

Town of Beech Mountain
Planning Board Meeting Minutes
April 16, 2012

Call to Order:

Chairman Paul O'Connell, called the meeting to order at 9:00 AM. Other Board Members present in attendance were John Hoffman, Andy Porter and Planning Director James Scott.

Adoption of Agenda:

Chairman Paul O'Connell made a motion to adopt the agenda. Said motion was carried with no opposition.

Approval of Minutes:

Paul O'Connell made a motion to adopt the minutes from the previous Planning Board meeting. Director James Scott said Brian Barnes had mentioned that in the last minutes his name was spelled incorrect and there were a few other errors. James Scott suggested that they wait until next meeting and review them again.

Discuss:

Telecommunications Towers. Paul O'Connell states that discussing the Communication Tower provisions is the first on the agenda. Planning Director James Scott stated that the Planning Board's proposed changes had been sent to Town Council. The Slopes Condominium Home Owners Association had provided the Town Council with some additional recommended changes that had been drafted up by their attorney, Chelsea Garrett, and one of their property owners, Tracy Simms. However, Council received these changes only a day before the Council meeting so they didn't really have time to review their proposal. Their recommendation was to send the amendments back to the Planning Board for further review and bring it back to the Town Council the next meeting. James Scott states that everyone was given a copy of changes that were drafted by Chelsea Garrett that was working with the slopes and also some of his comments of changes.

James Scott reminded everyone that the first change proposed is the Permitted Use Table. One of the reasons we addressed the Telecommunications Tower Ordinance was because there was a contradiction that our Permitted Use Table said that the towers were only allowed as conditional uses in the R-1 and R-2 districts, whereas the text of the Telecommunications Towers standards said that they were not allowed in residential zoning districts. James Scott states that that is totally opposed to each other. Legally we had to construe it in the most open manner. Chelsea Garrett and Tracy Simms still are recommending strongly that we prohibit them in the R-1 and R-2 districts. He stated that would be really very difficult to do because then there would not be any places left for them to go except for the Mobile Home District. Paul O'Connell asks about the Commercial District. James Scott states he doesn't think that the Commercial District is a good idea either because of public safety reasons. James Scott states that we could probably find a better place than right here in our most visible gateway town. All

of the large tracts are in our R-1 District. We still have 100 acre tracts in the R-1 District and that is where a tower could go. We don't have that much Commercial area. James Scott suggests that we take out the way that it currently states that it currently can be in the R-2 District and just leave the R-1 and add the Mobile Home District and those can be the two districts that they can go in.

Andy Porter states that the only issue is, if they do that and there is not a house next door and someone buys that lot or someone owns the lot and wants to put a house on it, then they will be blocked out if a tower is there. James Scott stated that was an issue brought up at the Council meeting. He also stated that if we take R-2 then the idea of one popping up next door to a building lot would not be possible. One potential problem that was raised concerned the fact that the large lots could be sub-divided in the future. However if they do divide the lots, the developer is going to know there's already a tower there.

Paul O'Connell asks if the people who have lots should not be protected. James Scott replies that the R-2 District should be totally removed off the table then they can't go there at all. Andy Porter questions whether some of the R-1's are sub-divided into lots or whether they all are larger tracks of land. James Scott states that most are larger tracks but some are sub-divided. Paul O'Connell states that something can still be put in there that would state they have to be so far from a vacant lot. Andy Porter states that also a "home" should be included. Paul O'Connell states that a vacant lot should be included to protect those people who own one. He also recommends that they increase the 250 ft. distance that is to be considered a "Residential Area." James Scott states that the Home Owners Association is also recommending at least 350 ft. Tracy Simms states she measured it off and 350 ft. isn't very far from a house or property line and suggests moving it to 500 ft. The Planning Board agrees on defining a "Residential Area" as anywhere within 500 ft. of a residential structure.

Paul O'Connell asks if there has been any discussion on what the towers omit. James Scott states that it's radio waves basically. Tracy Simms states that studies have shown that living next door to a tower is not safe. John Hoffman states that power lines are the same way and due to a lack of sound evidence to support claims that towers are harmful, this should not be considered. Paul O'Connell states the sooner they get this ordinance passed the better off the Town will be. James Scott agrees.

James Scott stated that the next change proposed by The Slopes was that if a cell tower was to be located immediately adjacent to a Residential Area, the applicant must present substantial evidence as to why it is not technically feasible to locate adjacent to a more appropriate nonresidential area. James Scott said that he agreed that this provision was reasonable, and the Planning Board concurred.

