

MINUTES
BEECH MOUNTAIN TOWN COUNCIL
Regular Meeting – September 20, 2011

I. CALL TO ORDER

Mayor Rick Owen called the regular meeting of the Beech Mountain Town Council to order at 3:03 p.m., Tuesday September 20, 2011 in the Town Hall Council Chambers. Other Council Members present were Paul Piquet, Rick Miller and Cindy Keller. Alan Holcombe was not in attendance. Town Attorney Stacy C. Eggers, IV was present. Staff members present were Town Manager Randy Feierabend; Town Clerk Jennifer Broderick, Finance Officer Nancy Johnson, Town Planner James Scott, Public Works Director Riley Hatch and Public Utilities Director Robert Heaton.

II. Invocation – John Troxler presented the invocation.

III. Pledge of Allegiance – All present joined in the Pledge of Allegiance to the flag.

IV. Adoption of Agenda – Mayor Owen stated that the agenda had been amended prior to the start of the meeting to switch the order of items e. and f. under section VIII. New Business. Mayor Owen stated that the agenda would stand as presented.

V. Approval of the Minutes

a. July 28, 2011 Special Meeting; August 9, 2011 Regular Meeting & August 9, 2011 Closed Session Minutes – Vice Mayor Piquet motioned to approve the July 28, 2011 Special Meeting Minutes. Councilman Miller seconded the motion and the vote passed unanimously. Vice Mayor Piquet motioned to approve the August 9, 2011 Regular Meeting Minutes. Councilman Miller seconded the motion and the vote passed unanimously. Vice Mayor Piquet motioned to approve the August 9, 2011 Closed Session Minutes. Councilman Miller seconded the motion and the vote passed unanimously.

VI. Public Hearing

a. Public Hearing to Amend Zoning Ordinance to Allow Alterations to Structures Located Within the Setback – Vice Mayor Piquet motioned to open the public hearing. Councilman Miller seconded the motion and the vote passed unanimously. Hearing no public comment Vice Mayor Piquet motioned to close the public hearing. Councilman Miller seconded the motion and the vote passed unanimously.

VII. Public Comment

There was no public comment.

VIII. New Business

a. Proclamation for Henry Potter – Mayor Owen read aloud the Proclamation for Henry Potter and extended his gratitude to Mr. Potter for his years of service to the Town. Those in attendance stood and applauded Mr. Potter's achievement.

b. Resolution to Exchange Property – Mayor Owen stated that this proposed property exchange would further enhance the Towns trail system. Vice Mayor Piquet motioned to pass resolution number 2011-08 to exchange property. Mayor Owen seconded the motion and the vote passed unanimously. Resolution No. 2011-08 is attached as Exhibit A and incorporated by reference as if fully set out within these minutes.

c. Geographic Information System Equipment – Town Planner James Scott stated that staff is making a request of Council to be allowed to acquire Geographical Information System Equipment for the purpose of locating existing water and sewer lines. Staff is specifically requesting to purchase a Trembele GeoExplorer XT with ArcPAD software. The total cost is approximately \$11,000 and does include training. Mr. Scott stated that Geographic Information Systems are about data collection and correlation as much as they are about location. This combined information allows for greater analysis. One of the Water and Sewer Study Report findings was that the Town had collected a lot of data over 10 years ago. However since the collection of this data it has not been kept up to date. Staff believes that ArcGIS will be able to be used to share the data with all employees. This software is free. Councilwoman Keller asked if there would be one designated person that would be in control of this project and secondly whether or not the Town could be reimbursed by Hobbs and Upchurch. Mr. Scott stated that he would be responsible for the project. Mayor Owen stated that Hobbs and Upchurch had been charging the Town to host the Geographical Information Site and not to keep the data current. Mayor Owen stated that a final decision would be made on this proposal later in the meeting when Council discussed the proposed budget amendments. Councilwoman Keller asked if this new program would tie into the administrative staff's new software. Mr. Scott stated that he is hoping to be able to manipulate the software for this use.

d. Fall Utility Projects –

i. Description and Cost for Water Plant Work – Manager Feierabend stated that the repairs and construction cost for the Water Plant would be approximately \$80,000. This figure does not include anything except outside contractors. Manager Feierabend discussed the cost of the Tube Settlers as well stating that the total estimated cost for the Tube Settlers would be \$25,000.

ii. New High Service Pump for the Water Treatment Plant – Manager Feierabend stated that the total estimated cost for the new high service pumps for the Water Treatment Plant would be \$73,000.

