

## Town of Lake Santeetlah

### Council Meeting Minutes

### Initial Draft Subject To Council Approval

**August 15, 2017**

Mayor Jim Hager called the meeting to order at 10:02AM. Council Members Connie Gross, Karen Anderson, Bob Wehr and Keith Predmore were present for the meeting. Attorney Ellen Davis, Town Administrator Kim Matheson, Clerk Emily Hooper and Public Works Technician Eric Hayes were also present.

The first order of business was the approval of the agenda. Councilman Keith Predmore asked to move Item #1 under New Business: Closed Session RE: Lawsuit by Jack and Connie Gross vs. Town of Lake Santeetlah to Item #9 under New Business so those attending the meeting were not required to exit then return while the Council moved to Closed Session. Councilwoman Connie Gross made a motion to approve the agenda as amended. Councilman Keith Predmore seconded. All others approved, the motion carried.

After review of the July 18, 2017 Council Meeting Minutes there were no additions or changes necessary. Councilman Keith Predmore made a motion to approve. Councilman Bob Wehr seconded. All others approved, the motion carried.

**Financial Report:** Town Administrator Kim Matheson reviewed the balance sheet through July 31, 2017. The balance in the General Operating Checking is \$63,385.73; Water operating \$24,703.40. \$19,907.00 were the tax collections for June reported by the Graham County Tax Office. We have not received the check yet from the County and this amount does not reflect the 5% collection fee charged by the County. The check should be received within the next week and will increase the general fund balance. The DOT paving project is completed and was less than the projected cost of \$54,000.00. Keith Rogers, DOT representative for the project, estimated the cost to be approximately \$7,000.00 – \$9,000.00 less. We will receive a re-imbusement check from the DOT.

#### **Request for Public Comment:**

Tina Emerson, shared her concerns with the road wash out on Santeetlah Trail that needs attention before more damage occurs that could cost a large amount of money to repair. This issue has been discussed in previous Council Meetings. The area in question involves the land that has been surveyed and is awaiting an appraisal in order for the Town to complete a land transfer to the interested property owners. Emerson stated that she knew the Town Council had mentioned in the past using the funds received from the sale to repair the damage. Emerson suggested the Town repair the damage now and the cost for repair be divided among the property owners interested in purchasing the land from the Town. This would be an effective way to determine a cost for the land and the Town would be fixing their own property if completed before the transfer and if deferred the work would be completed to "personal property." According to Emerson it would be a better option to proceed with the repair before moving forward.

Emerson has been actively involved with the Brookfield issues over the past several months and was pleased to review the letter sent out by mass email stating that those with less than 50ft would be grandfathered and would no longer need to obtain additional lake frontage in order to maintain a dock. Emerson asked the Council if they could confirm that the surveys would now go straight down from the property lines. Some of those with less than fifty feet were having surveys that encroached into neighboring properties in order to obtain the sufficient amount of lake-frontage necessary to comply with Brookfield requirements. Emerson asked the Council to confirm this encroachment would no longer be necessary. Councilman Jim Hager spoke as only one member of the Council, surveys of this type would no longer be needed.

Dick Eyestone, shared a story of his grandson from years past when the Town of Lake Santeetlah did not have speed bumps in place. Eyestone's home on Cherokee Trail is in an area where traffic seems to move quickly.

Approximately six or seven years ago Eyestone's grandson was playing outside and ran to the top of the roadway before the adults could reach him. A truck moving at a fast speed for the area was coming through at the same time. If it hadn't been for the speed bumps forcing the truck to slow down, Eyestone strongly feels that there would have been a tragedy that day. Eyestone asked that the bumps be replaced as they were to prevent accidents.

Stephanie Danforth asked if the speed bumps could be smaller. Town Technician Eric Hayes has researched speed bumps and humps. The humps are smaller, and may not be effective in slowing down the speed of passing vehicles.

Gary Lane requested that signage be placed within the Town allowing those passing to be informed to watch for pedestrians.

Mike Danforth suggested that those walking be urged and reminded to walk alongside the curb and not in the roadway.

