

**MINUTES**  
**BEECH MOUNTAIN TOWN COUNCIL**  
**Regular Meeting – November 15, 2011**

***I. CALL TO ORDER***

Mayor Rick Owen called the regular meeting of the Beech Mountain Town Council to order at 3:01 p.m., Tuesday November 15, 2011 in the Town Hall Council Chambers. Other Council Members present were Paul Piquet and Rick Miller. Council Members absent were Alan Holcombe and Cindy Keller. Town Attorney Stacy C. Eggers, IV was present. Staff members present were Town Manager Randy Feierabend; Town Clerk Jennifer Broderick, Town Planner James Scott, Building Codes Administrator Stan Hanna, Public Utilities Director Robert Heaton and Fire Chief Robert Pudney.

***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 would stand as presented.

***V. Approval of the Minutes***

***a. October 11, 2011 Regular Meeting*** – Vice Mayor Piquet motioned to approve the October 11, 2011 Regular Meeting Minutes as corrected. Councilman Miller seconded the motion and the vote passed unanimously.

***b. October 11, 2011 Closed Session Minutes*** – Vice Mayor Piquet motioned to approve the October 11, 2011 Closed Session Minutes. Councilman Miller seconded the motion and the vote passed unanimously.

***VI. Public Hearing***

***a. Public Hearing for Ordinance to Amend §154.355 – 154.376 ‘Tree Regulations and Penalties’*** – Vice Mayor Piquet motioned to open the public hearing. Councilman Miller seconded the motion and the vote passed unanimously. Town Planner James Scott stated that the biggest proposed change in the ordinance was the penalty. Mr. Scott explained that if a tree was cut without getting a permit and the tree would have qualified for a permit then the homeowner would receive a penalty of \$100 per tree. If the tree would not have qualified then the penalty would remain at \$1,000 per tree. Additionally this newly proposed ordinance allows staff to permit trees to be cut that are not of a native species. Mr. Scott stated that an additional change was suggested by Attorney Eggers. Attorney Eggers recommended that adding at the end of the second sentence of section (1) of §154.365 the following language: “Upon a finding that the cut trees would have qualified for a permit under §154.360, the offender shall be subject to a civil penalty in the amount of \$100 per tree to be recovered by the Town.” Tree Board Chairperson Renee Castiglione stated that the proposed changes before Council had not been reviewed by the Tree Board and that this was not how the process was supposed to work. Mrs. Castiglione stated that there was no issue with the change in the penalty however the Tree Board does not wish to see this nonnative amendment in the tree ordinance. Mrs. Castiglione stated that as a forest all trees should be

included. Councilman Miller motioned to close the public hearing. Vice Mayor Piquet seconded the motion and the vote passed unanimously.

***b. Public Hearing for Manufacturing Processing Uses*** – Vice Mayor Piquet motioned to open the public hearing. Councilman Miller seconded the motion and the vote passed unanimously. Town Planner James Scott stated that if a land use is not specifically addressed then it is permissible and that currently the Town of Beech Mountain had no regulations in place. Mr. Scott stated that this proposed ordinance would effectively eliminate heavy manufacturing occurring on the mountain. There were justifiable reasons to support this nonuse based on infrastructure and character. Mr. Scott stated that there was less justification to support a finding that light manufacturing is not permissible. Therefore Council has been presented with a conditional use ordinance to regulate this type of activity. Hearing no public comment Vice Mayor Piquet motioned to close the public hearing. Councilman Miller seconded the motion and the vote passed unanimously.

***c. Public Hearing to Amend the permitted Decibel Level of Wind Energy Systems as a Conditional Use*** – Vice Mayor Piquet motioned to open the public hearing. Councilman Miller seconded the motion and the vote passed unanimously. Town Planner James Scott stated that what Council had before them was the Planning Boards proposed amendment to change the permissible decibel level from 10 to 40. 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*** – James True of 127 Beechwood Lane congratulated the incumbents on their victory in the Towns recent election. Renee Castiglione of 104 Wild Turkey Lane questioned the stickers that were on the garbage bins stating that they were a nuisance and wanting them to be removed. Mayor Owen stated that Manager Feierabend would address this issue latter in the meeting.

#### ***VIII. New Business***

***a. Resolution to Adopt the Town of Beech Mountain 2011 Water and Sewer Master Plan*** – Mayor Owen stated that this resolution needed to be adopted in order to receive funding from the North Carolina Rural Economic Development Center for the approved grant which would reimburse the High Country Council of Government for their service. Vice Mayor Piquet motioned to approve Resolution 2011-09. Councilman Miller seconded the motion and the vote passed unanimously.