iii. Tank Mixer Installation in Six Existing Tanks – Manager Feierabend stated that the total estimated cost for the Tank Mixers for the six existing tanks would be \$18,000.

iv. Installation of Seven Auto Flush Valves – Manager Feierabend stated that the total estimated cost for the Auto Flush Units would be \$5,600.

e. Projected 2012 Spring Utility Projects –

i. Design of Grassy Gap Lift Station – Manager Feierabend stated that the estimated cost of the design work would be \$27,500 for the Grassy Gap Lift Station.

ii. Design of Sewer Rehab in the Gassy Gap Basin; Specifically Draining to the Grassy Gap Lift Station – Manager Feierabend stated that the cost of the design work for the Sewer Rehab in the Grassy Gap Basin would be \$47,000.

Manager Feierabend stated that the total requested was \$287,000. This request encompassed all of the fall utility projects, spring design work as well as the staff requested Geographical Information System Equipment.

f. Transfer from Fund Reserve for the Fall Utility Projects & 2012 Spring Utility Projects – Council discussed the first budget amendment to transfer \$287,000 from the General Fund to the Water and Sewer Fund. Council elected to waive the informal bid process for the Geographical Information System due to compatibility with existing software and hardware. Vice Mayor Piquet motioned to appropriate the monies in the amount of \$287,000 from the General Fund to the Water and Sewer Fund. Councilman Miller seconded the motion and the vote passed unanimously. Council discussed the second budget amendment to transfer \$102,200 from the Water and Sewer Fund to the Replacement Meters Capital Project. Mayor Owen stated that Council had budgeted for a percentage of people to pay the Town back however these monies that the Town receives from reimbursement from the citizens does not go directly back into the fund that is being used for payment disbursement. Vice Mayor Piquet motioned to approve the transfer in the amount of \$102,200. Councilman Miller seconded the motion and the vote passed unanimously. Council then discussed the third budget amendment to transfer \$96,810 from Fund 95 to the Replacement Meters Capital Project. Mayor Owen asked staff to explain this transfer. Finance Officer Nancy Johnson stated that these monies were what remained from a project that had been completed. Public Works Director Riley Hatch further stated that these monies had been appropriated for generators, the water main down the ski slope and 2 pressure reducing stations; one on Grassy Gap and the other on St. Andrews. Councilman Miller motioned to approve the budget amendment in the amount of \$96,810. Vice Mayor Piquet seconded the motion and the vote passed unanimously.

g. Set Public Hearing for § 154.355-154.376 “Tree Regulations and Penalties” – Vice Mayor Piquet motioned to schedule the public hearing for the next regularly scheduled Council meeting. Councilman Miller seconded the motion and the vote passed unanimously. Staff was instructed to make sure that the public hearings along with the proposed ordinance changes were placed on the Towns website and Channel 2.

h. Set Public Hearing for Manufacturing Processing Uses – Town Planner James Scott stated the proposed amendments has two distinct categories; one that defines heavy manufacturing and one that defines light manufacturing. The proposed amendment disallows heavy manufacturing and develops standards for light manufacturing as a conditional use. Vice Mayor Piquet motioned to schedule the public hearing for Councils next regularly scheduled meeting. Councilman Miller seconded the motion and the vote passed unanimously.

IX. Old Business

a. Vote on Ordinance to Allow Alterations to Structures Located Within the Setback –

Vice Mayor Piquet motioned to pass the ordinance for alterations of nonconforming structures. Councilwoman Keller seconded the motion and the vote passed unanimously. Ordinance No. 2011-14 is attached as Exhibit B and incorporated by reference as if fully set out within these minutes.

X. Town Manager and Staff Reports

Dog Park & Brush Burn Pile – Manager Feierabend stated that staff believes that a good location has been found for a community dog park. The location would enable the Town's Streetscape Project to adjoin the proposed dog park. Vice Mayor Piquet stated that he did not have a problem with providing the land for a dog park but was concerned with regards to the maintenance of the designated area. Manager Feierabend stated that weed eating and mowing would be the responsibility of the general public. The only real work for the Town would be to put in the fence. By-laws can be written to clearly state who will be responsible for the maintenance. Councilwoman Keller felt that a lease for a fixed period of time was a good idea to take care of any incidental dog bites that may take place. Mayor Owen asked who was going to pay for this portion of the Streetscape Project extension. Mr. Scott stated that this was in line with the original proposed Streetscape Project. Mayor Owen stated that Council was okay with the concept. Staff was directed to bring back a written proposal to Council which illustrated the upkeep of the area. Staff was further informed that the brush burn would be acceptable as a Fire Department exercise should the Town move forward with the dog park.