Lori Broyles thanked all those who had been involved with writing letters and calling Brookfield. The pressure from the Town had obviously been heard and as a homeowner within Lake Santeetlah Broyles was thankful to those who took the time to get these results.

Linda Eyestone strongly urged that the speed bumps be replaced as soon as possible to continue to provide safety to all those within the Town.

Councilman Keith Predmore made a motion to close Public Comment. Councilman Bob Wehr seconded. All others approved. The motion carried.

### **Old Business**

**#1 Cochran, Anderson, Mathews, McNally and McCoy Property on Santeetlah Trail:** No action was taken on this item as we are still waiting to hear from, certified appraiser Dana Jones. Town Administrator Kim Matheson will follow up with Dana Jones. As soon as an update is received the Property Owners will be notified.

**#2 Zoning Regulations/Schedule Public Hearing:** Councilman Connie Gross made a motion to schedule the Zoning Regulation Public Hearing for September 19, 2017 at 1:00PM. This will follow the September Council Meeting. Councilwoman Karen Anderson seconded. All others approved. The motion carried. The last revision of the Zoning Regulations is posted on the website for review.

**#3 Sewer System Survey/Alicia Parham Presentation:** Alicia Parham, Graham County Health Director, resigned and could not be contacted for a presentation. Parham had been with the Health Department for over twenty years and was very familiar with the area and its history. Becky Garland is serving as the interim director. No action on this item at this time.

**#4 Ethics Training for Candidates:** Each Candidate for the November 2017 Town Council Election has completed the ethics training and turned in the certificate of completion for Town Hall records.

### **New Business**

**#1 Resolution to the Graham County Election Board for Absentee Voting and One Stop for November 7, 2017 TOLS Election:** The Town of Lake Santeetlah Town Council approved to have absentee and One Stop voting for the November election at a previous Council Meeting. This Resolution is a formality needed from the Graham County Election Board to submit to the state. Councilwoman Connie Gross made a motion to approve the Resolution.

Councilman Bob Wehr seconded. All others approved. The motion carried. The Resolution will be delivered to the Graham County Election Board this afternoon.

**#2 Jack Lovin, 61 Nantahala Terrace, Purchase of Town Property abutting the 1817 Contour Line of Lake**

**Santeetlah:** Mayor Jim Hager asked for a motion to combine Item #2 - #7 as they all involve land transfers from the Town of Lake Santeetlah to Town Property Owners. Councilwoman Connie Gross made a motion to combine the items. Councilman Keith Predmore seconded. All others approved. The motion carried.

In the past the Town of Lake Santeetlah has used a combination of NC State Statute and practice. The Statute states that the Town shall advertise the ten day period of transfer. Historically this responsibility has been transferred to Mack Tallant, an attorney in Graham County. Mayor Jim Hager suggested that until a procedure is in place of how land will be transferred from this point forward and approved by Town Attorney Ellen Davis the following six land transfers be rejected. Any further advertising needed for these properties would be paid for by the Town. Attorney Ellen Davis will assist in preparing a Resolution for the town to proceed with land transfers according to the Law. Councilman Keith Predmore made a motion to reject the following transfers until a new resolution is completed. Councilwoman Karen Anderson seconded. Councilwoman Connie Gross opposed. The motion passed, three to one.

**#3 Kingsley Miner, 161 Nantahala Trail, Purchase of Town Property abutting the 1817 Contour Line of Lake**

**Santeetlah:** See Item #2

**#4 Kenneth Degarmo, 40 Santeetlah Point, Purchase of Town Property abutting the 1817 Contour Line of Lake**

**Santeetlah:** See Item #2

**#5 Leslie Casse, 55 Nantahala Terrace, Purchase of Town Property abutting the 1817 Contour Line of Lake**

**Santeetlah:** See Item #2

**#6 Jack Gross, 75 Nantahala Terrace, Purchase of Town Property abutting the 1817 Contour Line of Lake**

**Santeetlah:** See Item #2

**#7 Purchase of Town Property/Bruce Weaver:** See Item #2

**#8 Replacement of Speed Bumps within the Town:** The speed bumps were removed for the DOT to complete road re-surfacing within the Town. Some of the bumps that were removed are beyond repair. Town Technician Eric Hayes has researched prices for new speed bumps and will report those to the Town Council. Any additional comments regarding the speed bumps can be submitted to Town Hall.

