

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 574
Committee Substitute Favorable 4/18/91
Third Edition Engrossed 4/23/91

Short Title: Foscoe Incorporated.

(Local)

Sponsors:

Referred to:

April 2, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO INCORPORATE THE TOWN OF FOSCOE.

3 The General Assembly of North Carolina enacts:

4 Section 1. A Charter for the Town of Foscoe is enacted to read:

5 "CHARTER OF THE TOWN OF FOSCOE.

6 "CHAPTER I.

7 "INCORPORATION AND CORPORATE POWERS.

8 "Section 1.1. **Incorporation.** The citizens of the area described in Chapter II shall
9 be and constitute a body politic and corporate under the name of 'Town of Foscoe' and
10 shall have all the powers, authority, rights, privileges, and immunities conferred upon
11 municipal corporations by the Constitution and general laws of North Carolina.

12 "Sec. 1.2. **Powers.** The Town shall have all the powers, duties, rights, privileges
13 and immunities now vested in the Town and now or hereafter granted to municipal
14 corporations by the laws of the State of North Carolina and by this Charter. The Town
15 shall exercise and enjoy all other powers, functions, rights, privileges and immunities
16 necessary or desirable to promote or protect the safety, health, peace, security, good
17 order, comfort, convenience, and general welfare of the Town and of its citizens, unless
18 otherwise prohibited in this Charter.

19 "CHAPTER II.

20 "CORPORATE BOUNDARIES.

21 "Sec. 2.1. Until changed in accordance with law, the boundaries of the Town are:

1 A 1.71 +/- square mile tract within the Foscoe/Grandfather Community of Watauga
2 River and being briefly described as:

3 Beginning on the point of intersection of the southern right-of-way (50 feet from the
4 center) of NC 105 with the Avery-Watauga County line; thence northwest with the
5 County line to Parcel #9618; thence easterly with the lines of Parcels 9618 and 4575 to
6 the northern right of way of 105; thence with the northern R/W of 105 to the point
7 where parcel 4675 leaves the highway; thence leaving the highway and running
8 northeasterly with the lines of Parcels 4675, 1686, 4616, 8565, 9927, 4342, 2319, 7007,
9 9951, 4567, 3503, and 6566 to the corner of Parcel 6566 in the Town of Seven Devils
10 line; thence southeasterly with the Seven Devils line to NC 105; thence with 105 to the
11 point where Seven Devils leaves the highway; thence leaving the highway and with the
12 Seven Devils lines northwesterly and then northeasterly to the corner of Seven Devils
13 and Parcel 1638; thence northeasterly with the lines of parcels 1638 and 4660 to the
14 corner of Parcel 4060 and 8438 at the old Tweetsie Rail Road bed; thence northeasterly
15 with the old Tweetsie Railroad bed and various tracts in the Devils Den Development to
16 the point where Parcel 0035 leaves the old railroad bed; thence westerly with parcels
17 1140, 1158, 1330, 1365, 1594, 7363, 6544, 2984, 4844, and 2984 to the northern R/W
18 of NC 105; thence with the highway to the point where Parcel 2984 (Camp Rainbow)
19 leaves the highway; thence leaving the highway and running northerly with parcels
20 2984 and 7585 to the corner of Parcel 7585 at Clarks Creek Road, NCSR 1136; thence
21 crossing the road and running southeasterly with the lines of Parcel 0389 crossing NC
22 105 to Watauga River; thence northeasterly down the river to the corner of parcel 0389
23 and 4281; thence leaving the river and running southwardly with the lines of parcels
24 4281, 4394, 8395, 9311, 7846, 2651, and 7846 to the point where Parcel 7846 intersects
25 Holloway Mountain Road, NCSR 1559; thence westerly with the road to the point of
26 intersection of Holloway Mountain Road with Church Road, NCSR 1560; thence
27 continuing northwesterly with NCSR 1559, Church Road, to the point where Parcel
28 1567 leaves the road; thence westwardly with the lines of Parcel 1567 to Watauga
29 River; thence westwardly up the river to the point where Parcel 7254 leaves the river;
30 thence westwardly with the lines of Parcels 7254, 2601, 1463, 7199, 0079, 7216, 7074,
31 6893, 5025, and 0347 returning to Watauga River; thence southwesterly with the river
32 to the point where Parcel 6980 leaves the river; thence southeasterly with the lines of
33 Parcel 6980 to the corner of Parcel 6980 and 3852; thence westerly with the lines to
34 Parcels 3852, 2212, 9580, 7415, 4543, and 0662 to Watauga River; thence
35 southwesterly up the river to the eastern corner of parcel 4299 at the river; thence
36 leaving the river with the lines of Parcel 4299 northwesterly to the southern R/W of NC
37 105; thence southwesterly with the southern R/W to the beginning.

38 Containing 1092 acres more or less (gross). From the above is excepted
39 approximately 17 acres satellite annexed by the Town of Seven Devils in the vicinity of
40 NC 105 and Seven Devils Road, NCSR 1151.

41 "CHAPTER III.

42 "GOVERNING BODY.

43 "Sec. 3.1. **Number of Members.** The governing body shall consist of five
44 members called aldermen.

1 "Sec. 3.2. **Manner of Election of Aldermen.** The qualified voters of the entire
2 Town of Foscoe shall elect the aldermen.

3 "Sec. 3.3. **Term of Office of Aldermen.** Five aldermen are to be elected at the
4 regular Town election in November of 1991. The three persons who receive the highest
5 number of votes shall serve a four-year term, and the two persons receiving the next
6 highest number of votes shall serve a two-year term. The terms will continue to be
7 staggered, with ensuing aldermen being elected for four-year terms. Only residents and
8 qualified voters are eligible to be a candidate or be elected an alderman or serve in such
9 capacity.

10 "Sec. 3.4. A mayor will be selected from the Board of Aldermen by the Board of
11 Aldermen whose duties will be those provided by law.

12 "Sec. 3.5. **Recall.** Any member of the Board of Aldermen may be removed from
13 office in the following manner:

14 (1) Any elector of the Town may make and file with the Town Clerk an
15 affidavit containing the name of the alderman whose removal is sought
16 and a statement of the grounds alleged for his removal. The Clerk
17 shall thereupon deliver to the elector making such affidavit copies of
18 petition blanks for demanding such a removal, printed forms of which
19 shall be kept on hand. Such blanks shall be issued by the Clerk with
20 the Clerk's signature thereto attached and shall be dated and addressed
21 to the Board of Aldermen, indicating the person to whom issued and
22 stating the name of the officer whose removal is sought. A copy of the
23 petition shall be entered in a record book kept for that purpose in the
24 office of the Clerk. A recall petition to be effective must be returned
25 and filed with the Clerk within 30 days after the filing of the affidavit
26 and to be sufficient must bear the signature of at least thirty-three
27 percent (33%) of the registered voters of the Town as shown by the
28 registration records for the last preceding general municipal election.

29 (2) If a recall petition shall be certified by the Clerk to be sufficient, the
30 Clerk shall at once submit it to the Board of Aldermen with
31 certification to that effect and shall notify the officer whose removal is
32 sought of such action. If the officer whose removal is sought does not
33 resign within five days after such notice the Board of Aldermen shall
34 thereupon order and fix a day for holding a recall election. Any such
35 election shall be held not less than 70 nor more than 100 days after the
36 petition has been certified to the Board of Aldermen, and it may be
37 held at the same time as any other general or special election within
38 such period; but if no other election is to be held within such period
39 the Board of Aldermen shall call a special recall election to be held
40 within the time aforesaid.

41 (3) The question of recalling any number of officers may be submitted at
42 the same election, but as to each such officer a separate petition shall
43 be filed and there shall be an entirely separate ballot.

(4) The ballots used in a recall election shall submit the following propositions in the order indicated:

- a. For the recall of (name of officer).
- b. Against the recall of (name of officer).

Except that the spaces left for the name and date shall be filled by the correct name and date, the ballots used in a recall election shall be in form substantially as follows:

**'RECALL ELECTION
TOWN OF FOSCOE**

_____ (Month and day of month) _____ 19__

- For the recall of _____
- Against the recall of _____'.

(5) If a majority of the votes cast on the question of recalling an officer are not for such recall, the person shall continue in office for the remainder of the unexpired term, but subject to the recall as before. If a majority of such votes be for the recall of the officer designated on the ballot, the person shall, regardless of any defects in the recall petition, be deemed removed from office.

(6) If an officer in regard to whom a sufficient recall petition is submitted to the Board of Aldermen shall resign before the election, or be removed as a result thereof, the vacancy so caused shall be filled in the manner provided by this Charter for filling vacancies in such office, except as provided in subdivision (8) of this section. An officer removed by the voters as the result of a recall election or resigning after a sufficient petition for his recall has been submitted to the Board of Aldermen, shall not be reelected to fill the vacancy caused by his own removal or resignation.

(7) No recall petition shall be filed against an officer within three months after he takes office, during the last four months of his term, nor, in the case of an officer subjected to a recall election and not removed thereby, until at least six months after that election.

(8) If the recall of a majority of the members of the Board of Aldermen shall be effected at a single recall election, the successors of the officers recalled shall be elected by the registered, qualified voters of the Town at a special municipal election and said successors shall serve for the unexpired part of the terms of the officers recalled. The members of the Board of Aldermen who have not been recalled may call said special election and make all necessary provisions regarding the same in conformity to the Constitution and general laws of North Carolina. If the recall of all of the members of the Board of Aldermen shall be effected at a single recall election, they shall be continued in office for the purpose, and only for the purpose, of calling a special municipal election for the election of their successors as above provided, and of ascertaining and declaring the result thereof.

1 "Sec. 3.6. **Pay for Aldermen.** The aldermen shall receive no pay.

2 "**CHAPTER IV.**

3 "**ELECTIONS.**

4 "Sec. 4.1. **Conduct of Town Elections.** The Town officers shall be elected on a
5 nonpartisan basis, and the results determined by plurality as provided in G.S. 163-292.
6 Elections shall be conducted by the Watauga County Board of Elections.

7 "Sec. 4.2. **Interim Budget.** The Board of Aldermen may adopt a budget ordinance
8 for the 1991-92 fiscal year, following their qualifications for office, without having to
9 comply with the budget preparation and adoption timetable set out in the Local
10 Government Budget and Fiscal Control Act. If the initial budget is adopted after July 1,
11 1991, then taxes may be paid at par or face amount within 90 days of adoption of the
12 budget, and thereafter according to the schedule in G.S. 105-360 as if the taxes had been
13 due on September 1, 1991.

14 "Sec. 4.3. **Initial Board.** Until the organizational meeting of the Board of
15 Aldermen after the 1991 municipal election, Tom Foxx, David Taylor, Clarence Berry,
16 Dan Klink, and Nancy Chamblin are appointed as members of the Board of Aldermen.

17 "**CHAPTER V.**

18 "**ADMINISTRATION.**

19 "Sec. 5.1. The Town of Foscoe shall operate under the mayor-council plan as
20 provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

21 Sec. 2. This act is effective upon ratification.