

MINUTES
BEECH MOUNTAIN TOWN COUNCIL
Regular Meeting – April 12, 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 April 12, 2011 in the Town Hall Council Chambers. Other Council Members present were Paul Piquet, Rick Miller, Cindy Keller and Alan Holcombe. Town Attorney Stacy C. Eggers, IV was present. Staff members present were Town Manager Randy Feierabend; Finance Officer Nancy Johnson acting as Deputy Clerk, Public Utilities Director Robert Heaton, Public Works Director Riley Hatch, Town Planner James Scott and Town Treatment Plant Operator/Cross Connection Control Specialist Brian Railing.

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 amended the agenda to include under § VIII. New Business item d. Huff – Water Reduction Request. Mayor Owen stated the agenda would stand as amended.

V. Approval of the Minutes – March 8, 2011 Reconvened March 24, 2011 – Councilwoman Keller asked that the word mobile be replaced with modular throughout the minutes. Councilwoman Keller motioned to approve the minutes as amended. Councilman Holcombe seconded the motion and the vote passed unanimously.

VI. Public Hearing

a. Amend Title XV Land Usage § 154.215 “Mandatory Standards for Land Disturbing Activity” – Town Planner James Scott explained that the Town runs its own Soil Erosion Program which implements State law. The State has made some changes in its law. The proposed amendment keeps the Town up-to-date with the new State regulations. 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 Holcombe seconded the motion and the vote passed unanimously.

b. Amend Title XV Land Usage Section §154.272 “Exempt Signs” – Town Planner James Scott stated the proposed change would make it clear that any signs erected by the Town of Beech Mountain would be exempt from the Towns sign ordinance. The purpose of this change was to enable the Town to erect directional signs. 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 Holcombe seconded the motion and the vote passed unanimously.

VII. Public Comment –

Dave Garriss spoke on behalf of Ken Kielbania the owner of Katz, 704 Beech Mountain Parkway. Mr. Garriss stated that Mr. Kielbania understands that the structure has been an eyesore for the Town and is in need of a new paint job, metal roof, etc. To remedy this situation Mr. Kielbania has hired Mr. Garriss as a subcontractor. Plans are available on site to review. Mr. Garriss concluded by stating that Mr. Kielbania has yet to receive satisfaction from the insurance company.

Jim Frye with Associated Construction spoke on behalf of Dr. Douglas Smiley the owner of the old Destiny Inn Bar and Grille Restaurant, 1001 Beech Mountain Parkway. Mr. Frye stated that they were in a legal battle with the insurance company. The insurance company has only offered \$134,000. Mr. Smiley feels this amount is inadequate to rebuild. Mr. Frye stated that it is not the intention of Dr. Smiley to be a burden on the community. Mr. Frye has been working with Town Code Inspector Stan Hanna and Town Fire Chief Robert Pudney. Together a plan has been formulated to tear the structure down to the foundation with the exception of the decks. During the demolition Fire Chief Pudney plans to perform on-site training exercises. The demolition will take place in 3 weeks. Mr. Smiley's intention was to open a sports bar on site but this will depend on the settlement. A professional insurance adjuster has been hired to help move this situation forward.

VIII. New Business

a. Proclamation Declaring National Military Appreciation Month – Mayor Owen – Mayor Owen stated that this proclamation formally recognized May 1st – June 14th as National Military Appreciation month for the Town of Beech Mountain. The proclamation specifically thanked Fort Jackson and Fort Bragg for utilizing Beech Mountain for their recreational opportunities. Mayor Owen read the proclamation aloud. Councilman Holcombe motioned to approve the proclamation. Councilman Miller seconded the motion and the vote passed unanimously. Mayor Owen asked the former military members in the audience to stand and be acknowledged. Those military members received an ovation from all present. Pictures were taken to be placed on the Town's website and television station.

b. Resolution Amending Personnel Policy – Randy Feierabend – Manager Feierabend stated that Attorney Eggers had reviewed the proposed amendments that Council had before them. Attorney Eggers stated that the shared leave arrangement was the only major addition to the policy and that while not required is a nice perk for employees. This addition to the policy would allow for vacation leave to be shared. Mayor Owen inquired about sharing sick leave. Manager Feierabend stated that staff was not recommending the use of sick leave because this is leave that the donor may end up needing to use themselves. Vice Mayor Piquet asked for clarification on who was considered an exempt employee. Mayor Owen stated that exempt employees are generally higher paid employees and that if the Town was going to reconsider compensatory time for these employees then their salaries would need to be readdressed as well. Vice Mayor Piquet wanted the wording on this paragraph looked at again. Mayor Owen asked staff to work on the policy and present it back to Council at next month's meeting.