Equipment Purchased: Manager Feierabend updated Council on budgeted equipment that had been purchased thus far. Those items included a Color Copier, Pothole Patcher, Striping Machine, Swap Loader/Sand Truck, Utility Service Truck, Generator, Leak Colators, INCODE Software and Cardio Equipment.

Request from Leslie Hayhurst for Compensation – Manager Feierabend stated that Susan Halliburton had approached him regarding compensation for Leslie Hayhurst when performing duties as a wildlife agent. Manager Feierabend stated that there will be times when a Police Officer determines that the wild animal in question is out of their ability to deal with and it will be necessary to have dispatch call Mrs. Hayhurst. The cost would be \$75 per incident. Mayor Owen stated that it is going to come down to staff writing a policy. Council directed staff to formulate a policy that dictated when Mrs. Hayhurst services could be warranted. Times of necessity would be when individuals are endangered. When this occurred the Town would initiate contact through dispatch to Mrs. Hayhurst and take on the responsibility of picking up the bill. If the situation was not endangering anyone then Mrs. Hayhurst's information could be provided to the homeowner who could then make the decision of whether or not they wished to pay for this type of service.

USA Cycling Gravity National Championship – Manager Feierabend stated that the Beech Mountain Ski Resort will be hosting the USA Cycling Gravity National Championship this coming weekend.

Watauga Intergovernmental Retreat – Manager Feierabend stated the Watauga Intergovernmental Retreat will be held at the Broyhill Inn & Conference Center Broyhill Room on September 26, 2011 at 5:00 p.m.

Ad – Valorm – Council discussed the possible change in distribution of Watauga County’s Sales Tax. Councilwoman Keller asked if the Town would be able to use those funds to pay for some of their Utility Projects. Manager Feierabend stated that if the Town did receive increased revenue from Watauga County for Sales Tax then yes these funds could be used for Town Utility Projects. Manager Feierabend did denote that Council would have to vote to move these funds from the General Fund to the Water and Sewer Fund. Attorney Eggers advised that there are two methods of distribution for Sales Tax available to the Watauga County Commissioners. Currently the Sales Tax is distributed by means of the per capita method which is based on the number of permanent residents. The second method that is available to the Watauga County Commissioners would be to distribute funds based on property tax revenues. This second method would be very appealing to the Town of Beech Mountain. The Watauga County Commissioners have until May to make their final decision on how funds are to be distributed. After much discussion Mayor Owen stated that this discussion could be brought up next month.

Highway 105 Meeting – Manager Feierabend stated that he, Rick Miller and Alan Holcombe attended the Highway 105 meeting to look at the proposed plans for the widening of this road. Councilman Miller stated that it was projected that this project would take place between 2015 and 2018 and that it would create a 4 lane road from Linville to the 105 Bypass in Boone.

Mayor Owen stated that Council would take a break at 5:00 p.m.

XI. Closed Session – Pursuant to NC GS 143-318.11(a)(3) Attorney Client Matters – Upon motion by Councilman Miller at 5:15 p.m., seconded by Vice Mayor Piquet, the Council voted unanimously to go into closed session pursuant to NC GS 143-318.11(a)(3) for Attorney Client Matters. Vice Mayor Piquet motioned to exit closed session at 6:26 p.m., which was seconded by Councilman Miller. The motion passed unanimously.

XII. Other Business – There was no other business to discuss.

XIII. Adjourn – Upon motion to adjourn made by Councilman Miller and seconded by Vice Mayor Piquet, the meeting was adjourned at 6:27 p.m. The motion carried unanimously.

Minutes approved by Town Council on October 11, 2011.

Richard H. Owen, Mayor

ATTEST:

Jennifer Broderick, Town Clerk

EXHIBIT A

Resolution Number 2011-08

(2 pages)

Resolution Number 2011-08

TOWN OF BEECH MOUNTAIN

RESOLUTION TO EXCHANGE PROPERTY

WHEREAS, the Town of Beech Mountain is a municipal subdivision and body politic of the State of North Carolina duly authorized by State law to set apart lands for parks, playgrounds, recreational centers, and other recreational programs and facilities pursuant to authority granted it by N.C. Gen. Stat. §160A-353; and

WHEREAS, the Town of Beech Mountain has obtained property for a trail system and has constructed a hiking trail through the town and wishes to extend and further develop said trail to provide increased recreational opportunities for the citizens, residents, and visitors to the town; and

WHEREAS, making available recreational opportunities for citizens of all ages is a subject of general interest and concern and a function requiring appropriate action by local government; and