**#9 Closed Session RE: Lawsuit by Jack and Connie Gross vs. Town of Lake Santeetlah:** Pursuant to the provisions of North Carolina General Statute 143-318.11 (a) (3) and North Carolina General Statute 143-318.11 (c), I Karen Anderson move that the Town of Lake Santeetlah Town Council go into Closed Session to receive advice relative to the following existing lawsuit which is presently pending: Jack and Connie Gross vs. Town of Lake Santeetlah Town Council, currently pending in the Superior Court of Graham County, North Carolina. Councilman Keith Predmore seconded. All others approved. The motion carried.

**#10 Motion to Recess Council Meeting until 1:00PM:** Councilwoman Connie Gross made a motion to recess from the regular scheduled Council meeting until 1:00PM for lunch. The Public Hearing will begin at 1:00PM.

Councilman Bob Wehr seconded. All others approved. The motion carried.

**#11 Motion to Open Public Hearing:** Councilman Keith Predmore made a motion to open the Public Hearing.

Councilwoman Connie Gross seconded. All others approved, the motion carried.

**#12 Occupancy Tax Public Hearing:** The Town of Lake Santeetlah was authorized by the General Assembly in 2015 to collect Occupancy Tax. In order to proceed the Town must pass a Resolution. Chris McLaughlin, from the NC

School of Government has previously reviewed the questions that the residents submitted in hopes of providing clarification on certain issues regarding the tax. McLaughlin was available by conference call.

How can the tax be spent? What restrictions are there on the tax revenue?

Chris McLaughlin – There are two exclusive requirements regarding use of Occupancy Tax funds. Two thirds of the money must be used to promote travel and tourism. This is well defined in the statute and must be used to advertise and promote tourism. The funds would not solely have to be used to advertise/promote Lake Santeetlah but could promote the County as a whole. The money could be handed over to Graham County to use for promotion. The remaining one third is more of a “grey area” but must be used on tourism related expenditures. Road Maintenance and Security according to Chris would not likely be approved expenditures as they are budgeted items in the General Operating Budget for the Town. The TDA must be able to go on record and provide a reasonable explanation of why/how the expenditure would be promoting tourism. All money received from Occupancy Tax is controlled by the TDA and not the Town Council.

What happens if the TDA violates the expenditure restrictions?

There are only two ways to control/eliminate violations by the TDA. The Town Council can make changes to the TDA Board. The Town Council controls who is on the Board and the length of terms, but does not have control of the money. This is the political solution. The other solution would be legal. Taking the TDA to court to argue that the funds are being misused. If the court were to rule on the case, it would likely enforce that moving forward funds must be used differently. Such legal actions would result in high cost with little penalty therefore few cases end up in court. Most situations can be handled by the Town Council controlling TDA board members.

Lori Broyles (resident of Lake Santeetlah), shared with Mr. McLaughlin that at the onset of the meeting it was asked if the Town of Lake Santeetlah collected property taxes. Mrs. Broyles affirmed to McLaughlin that the Town does receive revenue from property taxes however does not collect the tax here. Broyles asked McLaughlin if he was attempting to inquire by asking the question if the Town had the infrastructure to implement and collect Occupancy Tax. Broyles explained that the administration may not be capable of collections as they currently do not collect property tax. McLaughlin suggested that the County be used for the collection of Occupancy Tax for Lake Santeetlah. Mayor Jim Hager stated that this idea had been approached numerous times but denied by Graham County Staff. McLaughlin shared certain responsibilities that would be included in the collection of the tax; locating rentals, billing rental owners, account keeping and reporting to the TDA, yearly audit preparation and notifying those who are late of non-payment. Broyles, a tax attorney, asked for clarification that the Town could outsource the collection to the County despite the General Assembly’s authorization for the Town to collect. McLaughlin confirmed that just as the property tax is outsourced the occupancy tax could work the same. Broyles asked if the revenue that would be received from the tax would compensate for the infrastructure that would need to be implemented for the Town to collect. This question is difficult to determine until the tax is implemented. At this time the Town will be permitted to collect an additional 3% above what the County collects.