***b. Watauga County Comprehensive Transportation Plan*** – Craig Hughes with the High Country Council of Government addressed Council. Mr. Hughes stated that the North Carolina Department of Transportation and Watauga County initiated a study for a Comprehensive Transportation Plan in 2010 which included the Towns of Boone, Blowing Rock, Seven Devils and Beech Mountain. Mr. Hughes explained that the Comprehensive Transportation Plan will be the bases for future funding requests from the North Carolina Department of Transportation. Representatives from each Watauga County municipality as well as Appalachian State University had representatives participating on the committee. The representatives for the Town of Beech Mountain were Mayor Rick Owen and Town Planner James Scott. Mr. Hughes was requesting that Council approve the Employment Operation Growth Rates which were projected through the year 2040. Socio-economic data

was gathered from the United States Census from 2010. Growth Rates were determined by looking at data and projecting out. When establishing the Employment Operation Growth Rates identifiable deficiencies are identified in order to prepare recommendations. This data will then be used to create a draft plan which will be presented to all municipalities involved at a future date for approval. Mr. Hughes stated that the second area in which the Watauga County Comprehensive Transportation Plan needed approval was with its Vision Statement Goals and Objectives. The statement has recently been more refined. Councilman Miller asked if this was in conjunction with the 105 widening project. Mr. Hughes stated that this was separate and that Section B of this project was already funded from Foscoe to Boone. Mayor Owen stated that these plans are very important to ensure that the High Country Council of Government is able to receive future funding from the North Carolina Department of Transportation. The North Carolina Department of Transportation's prioritization process places emphasis on a well development Comprehensive Transportation Plan being in place. In the future they are probably not even going to consider funding projects that do not have a Comprehensive Transportation Plan. It has been 20 years since Boone has had a thorough plan. Council endorsed the Employment Operation Growth Rates which were through the year 2040 as well as the Vision Statement Goals and Objectives as presented by Mr. Hughes.

**c. 125 Dogwood Lane** – Vice Mayor Piquet motioned to approve the reduction in the water portion of the bill by following the staff recommendation of 15%. Councilman Miller seconded the motion and the vote passed unanimously.

**d. Tax Releases** – Manager Feierabend stated that these tax releases were a result of the new software that Watauga County was using this year and that these properties belonged to other municipalities. Councilman Miller motioned to approve the tax releases. Vice Mayor Piquet seconded the motion and the vote passed unanimously.

## **IX. Old Business**

**a. Vote on Ordinance to Amend § 154.355 – 154.376 ‘Tree Regulations and Penalties’** – Mayor Owen asked how Council felt about removing the nonnative trees. Vice Mayor Piquet stated that he concurred with the Tree Board Chairperson Renee Castiglione's opinion. Councilman Miller was in agreement as well. Councilman Miller asked for the \$100 fine to be explained again. Town Planner James Scott stated that if the cut tree would have qualified for a permit then the fine would be \$100. However if the tree would not of qualified then the fine would be \$1,000. Mayor Owen stated that by passing this proposed amendment to the ordinance Council was not recommending that a permit not be obtained. The burden of proof would be carried by the homeowner to prove that the tree they cut did meet the requirements. Vice Mayor Piquet motioned to approve the ordinance as presented by striking out the nonnative species portion of the amendment and to include the Attorney Eggers wording for the penalty section. Councilman Miller seconded the motion and the vote passed unanimously. Ordinance No. 2011-15 is attached as Exhibit A and incorporated by reference as if fully set out within these minutes.

**b. Vote on Manufacturing Processing Uses** – Town Planner James Scott stated that the decibel level of this ordinance was set at 40 to ensure that if something was found to be obnoxious or unreasonable then it would be illegal. Councilman Miller asked about working after a specific hour. Mr. Scott stated that this proposed ordinance has provisions that working hours are to be between 9:00 a.m. and 5:00 p.m. Mr. Scott stated that the general

noise ordinance states that if it is unreasonable or excessive then the Police can tell someone to stop. Mr. Scott stated that this gave the Police some latitude to exercise good judgment. Vice Mayor Piquet motioned to approve the ordinance. Councilman Miller seconded the motion and the vote passed unanimously. Ordinance No. 2011-16 is attached as Exhibit B and incorporated by reference as if fully set out within these minutes.

***c. Vote on Amending the permitted Decibel Level of Wind Energy Systems as a Conditional Use*** – Vice Mayor Piquet motioned to approve the ordinance. Councilman Miller seconded the motion and the vote passed unanimously. Ordinance No. 2011-17 is attached as Exhibit C and incorporated by reference as if fully set out within these minutes.