c. Kickturn Lane – Richard Fox – Mayor Owen stated that Richard Fox had a water issue. Councilman Holcombe requested to recuse himself since Mr. Fox was a client of his. Councilman Miller motioned to recuse Councilman Holcombe. Vice Mayor Piquet seconded the motion and the vote passed unanimously. Councilman Holcombe explained that last fall the Town installed a homeowner's cutoff valve at 107 Kickturn Lane. A leak developed at the homeowners cut off after installation during Christmas causing Mr. Fox to lose significant rentals. Public Utilities Director Robert Heaton oversaw the project to dig up the area where the homeowner cutoff valve was located. The leak was caused by a copper pipe that was in contact with a large rock. The repair was made by Bob Garland. The problem is that there had been no leak prior to the Town completing their work. As a result Mr. Fox is seeking relief. Councilman Miller confirmed with Mr. Heaton that the contractors had performed the work of installing the homeowner cutoff valve and not the staff of the Town. Vice Mayor Piquet stated that the outstanding balance is \$573.28. Mayor Owen stated that charging the average bill for the past year would be a good idea for reducing the bill. Vice Mayor Piquet motioned that staff reduce the water and sewer portion of the bill to reflect the yearly average consumption. Councilman Miller seconded the motion and the vote passed unanimously. Vice Mayor Piquet motioned to allow Councilman Holcombe back. Councilman Miller seconded the motion and the vote passed unanimously.

d. Huff – Water Reduction Request – Manager Feierabend stated the Huff's took all the necessary precautions in shutting their water off. When the Huff's returned to the mountain and turned their water back on a leak had developed between the meter and the house. This leak occurred for 3 weeks before it was discovered. The total utility bill was \$3,505.40 which has been adjusted by staff down to \$1,605.62. Staff asks that Council consider adjusting it further because the Huff's did everything that they were supposed to do. Councilman Miller recollected that in another similar situation Council reduced the bill by 50%. Councilman Miller confirmed that the owners had a homeowner cutoff by the meter box. Vice Mayor Piquet moved that Council forgive the \$1,380.72. Motion died for lack of a second. Councilman Holcombe motioned for staff to reduce the amount of \$1,380.72 by 50%. Councilman Miller seconded the motion and the vote passed unanimously.

Councilwoman Keller asked if the new meters had alarms and how these types of issues were going to be addressed in the future. Manager Feierabend stated that the goal was for one of the Police Department's vehicles to be equipped to read the radio read meters once a week. Public Utilities Director Robert Heaton stated that the check would occur early in the morning to help detect leak activity. Councilman Miller stated that he felt that a lot of these problems could be stopped if the water line from the meter to the house was sleeved. This would eliminate a lot of these problems. Vice Mayor Piquet stated that if Council was going to consider sleeving the water line then they should also look into sleeving the electric lines if this is not already required by the current code. Councilman Holcombe thought that if an engineer agreed that this was a good idea then it should be done. Attorney Eggers stated that if the Town was going to modify its water ordinance then a public hearing would need to be held. Additionally the State building code would need to be looked at as well. Attorney Eggers stated he would report back to Council his findings.

IX. Old Business

a. Vote to Amend Title XV Land Usage § 154.215 “Mandatory Standards for Land Disturbing Activity” – Mayor Owen – Councilwoman Keller motioned to approve. Councilman Holcombe seconded the motion and the vote passed unanimously. Ordinance No. 2011-03 is attached as Exhibit A and incorporated by reference as if fully set out within these minutes.

b. Amend Title XV Land Usage Section §154.272 “Exempt Signs” – Mayor Owen – Councilwoman Keller stated that the Beech Mountain Club would benefit from a more elaborate sign off of Pine Ridge Road and the Beech Mountain Parkway. Councilwoman Keller was not suggesting that the Town pay for this sign. Town Planner James Scott stated that through this amended ordinance this would be possible. The club would pay for the sign and the Town would erect the sign thereby making it okay. Councilwoman Keller asked if the Beech Mountain Club would have to pay for the labor as well. Mayor Owen asked Attorney Eggers if the wording could be changed from ‘signs erected by’ to ‘signs approved by’. Attorney Eggers responded that there would need to be a provision added that sign requests would need to come before Council. Also standards would need to be set up to assist with regulating Councils approval. The way the amended ordinance currently reads this is a staff decision and as such has to be very specific and regimented so that there is not leeway in decisions being made with favoritism. Attorney Eggers stated that if Council were to choose this option then theoretically any business could approach Council. After much discussion Council decided that this was not a viable option. Manager Feierabend stated that the true intention of this amendment was to be able to place directional signs on the mountain. Vice Mayor Piquet stated as the language read the Town would not have to carry the burden of erecting the sign. Councilman Miller motioned to approve the ordinance. Councilman Holcombe seconded the motion passed unanimously. Ordinance No. 2011-04 is attached as Exhibit B and incorporated by reference as if fully set out within these minutes.