Tina Emerson - Can the revenue from the Occupancy Tax be used in other areas?

Chris McLaughlin – The funds can be used anywhere within the County or Region to promote tourism.

Can the tax be used for other items that the Town may need or want, such as to pay for security or repave roads?

No, Regular occurring Expenses would not fall under tourism promotion.

Should the Town Council include TDA bylaws in the OT resolution?

The TDA sets up its own procedures. The Town Council can provide guidance, and the Town Council appoints members to the TDA however cannot control the TDA’s decisions. The TDA decides how to use and distribute the funds.

How many members typically serve on the TDA Board?

Five in most cases, however that number can vary.

Mike Danforth – Does the TDA need to only include North Carolina residents?

No, as long as the individual has an interest in Occupancy Tax and tourism they would qualify to serve.

Jack Gross – Do we feel that we can administratively support and disperse funds with approximately \$600.00 (Jack's opinion) of Revenue expected to be received from the OT Tax?

That amount seems small to administer, maintain and disperse the OT tax.

Connie Gross – There are no restaurants, beaches, parks, stores, or businesses of any sort within the Town therefore who can serve on the TDA?

The rental home owners would be most appropriate to serve as they are the only "business owners" within the Town. 1/3-1/2 of the members could include rental owners, and the remaining should be those actively involved with promoting travel and tourism within the community. Members of the Town Council are eligible to serve as well as those involved with tourism in Graham County not only Lake Santeetlah.

Lori Broyles – confirmed that those renting their homes within Lake Santeetlah are the only ones actively promoting tourism and should make up the majority of the TDA Board.

Email Question – Can the funds collected from OT be used for things such as the heritage festival in Graham County?

Yes, the funds can be used to promote tourism anywhere within the County.

Can the funds be used for signage and website maintenance?

Yes, the website can advertise places to visit within the Community, share pictures of Lake Santeetlah, and help to draw visitors to the area. Signage and the beautification of the grounds would both be approved as expenditures.

Stephanie Danforth – Do we have a written quote for the cost of the audit for the OT?

There is an annual audit that must be completed. McLaughlin could not confirm the \$600.00 price quoted but acknowledged that an audit is required.

The TDA is responsible for developing and writing TDA by-laws, why has the Town been involved in writing any by-laws and what involvement will the town have in the TDA?

The TDA is responsible for developing its own procedures and guidelines. The Town monitors and approves the TDA members and term lengths, but does not control or have any authority of the decisions made by the TDA. The spending can be monitored/enforced politically as the Town Council has the authority to remove members from the TDA. The reasons for removal should be stated in the Resolution the Town will approve.

Are the Council members allowed to be on the TDA?

Yes, Council members qualify to serve on the TDA Board.

Does the Town Council or the TDA fill vacancies in the TDA board after the initial appointment?

The Town Council appoints members to the board.

Chris McLaughlin, would not offer an opinion as to whether he felt proceeding with OT would be a wise decision for TOLS. McLaughlin stated that it would be a policy decision.

Steve Poole – Shared that he had read a story from Durham NC of a town that implemented OT. The Town had restaurants, businesses, and tourism related venues in place prior to collecting the tax. They didn't use the OT as a "grass roots" starter to promote and bring tourism to the area.

Andy Owens – If the administrative costs exceeds the 3% collected who picks up the difference?

Any administrative expenses that exceed the 3% would fall back to the Town to cover.

Does the TDA or Town enforce/penalize for non-payment?

The TDA's responsibility is spend the money. The Town would be responsible for enforcing. The Town would have the same penalty options for collection as the County has for property taxes other than foreclosure. Attachments and garnishment, owners wages, bank accounts, levy personal property are all options to satisfy the tax. The costs for these enforcements fall on the Town.

Bob Wehr – There are over 30 rental homes within Lake Santeetlah which the Town would collect the tax from. There are two TDA boards in the area (Graham County and Fontana) which spend the bulk of their revenue on salaries, administrative costs, fireworks, parades, and festivals all of which Lake Santeetlah could contribute.