## ***X. Town Manager and Staff Reports***

***Water Meter Project Report and Pinnacle Water Tank Generator*** – Manager Feierabend stated that there will be approximately 75 radio read meters left to install in the spring which staff will take care of installing. Manager Feierabend reported that the original price quote that was given to the Town for the Tube Filters for Buckeye Water Treatment Plant had gone up 60% in cost. This was the only company that these filters could be purchased from. Marion Rothrock of Rothrock Engineering has scheduled a meeting with a company representative this week. Public Utilities Director Robert Heaton stated that staff had training with the new Geographic Information Equipment. Mr. Heaton stated that staff was to begin gathering data with the new system. Councilman Miller asked that the Water and Sewer Master plan be placed on Channel 2 as well as the Town's website. Councilman Miller wanted the public to be able to visually see the work that was being completed on the infrastructure. Manager Feierabend stated that this would be taken care of and that staff was working on gathering information to be disseminated to the public via e-mail in the form of a newsletter. Councilman Miller stated that members of the community are willing to assist with the newsletter and that a committee could be formed.

***Bark Park*** – Manager Feierabend stated that gravel parking and fencing were in place. An etching of the wood sign that was to be routed was distributed to Council.

***Parks and Recreation Master Plan Public Forum Meetings*** – Manager Feierabend informed Council that the dates of Tuesday, November 22<sup>nd</sup> at Buckeye Recreation Center, Tuesday, December 20<sup>th</sup> at the Beech Mountain Club Alpen Haus and Tuesday January 24<sup>th</sup> at Town Hall in the Council Chamber room were to be the meeting dates and locations. All meetings were to begin at 6:00 p.m. The idea was to invite the public to share their input on the master plan with Parks and Recreation Director Daniel Scagnelli presenting a background of the project and potential goals.

***Audit and Per Diem Penalty*** – Manager Feierabend informed Council that the audit has not been delivered by the auditors yet. The contract with the auditors did have a penalty clause. Manager Feierabend stated that the auditors are well aware that they are into the penalty portion of the clause.

***Sledding Hill Hours*** – Manager Feierabend stated that the Town does have the money to hire part time employees to man the sledding hill on weekends.

**December Photo Shoot** – Manager Feierabend stated that Councils photo was being scheduled on the day of Councils next regularly scheduled meeting. Staff would ask the Honorable Judge Alexander Lyerly to attend the meeting to swear in recently elected members.

**Pedestrian and Bike Connectivity Committee** – Mayor Owen stated that the goal was to formulate a plan to allow for multimodal connectivity. The Town would be looking at forming an informal committee to begin this process with the vision being that this would tie into a larger regional plan. This type of plan was more likely to gain funding. Mayor Owen stated that this was to be discussed more in depth at the upcoming High Country Municipal Association meeting.

**Garbage Bin Stickers & Garbage** – Manager Feierabend stated that these types of stickers do not fit in with the resort community atmosphere that Beech Mountain tries to maintain. Building Codes Administrator Stan Hanna has been instructed to remove these stickers or at a minimum place them on the backside of the garbage bin so they are not visible to everyone in the community. Staff was directed by Council to find a manner of informing the homeowner of their garbage bin that was more tasteful and effective. Councilman Miller wanted the stickers removed before the winter people arrived.

Councilman Holcombe arrived at the meeting at 4:00 p.m.

Councilman Miller stated that he also wished for staff to be proactive about the litter that was created by the garbage bins being broken in by animals. The public needed to be educated. Manager Feierabend stated that if a homeowner or property manager is not picking up the trash after the initial time that animals have gotten into their trash then staff is going to start giving these individuals fines for littering.

**Pine Ridge Road Extension** – Councilman Miller asked about the possibility of extending Pine Ridge Road all the way down to the Buckeye Recreation Center. Currently Pine Ridge Road goes most of the way down and then changes to Grassy Gap Creek Road which can be confusing to visitors. After some discussion Council confirmed that this was a good idea to have Pine Ridge Road continue until it connected to Pinnacle Ridge Road thus removing Grassy Gap Creek Road.

Mayor Owen stated that Council would take a short break at 4:07 p.m.

**XI. Closed Session – Pursuant to NC GS 143-318.11(a)(3) Attorney Client Matters** – Upon motion by Councilman Holcombe at 4:15 p.m., seconded by Mayor Owen, the Council voted unanimously to go into closed session pursuant to NC GS 143-318.11(a)(3) for Attorney Client Matters. Councilman Holcombe motioned to exit closed session at 5:09 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 Vice Mayor Piquet and seconded by Councilman Holcombe the meeting was adjourned at 5:10 p.m. The motion carried unanimously.

Minutes approved by Town Council on December 13, 2011.