WHEREAS, the creation, establishment, and operation of parks and recreation programs is a proper governmental function pursuant to N.C. Gen. Stat. §160A-351 and furthers the policy of North Carolina to encourage, foster, and provide recreational opportunities for its citizens; and

WHEREAS, the Town of Beech Mountain has determined that to expand and improve its trail system, the acquisition of an area identified as "Tract 6" on the deed recorded in Book of Records 372 at Page 654 would be beneficial to the Town; and

WHEREAS, the Town of Beech Mountain has determined it to be in the Town's best interests to exchange land owned by the Town of Beech Mountain at 295 Poplar Drive (Lot AA 492-Westridge) 1941-42-1981-000 in exchange for acquiring title to Tract 6.

WHEREAS, the record owner of "Tract 6" has agreed to deed his interest in Tract 6 to the Town of Beech Mountain in exchange for the Town of Beech Mountain quitclaiming 295 Poplar Drive (Lot AA 492-Westridge) 1941-42-1981-000 to him; and

WHEREAS, the Town of Beech Mountain has determined that the properties in question each have a value of \$6,000.00 and are therefore equivalent in value;

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BEECH MOUNTAIN, NORTH CAROLINA THAT the Town of Beech Mountain shall exchange land owned by the Town of Beech Mountain at 295 Poplar Drive (Lot AA 492-Westridge) 1941-42-1981-000 in exchange for acquiring title to Tract 6, a description of which property is found in the deed recorded in Book of Records 372 at Page 654 of the Watauga County Public Records.

READ, CONSIDERED, PASSED, AND APPROVED at a regular meeting of the Town Council of Beech Mountain, North Carolina, at which a quorum was present and which was held on the 20th day of September, 2011.

Richard H. Owen, Mayor

Attest:

Jennifer Broderick, Clerk

EXHIBIT B

Ordinance Number 2011-14

(4 pages)

Ordinance NO. 2011-14

TOWN OF BEECH MOUNTAIN, NC

**AN ORDINANCE TO ALLOW FOR ALTERATIONS OF
NONCONFORMING STRUCTURES IN THE TOWN OF BEECH
MOUNTAIN**

WHEREAS, the Town of Beech Mountain desires to preserve the safety, property values, aesthetic qualities and charm of its neighborhoods; and;

WHEREAS, the Town of Beech Mountain desires to prevent nuisances that would detract from the charm and aesthetic qualities of such neighborhoods; and;

WHEREAS, construction that conforms to the required setbacks provides an adequate open space buffer between structures for purposes of privacy, aesthetics, safety, etc.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BEECH MOUNTAIN, NORTH CAROLINA, THAT:

SECTION I. The Code of Ordinances, Chapter 154 (Zoning), Section 154.131 is hereby amended to read as follows:

§ 154.131 NONCONFORMING USES.

Any parcel of land, use of land, building or structure existing at the time of the adoption of this chapter, or any amendment thereto, that does not conform to the use or dimensional requirements of the district in which it is located, may be continued and maintained subject to the following provisions.

(A) *Nonconforming vacant lots.* This category of nonconformance consists of vacant lots for which plats or deeds have been recorded in the Register of Deeds office of Watauga or Avery County, which at the time of the adoption of this chapter fail to comply with the minimum area or width requirements of the districts in which they are located. Any such nonconforming lot may be used for any of the uses permitted in the district in which it is located provided that:

(1) Where the lot area is not more than 20% below the minimum specified in this chapter, and other dimensional requirements are otherwise complied with, the Zoning Administrator is authorized to issue a Certificate of Zoning Compliance; and

(2) Where the lot area is more than 20% below the minimum specified in this chapter or other dimensional requirements cannot be met, the Board of Adjustment is authorized to approve as a variance such dimensions as shall conform as closely as possible to the required dimensions.

(B) *Nonconforming occupied lots.* This category of nonconformance consists of lots, occupied by buildings or structures at the time of the adoption of this chapter, that fail to comply with the minimum

requirements for area, width, yard and setbacks for the district in which they are located. These lots may continue to be used.

(C) *Nonconforming open uses of land.* This category of nonconformance consists of lots used for storage yards, used car lots, auto wrecking, junkyards, and similar open spaces where the only buildings on the lot are incidental and accessory to the open use of the lot and where such use of the land is not permitted to be established hereafter, under this chapter, in the district in which it is located. A legally established nonconforming open use of land may be continued except as follows.

(1) When a nonconforming open use of land has been changed to a conforming use, it shall not thereafter revert to any nonconforming use.