Jack Gross – asked if there was specific certifications and trainings required to garnish wages?

It is recommended, but not required to receive training.

Lori Broyles – asked Mr. McLaughlin to confirm that if the Town were to collect the tax improperly it would be liable for lawsuits and legal action.

Yes, the tax must be collected properly or legal action could occur.

Mayor Jim Hager, thanked Mr. McLaughlin for his time and willingness to answer the questions from residents. If there are any further comments or questions Mr. McLaughlin offered his assistance.

Stephanie Danforth – explained that after hearing all the information presented it seems as though the Town of Lake Santeetlah is not a Town that should consider collecting OT. Danforth stated that it seems the collection of the tax would cost more than the revenue received. Why would we want to potentially use our general fund money to give away to the County?

Jack Gross – Is the Town going to spend more than it makes from the Tax? Graham County is set up to collect the tax, why not let them do it? The Planning and Council Meetings have been troublesome and contentious so why would we add another meeting that could potentially cause more trouble?

Lori Broyles – acknowledges that she is attending this meeting somewhat unaware of what has been going on and discussed in the past however asked, what is driving the Town to have a desire to collect OT?

Broyles also stressed the importance as a tax attorney of following all appropriate procedural practices in this process.

Tina Emerson – asked if there will be discussion about OT at some point or will the public continue to comment without any answers received.

Mayor Jim Hager explained that OT had been discussed for several years.

Emerson asked if she prepared a survey on survey monkey (online application) asking what others think about OT, would it be considered by the Council prior to making any final decisions.

If the survey is presented to the Council, it will be reviewed.

Broyles – asked why Graham County refuses to collect the Tax?

Graham County is not interested in entering any type of agreement with the Town to collect the tax and return any funds or favors. This could be re-visited at another time.

Steve Poole – asked the Council to please research and study the OT thoroughly.

Tina Emerson – (currently rents her home at Lake Santeetlah) states that at times the amount of paper work can become overwhelming and the time spent seems insufficient for the small amount of funds expected. Emerson recommended a special assessment tax instead of collecting OT.

Attorney Davis – Provided clarity on some questions that were asked today. Sharon Edmundson, NC State Treasury Director, refers to operating procedures as by-laws. Edmundson requires each TDA to operate by its own approved by-laws. Davis explained that those by-laws are simply the operating procedures of the board.

Failure to pay occupancy taxes results in criminal offenses as authorized by the NC General Assembly. The first offense is a Class 1 Misdemeanor and second offense is Class H Felony. The County Sheriff would serve a warrant for failure to pay.

Davis explained that day to day expenditures would not be appropriate OT funds. However a project at a road entrance or signage could be justified as promoting tourism.

Stephanie Danforth shared that 2/3 of the money received must be spent on tourism promotion which would mean that we proceed with the process only to give the funds to Graham County as Lake Santeetlah does not have tourist attractions to promote.

Danforth asked that the Council please address the questions and concerns before any action is taken.

**#13 Motion to Close Public Hearing:** Councilman Keith Predmore made a motion to close the Public Hearing. Councilwoman Connie Gross seconded. All others approved. The motion carried.

**#14 Action on Occupancy Tax:** Councilman Keith Predmore made a motion to defer any action on Occupancy tax until further review of public comments. The item will be on the September 19, 2017 Council Meeting.

#### **Discussion Items**

**#1 Tax Report 2017:** The first collection for the 2017-18 fiscal year is \$19,907.44. This amount was all current year collections.

**Announcements:**

Mayor Jim Hager announced that the next Council Meeting is September 19, 2017 at 10:00AM followed by a Zoning Regulation Public Hearing at 1:00PM both at Town Hall.

With no further business at this time Councilman Bob Wehr made a motion to adjourn the meeting. Councilwoman Connie Gross seconded, all others agreed. The motion carried. Mayor Jim Hager adjourned the meeting at 2:10PM.

**Meeting Adjourned**

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Jim Hager, Mayor

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Emily Hooper, Town Clerk