X. Town Manager and Staff Reports

Budget Amendment – Finance Officer Nancy Johnson advised Council that the monies that were being moved were within the current budget and that salary line items had been consolidated. Councilman Miller motioned to approve the budget amendment. Councilman Holcombe seconded the motion and the vote passed unanimously.

Planning Board Meeting Date Change – Manager Feierabend stated that the Planning Board agreed to move their meeting date to the last Tuesday of the month to assist with meeting the agenda packet deadline. Beginning in May and moving forward meetings will take place the last Tuesday of the month at 9:00 a.m. in the Council Chamber rooms at Town Hall.

Lees-McRae Visit – Councilman Holcombe stated that the discussion with Lees-McRae had not been productive because of the issue of students having to travel during the winter time. Councilwoman Keller stated that her goal had been to take the modular home and make it an amenity to Beech Mountain. Councilman Holcombe asked about the Land of Oz items that Councilwoman Keller had been trying to secure from Appalachian State University. Councilwoman Keller stated that the University is going to create a form for those soliciting the return of items to fill out which would have requestors stating what they were going to do

with the items and how they were going to preserve the items if returned to them. This form should be available by mid May.

Tree Board Vacancy – Manager Feierabend stated that at the Tree Board’s last meeting they discussed the vacancy on their board. All members were in favor of this position being filled by Tony Hunter. Councilwoman Keller stated that Tony Hunter was already attending the meetings. Councilman Miller motioned to appoint Tony Hunter to the Tree Board. Vice Mayor Piquet seconded the motion and the vote passed unanimously.

Schedule Budget Workshops – Manger Feierabend stated that budget workshops will need to be scheduled for the time period of May 11th through June 14th. Vice Mayor Piquet stated that Council could set their budget meetings at the next Council meeting when they were presented with the proposed budget.

Mayland Community College – Manager Feierabend informed Council that invitations had been extended from Mayland Community College for a 40th birthday celebration scheduled to take place April 25th at 5:30 p.m. Individual Council members were invited along with their spouses. Please inform staff of who would like to attend the event.

Property Closing – Attorney Eggers informed Council that Town’s purchase on the 5 acre lot behind public works had been successfully closed completed.

Radio Read Meter Financing – Manager Feierabend stated that the Local Government Commission had approved the Towns loan of \$950,000 for financing the Radio Read Meter Project. The closing will take place 10:00 a.m. this coming Friday with BB&T.

Skiloft – Manger Feierabend stated that he and Public Works Director Riley Hatch met with Kevin Mullins and were able to come up with a solution for the snow on his cul-de-sac.

Town Website – Manager Feierabend informed Council that Town Planner James Scott was ready to go live with the Town’s new website this week. Manager Feierabend acknowledged Kathy Khalifa for all of the wonderful work she had done on the Towns new website.

At 4:15 p.m. Mayor Owen stated that Council would take a short break before closed session.

- XI. Closed Session – Pursuant to NC GS 143-318.11(a)(3) Attorney Client Matters and NC GS 143-318.11(a)(6) Personnel Matters*** – Upon motion by Councilman Holcombe and seconded by Councilwoman Keller, the Council voted unanimously to go into closed session pursuant to N.C. Gen. Stat. 143-318.11(a)(3) for Attorney Client matters and N.C. Gen. Stat. 143-318.11(a)(6) for Personnel Matters. Finance Officer Nancy Johnson, acting as deputy clerk, was excused from closed session and minutes were taken by Town Attorney Eggers. Vice Mayor Piquet moved to exit closed session at 5:30 p.m., which was seconded by Councilwoman Keller. The motion passed unanimously.

XII. Other Business

Contract Review – Vice Mayor Piquet moved to pay Town Manager Feierabend a housing allowance of \$1,000 per month for the months of April, May, and June to conclude the budget year. The motion was seconded by Councilman Holcombe and passed unanimously.