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Richard H. Owen, Mayor

ATTEST:

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Jennifer Broderick, Town Clerk

**ATTACHMENT(S)**  
**TO**  
**MINUTES**

**EXHIBIT A** – Ordinance 2011-15 *'Ordinance to Amend Sections 154.356-154.376 (Tree Regulations)'*

**EXHIBIT B** – Ordinance 2011-16 *'An Ordinance to Establish Regulations tor Manufacturing And Processing'*

**EXHIBIT C** – Ordinance 2011-17 *'An Ordinance to Amend the Permitted Decibel Level Of Wind Energy Systems As A Conditional Use In The Town Of Beech Mountain'*

**Ordinance NO. 2011-15**

**TOWN OF BEECH MOUNTAIN, NC**

**AN ORDINANCE TO AMEND SECTIONS 154.356-154.376 (TREE REGULATIONS)**

**WHEREAS**, Beech Mountain is a resort area that is blessed with abundant environmental beauty; and;

**WHEREAS**, the Town of Beech Mountain desires to preserve natural beauty of the town; and;

**WHEREAS**, the Town of Beech Mountain desires to encourage better care of trees and vegetation within the town, on both public and private property; and;

**WHEREAS**, the Town of Beech Mountain has determined that existing Tree Regulations can be clarified and expanded upon in order to increase their effectiveness in achieving the above goals;

**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 154.356 through 154.376 are hereby amended to read as follows:**

**TREE REGULATIONS <sup>1, 2</sup>**

*Editor's note:*

<sup>1</sup> *Subchapter added by Town Council May 13, 2008.*

<sup>2</sup> *Amended in its entirety July 13, 2010.*

**§ 154.355 PURPOSES.**

This subchapter is adopted to promote the purposes of:

(A) To preserve the natural beauty of the town;



(B) To encourage better care of trees and vegetation within the town, on both public and private property;

(C) To develop a viable tree management program;

(D) To promote cooperation between the public and private sectors to effectively manage urban forests;

(E) To support and participate in the Tree City USA program; and

(F) To educate the public to the environmental importance and benefits of trees and their health.

(1989 Code, Title V, Ch. 51, Art. XXII, § 2201) (Ord. passed 5-13-2008; Ord. passed 7-13-2010)

### **§ 154.356 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**CLEAR CUTTING.** The cutting or removal of all trees within an area of 400 square feet or larger.

**INJURING A TREE.** Any cutting, trimming, pruning or other method of removing any live part of a live tree shall be considered injurious to the tree and therefore a permit must be obtained before performing any such act unless exemptions in §154.359 apply, with the exception that removing small branches under ½” in diameter shall not generally be considered injurious to the tree, provided that such act does not remove a substantial portion of the canopy of said tree or otherwise result in a threat to the life or health of such tree.

**PERSON.** Any individual, partnership, corporation, association or entity.

**PRIVATE PROPERTY.** All property other than that described as “public property” below.<sup>1</sup>

**PUBLIC PROPERTY.**

(1) Any property which the town owns, leases or has an easement over; and

(2) Any property which the owner or easement holder grants authority to the town for the purposes of enforcing this subchapter (e.g. DOT right-of-way).

**TEMPORARY SERVICE ROUTE.** A route, other than the planned permanent driveway or access route to a house, which is created and used during the construction process.<sup>2</sup>

(1989 Code, Title V, Ch. 51, Art. XXII, § 2202) (Ord. passed 5-13-2008; Ord. passed 7-13-2010)

## **§ 154.357 CREATION OF TOWN TREE BOARD.**

(A) *Tree Board.* There shall be a Town Tree Board which shall consist of five members appointed by the Town Council. The Town Manager shall designate member(s) of the town staff to serve as ex-officio members.

(B) *Term of office.* The members shall each serve a term of three years. When first appointed members to the Tree Board, the Council shall appoint three members to a three-year term and two members to a two-year term. At the conclusion of the initial terms, the Council shall appoint all new members to a three-year term.

(C) *Compensation.* The members of the Tree Board shall be paid \$15 per month for meeting attendance, regardless of the number of meetings attended; no money will be paid if no meetings were attended, payment will be on a quarterly basis. The compensation may be changed by the Town Council at any time.

(D) *Duties and responsibilities.* The Board shall perform the following duties:

(1) Assist the Town Manager or his or her designee with the creation, updating, monitoring and management of the town's tree regulations;

(2) Work with the Town Manager or his or her designee to prepare an annual tree replacement, planting, and maintenance program; and

(3) Work with the Town Manager or his or her designee ~~Director of Planning~~ on all other issues related to the management and care of the town's forest.

(E) *Operation.* The Board shall meet on a regular schedule to be determined at its first meeting. The first meeting of the Board shall be at the call of the Director of Planning. The Board shall elect a Chairperson and Vice-Chairperson from its own members who will serve at the pleasure of the Board. At the recommendation of the Town Manager and the Chairperson of the Board a member may be removed for improper conduct. This shall include missing more than three consecutive meetings or a criminal conviction involving an act of moral turpitude.

(1989 Code, Title V, Ch. 51, Art. XXII, § 2206) (Ord. passed 5-13-2008; Ord. passed 1-12-2010; Ord. passed 7-13-2010; Ord. passed 12-14-2010)

## **§ 154.358 DAMAGE TO TREES WITHOUT A PERMIT PROHIBITED.**

The following actions shall constitute a violation of this subchapter and shall be subject to the penalties prescribed herein. For trees located on public property, the following restrictions shall apply to any tree, regardless of size. For trees located on private property, the following restrictions apply to trees in excess of six inches in diameter measured four feet above the ground (at its highest point).