James Scott states that the next change proposed by The Slopes concerned the Qualified Protest Petition. They wanted to add in another provision that states that if the community members adjacent to the area the tower is being proposed got together and met certain criteria as far as enough of them protesting and signing a petition (it also talks about the form) and if the Board of Adjustments received it in a certain time before the meeting, then the approval would have to be a majority 4 out of 5 members. James Scott stated that the state law already requires that to approve any Additional Use Permit, the Board of Adjustment would have to meet 4 out of 5 votes anyway, and that he understood that this statutory standard could not be altered. However, he stated that he liked the idea of a "Qualified Protest" and thought such a provision would work well in Beech Mountain. He suggested instead of it referring to how the votes are going to be a qualified protest could trigger some other requirement. He also suggests that if a

“Qualified Protest” provision was incorporated anywhere it should not only be used for the cell towers. It should apply to any conditional use. However, The Planning Board needs to look at it more to see what impact it could have on the outcome and what is legal. Also in what time frame we want to get these changes put in, it’s going to take a little longer to work out these changes on the Qualified Protest Petition. James Scott added he doesn’t think it is going to be ready to go to the Board of Adjustment in two weeks. Andy Porter commented that he was not in favor of such a provision because he doesn’t think it should be left for the public to determine.

James Scott states that another thing to think about is that cell phone technology is getting out dated. In 10 to 15 years there may not be a need for cell towers, and then we are going to be stuck with them if we make it too easy for them to put them here. However it is in the ordinance that if they are going to decommission it and take it down, they only have so much time and we have recourse if they don’t.

James Scott suggests on looking at the Qualified Protest more next month. Paul O’Connell suggested on James Scott to come up with some additional wording. Paul O’Connell also suggested sending a proposal back to the Town Council that the cell tower should be 500 ft. from the nearest boundary line of a property zoned R-2 residential area. James Scott suggested on leaving the wording like it is written concerning if the tower is to be located immediately adjacent to a Residential Area the way they had discussed earlier. Paul O’Connell, Andy Porter and John Hoffman agreed.

Next issue is the application fee. James Scott suggested raising the fee. Andy Porter agrees it needs to be at least \$1,000.00. Paul O’Connell and John Huffman agreed.

John Hoffman asks if any of the cell towers are required to have strobe lights on them. James Scott states that is governed by the State and FCC. John Hoffman states that if it does require for the towers to have them, then the light may be obnoxious due to the height of the tower it could shine into home owners windows at night. James Scott states that it is already in the ordinance that they have to describe any lighting that is going to be on the tower. Also, regardless of all the rules that we have and if everyone meets all of the criteria, the Board of Adjustment can still deny it if they feel it is going to be a nuisance to the people of the community. John Hoffman stated that he felt that the Board of Adjustment needs to be aware if there is going to be a strobe light installed on the cell towers.

James Scott went over the list of change request being sent to the Town Council. The list of request is: Taking out R-2 so they can’t go on R-2 at all, increase distance to 500 feet from a residential structure, and that the fee is going to be \$1,000.00. However, we are not writing that into the ordinance because in the ordinance it already states there is a fee and the Town has chart with the fees listed. Then add the part about if the tower is to be located in immediately adjacent to a Residential Area. John Hoffman made a motion to send changes to the Town Council. Andy Porter seconded and motion was carried.

Sign Regulations. Paul O’Connell states that Sign Regulations is next on the agenda. James Scott states he gave out letters to all the businesses that had permanent signs that did not comply with the ordinance as requested by the Planning Board at previous meeting. By October everyone needs to be in compliance with the ordinance. The changes that we have been dealing with are the “accessory signs.”

James Scott discusses “Prohibited Signs”. He proposed to add that the intent is to allow one neon internally lit “open” or “close” sign smaller than 2 sq ft inside a window. No flashing lights, changing intensity or moving parts are prohibited. John Hoffman states that he thinks that

the owner of a business has the right to advertise that their business is open and without the illuminated sign it is sometimes hard to see. Andy Porter also says he is ok with it as long as it is interior and not flashing. Cindy Keller asks if it could be mandated that the neon signs have to be in blue. It was decided not to limit it to a certain color.

James Scott states the “Commercial Signs” is the next issue to discuss. He explains that the wording should be changed under 154.274(A) 1 “Attached signs”. Instead of having the word “the” it should be changed to “any”.