(2) Nonconforming open use of land shall be changed only to conforming uses.

(3) A nonconforming open use of land shall not be enlarged to cover more land than was occupied by that use when it became nonconforming.

(4) When any nonconforming open use of land is discontinued for a period in excess of 180 days, any future use of the land shall be limited to those uses permitted in the district in which the land is located. Vacancy and/or non-use of the land, regardless of the intent of the owner or tenant, shall constitute discontinuance under this provision.

(D) *Nonconforming uses of structures.* This category of nonconformance consists of buildings or structures used at the time of enactment of this chapter for purposes of use not permitted in the district in which they are located. Such uses may be continued as follows:

(1) An existing nonconforming use may be changed to another nonconforming use of a higher classification, provided that the other conditions in this section are complied with. For the purpose of this chapter, the rank order of uses from higher to lower shall be: 1) residential, 2) private-public service, and 3) commercial service.

(2) When a nonconforming use has been changed to a conforming use, it shall not thereafter revert to any nonconforming use.

(3) A nonconforming use may not be extended¹ or enlarged, ~~nor shall a nonconforming structure be or~~ altered except as follows:

(a) Structural alterations as required by law or ordinance to secure the safety of the ~~use of~~ ^{use of a} structure are permissible.

(b) Maintenance and repair necessary to keep a nonconforming ~~use of a~~ structure in sound condition are permissible.

(c) Expansion of a nonconforming use of a building or structure into portions of the structure which, at the time the use became nonconforming, were already erected and arranged or designed for such nonconforming use is permissible.

(d) Nonconforming parking facilities must be brought into compliance with § 154.132.¹

(4) When any nonconforming use of a building or structure is discontinued for a period in excess of 180 days, the building or structure shall not thereafter be used except in conformance with the regulations of the district in which it is located.

(E) *Reconstruction of damaged buildings or structures.* Any nonconforming use, which has been damaged by fire, wind, flood or other causes, may be repaired and used as before provided:

- (1) Minimum parking requirements of § 154.132 are met. ²
- (2) The total amount of space devoted to nonconforming use may not be increased.
- (3) Reconstructed buildings may not be more nonconforming with respect to dimensional restrictions.

(4) Within the WS-II and WS-II-C districts, the total amount of space devoted to built-upon area may not be increased unless storm water control that equals or exceeds the previous development is provided. ³

(1989 Code, Title V, Ch. 51, Art. XI, § 1101) (Ord. passed 7-13-1993; Ord. passed 12-14-1999)

Editor's note:

¹ Division (D)(3)(d) added by amendment July 13, 1993.

² Amended July 13, 1993.

³ Division (E)(4) added by amendment December 14, 1999

~~(F) *Alteration of Nonconforming Structures.* This category of nonconformance consists of buildings or structures existing at the time of the adoption of this chapter that fail to comply with the minimum requirements for building height or setbacks for the district in which they are located. These structures may continue to be used, but may not be extended, enlarged or altered except as follows:~~

~~(a) Enlargement or extension of a legal, non-conforming structure (i.e. house additions, deck additions, etc.) is permissible if such enlargement or extension occurs in portions of the lot or tract that meet all required setbacks, provided that the maximum depth of penetration of the setback violation shall be added to the setback on the opposite side. All applicable zoning requirements must be met by this new construction.~~

~~(b) Structural alterations as required by law or ordinance to secure the safety of the structure are permissible.~~

~~(c) Maintenance and repair necessary to keep a nonconforming structure in sound condition are permissible.~~

~~(d) Nonconforming parking facilities must be brought into compliance with § 154.132. ¹~~

SECTION II. CODIFICATION. The provisions of Section I of this Ordinance shall be published as appropriate in the Town of Beech Mountain Code of Ordinances as soon as practicable.

SECTION III. SEVERABILITY CLAUSE. If any section, part or provision of this Ordinance is declared unconstitutional or invalid by a court of competent jurisdiction, then it is expressly provided and it is the intention of the Town Council in passing this Ordinance that its parts shall

be severable and all other parts of the Ordinance shall not be affected thereby and they shall remain in full force and effect.

SECTION IV. PUBLICATION AND EFFECTIVE DATE. This Ordinance shall take effect immediately upon its passage and publication according to law.

READ, CONSIDERED, PASSED AND APPROVED at a regular meeting of the Town Council of Beech Mountain, North Carolina, at which a quorum was present and which was held on the 20th day of September, 2011.

This ordinance adopted this the 20th day of September, 2011.

Richard H. Owen, Mayor

Attest:

Jennifer Broderick, Clerk