(A) *Injuring, removal, relocation, generally.* No person shall, without a written permit from the town, willfully perform or cause to be performed the following acts: mutilate, injure, remove or relocate any live tree within the town, or injure or misuse any structure or device placed to protect any such tree.

(B) *Whitewashing, painting.* No person shall, without a written permit from the town, whitewash, paint or in any way discolor the stem base, bole or root of any tree in the town.

(C) *Attaching signs or other devices; obstructing roots.* No person shall, without a written permit from the town, fasten or attach any sign, wire or electrical attachment or other device in any manner to the trees in the town, or to guard about the tree, or close or obstruct any open space provided about the base or root of the tree within three feet in any direction, or in any way prevent the access of air, water or fertilizer to roots of the tree. Attachment of birdhouses or other small ornamental attachments that do not substantially threaten the life a tree is permissible.

(1989 Code, Title V, Ch. 51, Art. XXII, § 2203) (Ord. passed 5-13-2008; Ord. passed 7-13-2010)

### **§ 154.359 EXEMPTIONS.**

Exemptions to the provisions of this subchapter include the following:

(A) Trimming of trees by the town or approved agent as normal maintenance provided the trimming does not result in the mutilation, death or destruction of the tree; and

(B) Any tree which during a period of emergency or act of God must be removed so that it in no way will hinder public work to restore order in the town; removal to be by the town or its authorized agents.

(C) The removal of dead trees or dead portions of a tree. The owner of the property on which the trees are located bears the burden of proving that such trees or parts of trees were dead at the time of removal.

(D) The removal or cutting of live trees or portions of live trees (i.e. limbs or branches) on private property under six inches in diameter measured four feet above the ground (at its highest point); with the exception that provisions regulating clear-cutting as found in §154.362 of this chapter must be followed.

(1989 Code, Title V, Ch. 51, Art. XXII, § 2204) (Ord. passed 5-13-2008; Ord. passed 7-13-2010)

### **§ 154.360 PERMITS.**

(A) *General.*

(1) Permits shall be valid for 90 calendar days.

(2) The town may require the replacement of trees in accordance with § 154.364 as a condition of any permit.

(3) A copy of the permit shall be displayed in plain sight on the property where the trees are being cut.

(B) *Permit procedure.* The application for a permit shall be on a form provided by the town and signed by the property owner.

(C) *Standards for granting permits.*

(1) *Public property trees.* In determining whether a permit should be issued for the cutting of trees on public property, the Town Manager or his or her designee shall consider the following criteria:

(a) The condition of the tree with respect to disease, danger of falling, proximity to existing or proposed structures, and interference with utility services;

(b) The necessity to remove trees in order to construct proposed improvements to allow economic development of property adjacent to public property;

(c) The topography of land and the effect of tree removal on erosion, soil retention and the diversion or increased flow of surface waters, and coordination with the town's drainage patterns; and

(d) The number of trees existing in the neighborhood on improved property. The Town Manager or his or her designee shall be guided by the standards established in the neighborhood and the effect of tree removal upon property values in the area.

(e) The town may require the relocation or replacement of trees as a condition of issuing the permit, on a one for one basis, with replacement trees having a caliper of one and one-half inch diameter at breast height (that is, four feet above the ground at its highest point).

(2) *Private property trees.* The Town Manager or his designee may issue a permit for the cutting of live trees or portions of live trees (i.e. limbs or branches) on private property when such trees are in excess of six inches in diameter measured four feet above the ground (at its highest point) when:

(a) The trees or portions of trees are within 15 feet of the existing main structure or main structure being constructed on the building site;

(b) The trees or portions of trees are within five feet of an approved septic tank or septic drain field;

(c) The trees or portions of trees are within five feet of a driveway or parking area, the location of which has been approved by the Town Manager or his or her designee;

(d) The trees or portions of trees pose a hazard to the property owner and/or other residents;

(e) The cutting of the trees or portions of trees promotes the growth and development of other trees on the lot;

(f) The trees or portions of trees are diseased or damaged;

(g) The trees or portions of trees are within a temporary service route as defined in this subchapter. Approval under this criteria shall require the replacement of trees on a one-for-one basis in accordance with § 154.364 of this subchapter; or

(h) The removal of trees or portions of trees not meeting the criteria set forth in divisions (a) through (g) above may be permitted pursuant to a landscaping plan that improves the property and is acceptable to the town. Such a plan ~~must provide the information as set forth in § 154.360(A)(1)(a) above~~ and shall be designed to minimize the injury, disturbance, or removal of trees not necessary to achieve the specific objectives of the plan.

(i) With regard to divisions (a), (b) and (c) above, for new construction no trees or portions of trees shall be cut pursuant to these criteria until the owner is ready to begin construction as evidenced by the issuance of a building permit.

(j) Permits may be granted for trees to be pruned or limbed for view enhancement. To attempt to minimize the detriment to the tree of these practices, the standards provided in American National Standards Institute (ANSI) A300 (Trees, Shrubs, and Other Woody Plant Management, Part 1-Pruning) shall be followed.

(D) *Flag and photo required.* All trees to be cut or trimmed must be clearly flagged and photo taken.

(1989 Code, Title V, Ch. 51, Art. XXII, § 2205) (Ord. passed 5-13-2008; Ord. passed 7-13-2010)

## **§ 154.361 REGISTRATION OF PRIVATE PROPERTY TREE CUTTERS.**

All persons paid compensation to cut or trim trees on private property in the Town of Beech Mountain must be registered in the office of the Beech Mountain Town Manager or his or her designee. The registration shall consist of obtaining a copy of this subchapter, and by signature, affirm that they will abide by the rules prescribed by this subchapter. No person shall be allowed to register unless all civil penalties owed to the town have been paid in full.<sup>1</sup> A property owner shall only hire persons to cut or trim trees who are registered with the Town.

(Ord. passed 7-13-2010)

*Editor's note:*

<sup>1</sup> Added by amendment December 14, 2004.

<sup>2</sup> Added by amendment December 14, 2004.

### **§ 154.362 CLEAR CUTTING PROHIBITED.**

On lots having a majority of trees under six inches in diameter at four feet above ground level (at its highest point), clear cutting is not allowed without the approval of the Town Manager or his or her designee. Under no circumstances can more than 50% of the natural vegetation, equally balanced across the entire lot, be cut regardless of the size or diameter of the vegetation, without approval of the Town Manager or his or her designee. The above criteria in § 154.360(C)(2)(a) through (h) will again be followed.

(Ord. passed 7-13-2010)

### **§ 154.363 VIEW ENHANCEMENT.**

A permit must be obtained from the Town Manager or his or her designee when trees are to be pruned or limbed for view enhancement. To attempt to minimize the detriment to the tree of these practices, the standards provided in American National Standards Institute (ANSI) A300 (Trees, Shrubs, and Other Woody Plant Management, Part 1-Pruning) shall be followed.

(Ord. passed 7-13-2010)

### **§ 154.364 REPLACEMENT TREES.**

Unless specified otherwise, when any provision of §§ 154.355 through 154.363 creates the need for trees to be replaced, the replacement shall be accomplished in accordance with this section.

(A) Trees shall be of an appropriate species and type for the location and elevation in which they will be planted. A list of replacement tree types and the locations in which they are appropriate may be obtained from the Town Manager or his or her designee.

(B) Tree caliper at the time of replanting shall be a minimum of one and one-half inches at breast height (that is, four feet ground level at its highest point).

(C) Tree replacement shall be accomplished at the next growing season in accordance with American National Standards Institute ANSI A300 (Part 6-Transplanting).

(Ord. passed 7-13-2010)

### **§ 154.365 PENALTIES.**

(A) *General.*

(1) The violation of any provision of this subchapter shall subject the offender to a civil penalty in the amount of \$1,000 per tree to be recovered by the town.

(1) The cutting or removal of trees not meeting the permit criteria set forth in §154.360 (C) shall subject the offender to a civil penalty in the amount of \$1,000 per tree to be recovered by the town.

Upon appeal, the burden of proving that cut trees would have qualified for a permit under §154.360 (C) lies with the appellant. Upon a finding that the cut trees would have qualified for a permit under §154.360, the offender shall be subject to a civil penalty in the amount of \$100 per tree to be recovered by the Town.

(2) The violation of any provision of this subchapter other than the cutting or removal of trees not meeting the permit criteria set forth in §154.360 (C) shall subject the offender to a civil penalty in the amount of \$100 pursuant to § 11.01 of the Beech Mountain Code of Ordinances. Each day's continuing violation shall be a separate and distinct violation.

(2) (3) Notwithstanding division (A)(1) above, all provisions of this subchapter may also be enforced by appropriate equitable remedies issuing from a court of competent jurisdiction.

(3) (4) Violation of any provision of this subchapter shall not be a misdemeanor.

(B) *Violations on public property.* In addition to the penalties above, any violator of § 154.358 with respect to trees on public property shall be required to replace removed or damaged trees on public property with trees and/or shrubs of the same size. The violator shall be responsible for the full replacement costs of the trees.

(C) *Violations on private property.*

(1) ~~Failure to register. In addition to the penalties above, any person required to register pursuant to § 154.361 above who cuts or trims trees without registering with the town shall be subject to a civil penalty of \$100 pursuant to § 11.01 of the Beech Mountain Code of Ordinances. Each day's continuing violation of this provision shall be a separate and distinct violation.<sup>3</sup>~~

(1) *Responsible Party.* For violations of § 154.358 with respect to private property, the property owner shall be deemed the responsible party and shall be liable for any penalties incurred under said provision.

(1989 Code, Title V, Ch. 51, Art. XXII, § 2207) (Ord. passed 5-13-2008; Ord. passed 7-13-2010)

*Editor's note:*

<sup>3</sup> *Added by amendment December 14, 2004.*

## **§ 154.366 APPEAL.**

See § 154.046 of this chapter.

(1989 Code, Title V, Ch. 51, Art. XXII, § 2208) (Ord. passed 5-13-2008; Ord. passed 7-13-2010; Ord. passed 11-9-2010)

## **§ 154.367 EFFECTIVE DATE.**

This subchapter is effective upon adoption.

(1989 Code, Title V, Ch. 51, Art. XXII, § 2209) (Ord. passed 5-13-2008; Ord. passed 7-13-2010)

## **VIOLATIONS, PENALTIES AND REMEDIES**

### **§ 154.375 VIOLATIONS.**

Whenever, by the provisions of this chapter, the performance of any act is prohibited, or whenever any regulations, dimension or limitation is imposed on the use of any land, or on the erection or alterations or the use or change of use of a structure, or the uses within such structure, a failure to comply with such provisions of this chapter shall constitute a separate violation and a separate offense.

(1989 Code, Title V, Ch. 51, Art. XIV, § 1400)

### **§ 154.376 PENALTIES. <sup>1</sup>**

(A) *Violation.* Violation of any provision of this chapter, except § ~~154.358-154.367~~, shall subject the offender to a civil penalty in the amount of \$100 dollars to be recovered by the town. Violation of § ~~154.358-154.367~~ shall subject the offender to a civil penalty in the amount specified in § ~~154.365 of \$500~~<sup>2</sup> dollars per tree to be recovered by the town. Violators shall be issued a written citation which must be paid within 30 days. If the violator does not pay the penalty within 30 days after receipt of the written citation, the town may recover such penalty in a civil action in the nature of a debt.

(B) *Continuing violations.* Each day's continuing violation of any provision of this chapter shall constitute a separate and distinct violation.

(1989 Code, Title V, Ch. 51, Art. XIV, § 1401) (Ord. passed 7-13-1999; Ord. passed 12-14-2004)

#### ***Editor's note:***

<sup>1</sup> *Criminal penalties removed and penalty for violation of § 154.144 changed by amendment July 13, 1999.*

<sup>2</sup> *Changed by amendment December 14, 2004.*

**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 15<sup>th</sup> day of November, 2011.

This ordinance adopted this the 15<sup>th</sup> day of November, 2011.

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Richard H. Owen, Mayor

Attest:

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Jennifer Broderick, Clerk

**Ordinance NO. 2011-16**

**TOWN OF BEECH MOUNTAIN, NC**

**AN ORDINANCE TO ESTABLISH REGULATIONS FOR  
MANUFACTURING AND PROCESSING**

**WHEREAS**, Beech Mountain is a resort area that is blessed with abundant environmental beauty; and;

**WHEREAS**, the Town of Beech Mountain desires to preserve the 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**, certain light manufacturing land uses such as wood working shops are not necessarily in conflict with the Towns character, should they abide by certain standards;

**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 154.006, 154.091, and 154.117 are hereby amended to read as follows:**

**REGULATION OF MANUFACTURING AND PROCESSING**

**§154.006 DEFINITIONS.**

*"Manufacturing/Processing, Heavy.* The manufacturing, processing, creating, repairing, renovating, painting, cleaning, or assembling of goods, merchandise or equipment at a facility at which the majority of dollar volume of business is not done through walk-in trade. In Manufacturing/Processing, Heavy establishments the objects created, repaired, cleaned, or assembled are often intended for transportation and sale or use at another facility."

*"Manufacturing/Processing, Light.* The manufacturing, processing, creating, repairing, renovating, painting, cleaning, or assembling of goods, merchandise or equipment at a facility at which the majority of dollar volume of business is done through walk-in trade. Without limiting the generality of this definition, specifically included are woodworking shops, pottery shops, and the like in which the majority of the items created, repaired, cleaned, or assembled are sold on site. Woodworking, pottery, arts and crafts, and the like executed in private residences for other than commercial purposes are not included in this definition."

## §154.091 PERMITTED USE TABLE.

	<i>Single-Family</i>				Multi-Family			Commercial		Public	Resort
	R-1	R-2	R-2A	MH	2	R-3A	R-3B	CS1	CS2	PS	BMR
Manufacturing/Processing, Heavy <sup>1</sup>											
Manufacturing/ Processing, Light								C			

<sup>1</sup> Due to the scenic beauty of Beech Mountain, its reputation as peaceful retirement and resort area community, its emphasis on tourism, the elevation of the town and its views, the Council finds that Heavy Manufacturing and Processing would be incompatible with the community of the Town of Beech Mountain and would injure the nature of the community and its focus on tourism, nature, and recreation.