The next that issue James Scott discusses is that under provision 154.274(A)(3), a and b seems to be saying the same thing and asks the board if there’s a need for both of them. James Scott reads both “a” and “ b” provisions to the board and points out that “a” states that “for buildings which are occupied by more than one business” and “b” states that “when more than one business share the same office space or quarters within a building”. He states that he had e-mailed Brian Barnes and got his opinion on what he thought the difference was. In Brian Barnes’ response back to him, he stated that it is like the difference between Beech Towers and Action Realty. Action Realty has got several businesses going on but they have the same office. Beech Towers has many separate businesses that all have separate quarters. James Scott states that he feels even if we are making that distinction, the rule is still the same and if it’s the same rule, do we need to make that distinction. Andy Porter states he doesn’t feel like it is necessary unless we are trying to make it stricter for where you have several in one office rather than a building which might be compatible to a little more signage area. However, he doesn’t know if it would be worth trying to determine the difference. John Hoffman points out that for example; like Beech Towers, would each business be allowed to have a 35 ft. sign. James Scott states that they can because Beech Towers is so big because if each business has a 35 ft sign, it’s still not going to add up to the 10% total allowed. Action Realty could not because the side of the building is smaller, so they are limited. After long discussion, it was decided to eliminate (b).

Paul O’Connell states that the next discussion is 154.274(A)(5). James Scott suggests adding the word “highest”, with regard to how signs relate to the roof line of a building. The intent is not to have sign sitting on the top of the roof line; it has to be below the roof line.

James Scott states that the next provision 154.274(B)(2)(b) under “Number of detached on-premise signs” is unclear about the purpose and meaning. After long discussion on trying to understand the meaning, Andy Porter suggests to let James Scott clarify this with some wording that is a little easier to understand and the intent and then bring up next meeting. John Hoffman asks if they need to visit the sign at the entrance of Beech Tower because of the size. James Scott states that they know that the October date is coming and are in the process of changing it.

Paul O’Connell states that under provision 154.274(B)(2)(d) is next. James Scott discusses that the intent to changing the wording is to allow one neon internally lit “open” sign smaller than 2 sq ft inside a window. However, no flashing light, changing intensity and moving parts are still prohibited for any sign. After everyone discusses the issue, it is decided to rewrite the provision as follows; one open and closed, vacancy or no vacancy, sign per premises is permitted, not to exceed two square feet. If located inside a building or structure, this sign may be internally lit or neon. If located outdoors, the sign cannot be internally lit or neon and must be attached to a permitted commercial or directional sign.

James Scott brings up that the next provision is (e) Special advertisements. He discussed that these are chalkboard, marker board, lunch today and dinner tonight signs. He proposed totally rewriting these provisions under the heading “Accessory Signs and Special Advertisements” and talking about it all together. James Scott read over all how he proposed to

enter the provision. James Scott pointed out that under the section that it reads; such signs need not adhere to the material and style requirements of Section 154.279, but must adhere to other applicable regulations. He explained that this is saying that they can write on a chalkboard. However, it can't be used a bulletin board or have anything attached. But they don't have to have a routed or carved. Cindy Keller asks how long they are allowed. James Scott points out that they are permanent and that they have always been allowed to have these signs. Some have more than one which is the problem. Paul O'Connell states that he doesn't think that the accessory sign they put out at the Massage Parlor is legal. James Scotts points out that according to how this provision is written this sign could be considered a "special sale sign" and allowed. John Hoffman suggested maybe saying no wire type frame signs except for special occasions. Paul O'Connell suggested leaving that section but reword it.

Paul O'Connell brings up next provision to discuss is 'banners'. James Scott points out that there used to be two separate things that dealt with banners. One for religious, charitable, civil, fraternal or public interest nature banners and then one for business banners. James Scott explained he would like to condense those into one and just have one standard for banners and temporary signs. The reason why is because the religious, charitable, civil, fraternal or public interest nature banners are already exempt. Paul O'Connell asks why James Scott jumped the size of the sign form nine sq ft to fifteen sq ft. James Scott explains that they don't make banners that small and no one's is that small. Paul O'Connell states that fifteen should be reasonable enough. Andy Porter and John Hoffman agreed. James Scott discusses that only one banner or temporary sign may be displayed at a time.

James Scott discusses that Randy Feierabend wanted him to mention that we have no provisions for temporary offsite signs that would provide directions to a major event on the mountain. The ordinance had recently been changed to say that offsite directional signs that were necessary to ensure the safe flow of traffic, if erected by the town, are allowable. Andy Porter states that he thought that they had restricted it to Ski Beech, Rec. Center and the Town. James Scott discussed that we did try to but the attorney said that we could not limit it to just these three, they can't be singled out.