XIII. Adjourn – Upon motion to adjourn made by Vice Mayor Piquet and seconded by Councilman Holcombe, the meeting was adjourned at 5:31 p.m.

Minutes approved by Town Council on May 10, 2011.

Rick Owen, Mayor

ATTEST:

Jennifer Broderick, Town Clerk

ATTACHMENT(S)
TO
MINUTES

EXHIBIT A – An Ordinance to Amend Title XV Land Usage § 154.215
“Mandatory Standards for Land Disturbing Activity” to Mitigate Erosion and
Sedimentation

EXHIBIT B – An Ordinance to Amend Title XV Land Usage Section §154.272
“Exempt Signs” of the Town of Beech Mountain to Include Directional Signs

EXHIBIT A

2011-03

Ordinance NO. 2011-03

TOWN OF BEECH MOUNTAIN, NC

**AN ORDINANCE TO AMEND TITLE XV LAND USAGE § 154.215
“MANDATORY STANDARDS FOR LAND DISTURBING ACTIVITY” TO
MITIGATE EROSION AND SEDIMENTATION**

WHEREAS, the Town of Beech Mountain’s erosion control program operates under the oversight of the North Carolina Department of Environment and Natural Resources pursuant to NC Sedimentation Pollution Control act of 1973; and

WHEREAS, the NC Sedimentation and Pollution Control Act of 1973 sets forth standards by which erosion and sedimentation is mitigated, including standards for providing ground cover to surfaces exposed in construction and development projects; and

WHEREAS, North Carolina Department of Environment and Natural Resources is requiring the Town of Beech Mountain to amend its erosion control ordinance to conform with the standards of the Sedimentation and Pollution Control Act of 1973;

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 154.215 (Mandatory Standards for Land Disturbing Activity) is hereby amended to read as follows:

154.215 MANDATORY STANDARDS FOR LAND-DISTURBING ACTIVITY

No land-disturbing activity subject to the control of this subchapter shall be undertaken except in accordance with the following mandatory standards.

. . .

(B) *Graded slopes and fills.* The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within ~~21 calendar days~~ of completion of any phase of grading, whichever is shorter, be planted or otherwise provided with ground cover, devices or structures sufficient to restrain erosion.³

. . .

(D) *Ground cover.* Whenever land-disturbing activity is undertaken on a tract comprising more than one-half acre, if more than one-half acre is uncovered, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or

EXHIBIT A

2011-03

otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in § 154 216(B)(5) below, provisions for a ground cover sufficient to restrain erosion must be accomplished within ~~15 working days or 90 calendar days~~ following completion of construction or development, whichever period is shorter.⁵

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 12th day of April, 2011.

This ordinance adopted this the 12th day of April, 2011.

Rick Owen, Mayor

ATTEST:

Jennifer Broderick, Clerk

EXHIBIT B

2011-04

Ordinance NO. 2011-04

TOWN OF BEECH MOUNTAIN, NC

AN ORDINANCE TO AMEND TITLE XV LAND USAGE § 154.272 “EXEMPT SIGNS” OF THE TOWN OF BEECH MOUNTAIN TO INCLUDE DIRECTIONAL SIGNS

WHEREAS, Beech Mountain is a tourism destination and is often visited by large numbers of people who are unfamiliar with the location of major points of interest in the Town; and

WHEREAS, the Town of Beech Mountain desires to encourage the safe and efficient flow of traffic; and

WHEREAS, the Town of Beech Mountain desires to preserve the natural beauty of the mountain by ensuring that all signs erected comply with standards of design and construction;

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

SECTION I. The Code of Ordinances, Title XV Land Usage, Chapter 154 (Zoning), Section 154.272 (Exempt Signs) is hereby amended to read as follows:

§ 154.272 EXEMPT SIGNS.

The following signs and/or displays shall be exempt from the regulations of this subchapter:

. . .

(B) Signs erected by a duly-constituted governmental body, including traffic or similar regulatory devices, legal devices, or warnings. This shall include street signs, signs used to identify public buildings, signs used to identify points of interest, and direction or informational signs that the governing body deems appropriate to encourage the safe and efficient flow of traffic.

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.

EXHIBIT B

2011-04

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 12th day of April, 2011

This ordinance adopted this the 12th day of April 2011.

Rick Owen, Mayor

ATTEST:

Jennifer Broderick, Clerk