## §154.115 PURPOSE.

The following conditional uses would not be appropriate without restriction throughout the zoning districts but could be acceptable if controlled as to number, area, location or relation to the neighborhood. Such uses may be permitted in a zoning district as conditional uses if the provisions or this and all other subchapters of this chapter have been met.

(1989 Code, Title V, Ch. 51, Art X, § 1000)

• • •

## §154.117 CONDITIONAL USE STANDARDS.

The following standards are applied to specific conditional uses. Before issuing a Conditional Use Permit, the Board of Adjustment shall find that all standards for specific uses listed in this section as well as all standards listed in § 154.116 have been met.

• • •

*(R) Manufacturing/Processing, Light.*

(1) Purpose. The Council finds that the residential/resort character of the area within Beech Mountain's planning jurisdiction is incompatible with the development of such area for Manufacturing/Processing uses except to the extent that such uses create none of the negative impacts often associated with such manufacturing/processing uses. Therefore, no Manufacturing/Processing use within any zoning district may:

(a) Emit from a vent, stack, chimney, or combustion process any smoke that is visible to the naked eye that is a result of the process of manufacturing, processing, creating, repairing, renovating, painting, cleaning, or assembling of goods, merchandise, or equipment.

(b) Generate noise in the course of manufacturing of greater than 40 decibels as measured at the lot line between the hours of 9 a.m. and 5 p.m. Between the hours of 5 p.m. and 9 a.m. the Town of Beech Mountain's general noise regulations as coded in §94.25 of the Beech Mountain Code of Ordinances shall apply.

(c) Generate any ground transmitted vibration that is perceptible to the human sense of touch measured the lot line

(d) Generate any odor that reaches the "odor threshold" measured at the lot line. For purposes of this subdivision, the "odor threshold" is defined as the minimum concentration in air of a gas, vapor, or particulate matter that can be detected by the olfactory systems of a panel of healthy observers.

(e) Require for its operations a daily average of more than 200 gallons of water per employee.

(f) Create any electrical disturbance that adversely affects any operations or equipment other than those of the creator of such disturbance, or otherwise causes, creates, or contributes to the interference with electronic signals (including television and radio broadcasting transmissions) to the extent that the operation of any equipment not owned by the creator of such disturbance is adversely affected.

(g) Store materials necessary for the manufacturing or processing activity in a location where such materials are visible from beyond the boundaries of the property on which the manufacturing/ processing facility is located.

(h) Semi-trucks or tractor trailers may be used to deliver or pick up materials but may not remain on the premises continuously for more than 48 hours. Such trucks or trailers may not be used as a means to store materials necessary for the manufacturing or processing activity or finished products of the manufacturing activity.

(i) Manufacturing/ Processing, Light facilities already in existence at the time of the adoption of this subsection shall be required to apply for Conditional Use Permits and comply with the requirements herein.

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 15<sup>th</sup> day of November, 2011.

This ordinance adopted this the 15<sup>th</sup> day of November, 2011.

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Richard H. Owen, Mayor

Attest:

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Jennifer Broderick, Clerk

**Ordinance NO. 2011-17**

**TOWN OF BEECH MOUNTAIN, NC**

**AN ORDINANCE TO AMEND THE PERMITTED DEICBEL LEVEL OF WIND  
ENERGY SYSTEMS AS A CONDITIONAL USE IN THE TOWN OF BEECH  
MOUNTAIN**

**WHEREAS**, Beech Mountain is a resort area that is blessed with abundant environmental beauty; and;

**WHEREAS**, the Town of Beech Mountain desires to preserve the 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**, wind energy is a renewable and clean energy source that reduces dependence on fossil fuels and foreign- held sources of energy;

**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 154.117 is hereby amended to read as follows:

(R) *Wind Energy Systems- Accessory.*

(1) *Standards for Wind Energy Systems-Accessory:* The Board of Adjustments shall deny any application for a Conditional Use Permit for a wind energy system that it determines will be out of harmony with the character of the community and its Land Use Plan for the area in which the turbine is proposed, that it determines would be unsafe or presents a potential safety hazard, or that it determines will be a nuisance due to its appearance, size, noise generated, etc. In making such a determination, the Board shall consider the following standards:

• • •

(e) Noise: Units cannot produce more than 40 decibels when in operation, measured at the lot line.

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 15<sup>th</sup> day of November, 2011.

This ordinance adopted this the 15<sup>th</sup> day of November, 2011.

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Richard H. Owen, Mayor

Attest:

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Jennifer Broderick, Clerk