

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 574

Short Title: Foscoe Incorporated.

(Local)

Sponsors: Representatives Judy Hunt; and Wilmoth.

Referred to: Local and Regional Government II.

April 2, 1991

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

The General Assembly of North Carolina enacts:

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

**"CHARTER OF THE TOWN OF FOSCOE.**

**"CHAPTER I.**

**"INCORPORATION AND CORPORATE POWERS.**

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

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

**"CHAPTER II.**

**"CORPORATE BOUNDARIES.**

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

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

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

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

### 39 "CHAPTER III.

#### 40 "GOVERNING BODY.

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

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

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

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

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

- 12 (1) Any elector of the Town may make and file with the Town Clerk an  
13 affidavit containing the name of the alderman whose removal is sought  
14 and a statement of the grounds alleged for his removal. The Clerk  
15 shall thereupon deliver to the elector making such affidavit copies of  
16 petition blanks for demanding such a removal, printed forms of which  
17 shall be kept on hand. Such blanks shall be issued by the Clerk with  
18 the Clerk's signature thereto attached and shall be dated and addressed  
19 to the Board of Aldermen, indicating the person to whom issued and  
20 stating the name of the officer whose removal is sought. A copy of the  
21 petition shall be entered in a record book kept for that purpose in the  
22 office of the Clerk. A recall petition to be effective must be returned  
23 and filed with the Clerk within 30 days after the filing of the affidavit  
24 and to be sufficient must bear the signature of at least thirty-three  
25 percent (33%) of the registered voters of the Town as shown by the  
26 registration records for the last preceding general municipal election.
- 27 (2) If a recall petition shall be certified by the Clerk to be sufficient, the  
28 Clerk shall at once submit it to the Board of Aldermen with  
29 certification to that effect and shall notify the officer whose removal is  
30 sought of such action. If the officer whose removal is sought does not  
31 resign within five days after such notice the Board of Aldermen shall  
32 thereupon order and fix a day for holding a recall election. Any such  
33 election shall be held not less than 70 nor more than 100 days after the  
34 petition has been certified to the Board of Aldermen, and it may be  
35 held at the same time as any other general or special election within  
36 such period; but if no other election is to be held within such period  
37 the Board of Aldermen shall call a special recall election to be held  
38 within the time aforesaid.
- 39 (3) The question of recalling any number of officers may be submitted at  
40 the same election, but as to each such officer a separate petition shall  
41 be filed and there shall be an entirely separate ballot.
- 42 (4) The ballots used in a recall election shall submit the following  
43 propositions in the order indicated:  
44 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-GRANDFATHER**

(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.

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

**"CHAPTER IV.**

**"ELECTIONS.**

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

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

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

14 **"CHAPTER V.**

15 **"ADMINISTRATION.**

16 "The Town of Foscoe-Grandfather shall operate under the mayor-council plan as  
17 provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

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