE ALLOCATING UP TO \$100,000 IN THE EVENT IT IS NEEDED TO COMPLETE THE MOODY FARM ROAD SIDEWALK AND BRIDGE PROJECT.
MOTION CARRIED UNANIMOUSLY.**

14. **Consideration of setting a date for a Town Board work session.**

Council decided to hold a work session on February 23 at 9:00 a.m. in the Police Department Conference Room.

15. **Manager's Report.**

The Town of Maggie Valley, Clyde, and Waynesville will hold a Health Fair at the Waynesville Recreation Center on March 18, 2010 from 9 to noon.

The Chamber of Commerce Calendar of Events was distributed.

16. **Other Business.**

Alderman Edwards reported that the Haywood County Parks and Recreation Committee has scheduled interviews for a firm to create the master plan for the Jonathan Creek property on January 21, 2010.

17. **Public Comment.**

Ms. Linda Bennett addressed Council stating that property rights are a basic premise to the way of life. Ms. Bennett asked that the Town not limit people's rights. Ms Bennett

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went on to ask if Council would consider lowering the tax rate due to recent annexations. Due to Council's concerns of not having to raise taxes, Ms. Bennett feared that lowering taxes is not in their vocabulary.

18. **Closed Session – Attorney-Client Privilege.**

ALDERMAN EDWARDS MADE A MOTION TO GO INTO CLOSED SESSION AT 7:19 P.M. AFTER TAKING A FIVE MINUTE BREAK TO CONSULT WITH THE TOWN ATTORNEY IN ORDER TO PRESERVE THE ATTORNEY CLIENT PRIVILEGE.

MOTION CARRIED UNANIMOUSLY.

ALDERMAN PRICE MADE A MOTION TO COME OUT OF CLOSED SESSION AT 8:30 P.M.

MOTION CARRIED UNANIMOUSLY.

19. **Meeting Adjourned**

ALDERMAN PAULEY MADE A MOTION TO ADJOURN AT 8:30 P.M. MOTION CARRIED UNANIMOUSLY.

Mayor Roger McElroy

Vickie Best, Town Clerk, CMC