However, the changes recently made don't really work for offsite signs for special events erected by entities other than the Town. John Hoffman points out that for a big event coming like in August that the Town should be able to put out temporary signs everywhere to keep people from getting lost. Andy Porter states that the Town should have full discretion if it's a large event then event signs should be put out. John Hoffman states that a major event like this is also a safety and traffic matter. James Scott states that is the reason Randy Feierabend suggested for them to be allowed, not only for the event coming up in August, but for any large event. He also stated that places he had been before, they would say they were allowed. However, they can only be a certain size, can only have an arrow on them and if not picked up within 24 hours after event they would be fined \$50.00 a sign that we would have to go pick up. Andy Porter suggested for James Scott to work on this and to keep it real simple. James Scott points out that it is getting to the point that maybe we should think beyond signs and that we should require permits for special events that draw a certain amount of people.

James Scotts discusses "Residential Signs". He pointed out that in the provisions they have now that there are different requirements for material and styles for residential signs than they have for all other signs. He discusses that he thinks there should only be one provision and that it should say that "all residential signs must comply with the material and style standards of Section 154.274" and take out (C) under the Residential Signs provision. Paul O'Connell states

that one reason is because they did not want big residential signs, that they wanted 3 sq ft and that the material and style is basically the same as 154.274. James Scott points out that it says they all have to be constructed of wood, however in 154.274 states that they need to be wood, stone or high-density urethane. Andy Porter agrees that it could be changed but leaving the size the same at 3 sq ft. Paul O'Connell agrees removing (c) as long as they don't use 4 x 4 posts.

James Scotts now discusses the "Residential Signs for Sub-Divisions and Condos". Previously we had discussed putting the section (G) into this provision because of Woodland Meadow/ Pinnacle Inn sign. However, since then he has determined that the sign is outside town limits. James Scott suggested taking out the "off-premises" signs. It was agreed to take it out.

James Scott describes that "Semi-Temporary" signs are really contractor signs. He explains that contractor signs should not be any different than real-estate. John Hoffman questions whether the lot number will be required to be put on these signs. James Scott states that a lot number sign could be out there but is not a requirement. John Hoffman states that all construction sites should have something out front of the site with a number on it visible from the road due to emergencies. Paul O'Connell discusses that maybe it could be on the building permit to require them to have a number. James Scott states that he thinks that (C) should be removed from provision because it is stated already that you have to have your numbers posted. It doesn't say when but we could start saying as soon as you pull the permit you have to have your 911 number posted. Everyone agreed this would be good.

Noise Regulations. Andy Porter brings up the motion to table "Noise Regulations" until next meeting. John Hoffman seconds and motion was carried.

Storage Containers. James Scott discusses "Storage Containers". He states that he has had some complaints that some residences and businesses having large containers sitting around. He stated that he had written a draft provision to address these items. Paul O'Connell states that the word "continuously" should be taken out and add "no more than 7 days". John Hoffman discusses the only problem he sees with this is construction sites. Andy Porter suggested adding some kind of wording stating that except containers used during the construction process for the duration of the building permit. James Scott suggested working on it until next meeting.

Comprehensive Planning. James Scott stated he wanted to mention that they had taken a step back to get some input from the survey and that if they want to take a look at it, they can go to the link and check out the response so far. He also stated it is password protected, however he had sent the password to everyone by e-mail.

Other Business:

Paul O'Connell discusses he has talked to the Town Manager and the Building Inspector concerning the Destiny Inn and wants to know why the owner is not being fined for not finishing tearing down the building and still having the storage trailers sitting there. James Scott states that he talked with the owner recently about this issue. They are still in an insurance dispute and his goal is to build back what was there. However, if we make him tear down the foundation, he could never build back as it was because of the foundation being so close to the creek. Right now it is grandfathered in because the ordinance says you can build back on the same footprint. James Scott stated that the owner promised if we gave him one month, he will have the trailers moved and cleaned up and hopefully within 6 months he will have the building permit and he can start building the place back. Andy Porter discusses that if the Town is assured he is planning on building back and working in that direction then let the foundation exist. Paul O'Connell states to still get rid of the storage trailers and clean it up a little more.

Call to Adjournment:

Chairman O'Connell called for a motion to adjourn. John Hoffman moved for the motion and Andy Porter seconded and was carried with no objection.

Respectfully Submitted,

James Scott
Secretary to the Board