

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 553
HOUSE BILL 574

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:

Beginning on the point of intersection of the southern right-of-way (50 feet from the center) of NC 105 with the Avery-Watauga County line; thence northwest with the County line to Parcel #9618; thence easterly with the lines of Parcels 9618 and 4575 to the northern right of way of 105; thence with the northern R/W of 105 to the point where parcel 4675 leaves the highway; thence leaving the highway and running northeasterly with the lines of Parcels 4675, 1686, 4616, 8565, 9927, 4342, 2319, 7007, 9951, 4567, 3503, and 6566 to the corner of Parcel 6566 in the Town of Seven Devils line; thence southeasterly with the Seven Devils line to NC 105; thence with 105 to the point where Seven Devils leaves the highway; thence leaving the highway and with the Seven Devils lines northwesterly and then northeasterly to the corner of Seven Devils and Parcel 1638; thence northeasterly with the lines of parcels 1638 and 4660 to the corner of Parcel 4060 and 8438 at the old Tweetsie Rail Road bed; thence northeasterly with the old Tweetsie Railroad bed and various tracts in the Devils Den Development to

the point where Parcel 0035 leaves the old railroad bed; thence westerly with parcels 1140, 1158, 1330, 1365, 1594, 7363, 6544, 2984, 4844, and 2984 to the northern R/W of NC 105; thence with the highway to the point where Parcel 2984 (Camp Rainbow) leaves the highway; thence leaving the highway and running northerly with parcels 2984 and 7585 to the corner of Parcel 7585 at Clarks Creek Road, NCSR 1136; thence crossing the road and running southeasterly with the lines of Parcel 0389 crossing NC 105 to Watauga River; thence northeasterly down the river to the corner of parcel 0389 and 4281; thence leaving the river and running southwardly with the lines of parcels 4281, 4394, 8395, 9311, 7846, 2651, and 7846 to the point where Parcel 7846 intersects Holloway Mountain Road, NCSR 1559; thence westerly with the road to the point of intersection of Holloway Mountain Road with Church Road, NCSR 1560; thence continuing northwesterly with NCSR 1559, Church Road, to the point where Parcel 1567 leaves the road; thence westwardly with the lines of Parcel 1567 to Watauga River; thence westwardly up the river to the point where Parcel 7254 leaves the river; thence westwardly with the lines of Parcels 7254, 2601, 1463, 7199, 0079, 7216, 7074, 6893, 5025, and 0347 returning to Watauga River; thence southwestly with the river to the point where Parcel 6980 leaves the river; thence southeasterly with the lines of Parcel 6980 to the corner of Parcel 6980 and 3852; thence westerly with the lines to Parcels 3852, 2212, 9580, 7415, 4543, and 0662 to Watauga River; thence southwestly up the river to the eastern corner of parcel 4299 at the river; thence leaving the river with the lines of Parcel 4299 northwesterly to the southern R/W of NC 105; thence southwestly with the southern R/W to the beginning.

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

"CHAPTER III.

"GOVERNING BODY.

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

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

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

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

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

- (1) Any elector of the Town may make and file with the Town Clerk an affidavit containing the name of the alderman whose removal is sought

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

- (2) If a recall petition shall be certified by the Clerk to be sufficient, the Clerk shall at once submit it to the Board of Aldermen with certification to that effect and shall notify the officer whose removal is sought of such action. If the officer whose removal is sought does not resign within five days after such notice the Board of Aldermen shall thereupon order and fix a day for holding a recall election. Any such election shall be held not less than 70 nor more than 100 days after the petition has been certified to the Board of Aldermen, and it may be held at the same time as any other general or special election within such period; but if no other election is to be held within such period the Board of Aldermen shall call a special recall election to be held within the time aforesaid.
- (3) The question of recalling any number of officers may be submitted at the same election, but as to each such officer a separate petition shall 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.

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

"CHAPTER IV.

"ELECTIONS.

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

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

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

"CHAPTER V.

"ADMINISTRATION.

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

Sec. 2. (a) The Watauga County Board of Elections shall conduct an election on a date set by it, to be not less than 60 nor more than 120 days after the date of ratification of this act, for the purpose of submission to the qualified voters of the area described in Sec. 2.1 of the Charter of the Town of Foscoe, the question of whether or not such area shall be incorporated as the Town of Foscoe. Registration for the election shall be conducted in accordance with G.S. 163-288.2. The Watauga County Board of Elections shall provide for absentee voting on the referendum on the incorporation of the Town of Foscoe.

(b) In the election, the questions on the ballot shall be:

FOR incorporation of the Town of Foscoe

AGAINST incorporation of the Town of Foscoe'.

Sec. 3. In such election, if a majority of the votes are cast 'FOR incorporation of the Town of Foscoe,' this Charter shall become effective on the date that the Watauga County Board of Elections determines the result of the election. Otherwise, Section 1 of this act shall have no force and effect.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives