

MINUTES
BEECH MOUNTAIN TOWN COUNCIL
Regular Meeting – August 9, 2011

I. CALL TO ORDER

Mayor Rick Owen called the regular meeting of the Beech Mountain Town Council to order at 6:02 p.m., Tuesday August 9, 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; Town Clerk Jennifer Broderick, Town Planner James Scott, Fire Chief Robert Pudney and Public Utilities Director Robert Heaton.

II. Invocation – Charlie Burleson 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 be amended to include § VIII. New Business item k. Veterans. In addition § XI. Closed Session would be amended to include NC GS 143-318.11(a)(5) Acquisition of Real Property. Mayor Owen stated that the agenda would stand as amended.

V. Approval of the Minutes

a. July 12, 2011 Regular Meeting & July 12, 2011 Closed Session Minutes – Councilman Miller motioned to approve the minutes. Councilman Holcombe seconded the motion and the vote passed unanimously.

VI. Public Hearing

a. Ordinance to Establish Wind Energy Systems as a Conditional Use in the Town of Beech Mountain – Town Planner James Scott stated the proposed ordinance would establish standards and regulations for wind energy systems and wind turbines to allow them as a conditional use in certain zoning districts. Specific issues addressed are height and noise. Additionally the proposed ordinance now distinguishes between commercial and residential types of energy systems. Commercial energy systems would be required to be on a minimum of 5 acres in order to produce energy that would be going off site. Vice Mayor Piquet motioned to open the public hearing. Councilman Holcombe seconded the motion and the vote passed unanimously. With there being 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

Rick Simeone of 100 Pine Ridge Road stated that he was displeased with the cleanup efforts of Mountain Electric from their right-of-way clearing. Mr. Simeone stated that he had spoken with a Mr. Grubb of Mountain Electric and has been assured that Mountain Electric would clean up Pine Ridge Road and Beech Mountain Parkway. Mr. Simeone stated that

someone from the Town needed to coordinate with Mountain Electric to ensure follow through.

VIII. New Business

a. Service Contract with Leslie Hayhurst – Manager Feierabend stated that Susan Halliburton has approached the Town suggesting that Leslie Hayhurst be contracted for service as the Towns' wildlife agent. The proposed contract would not include bears. Manager Feierabend pointed out that there are only three options for the Town for this type of service. One, being to contract with Mrs. Hayhurst. Two, to contract with Wildlife Wranglers and three to call North Carolina Wildlife. Mayor Owen stated that one of the issues with contracting for service with Mrs. Hayhurst was where the injured animals would be kept. Mayor Owen asked Mrs. Hayhurst to expound upon this. Mrs. Hayhurst stated that all animals will be kept inside and that there will be no outside cages. Mrs. Hayhurst stated that throughout the course of a year approximately three dozen critical care cases were taken on as well as approximately 100 animals retrieved from within town limits. Vice Mayor Piquet stated that Genesis has always operated through private donations but if the Town was contracting for services then there would have to be a different level of accountability because tax payer dollars would be paying for the service. Vice Mayor Piquet questioned if this service could be provided three hundred and sixty-five days a year. Mrs. Hayhurst assured Council that this was the case. Councilwoman Keller asked if this was the final paperwork. Mayor Owen stated that this was simply a proposal that would be sent on to Attorney Eggers to form a contractual agreement should Council make this election. Manager Feierabend pointed out that some Towns do provide this service but that some Towns do not. Mrs. Hayhurst stated that records are maintained for the Federal Government and the North Carolina Wildlife Association and that they were in compliance with the rules and regulations with logs being kept for every call and animal. Mrs. Hayhurst states that the agreement with the Town could be made through Genesis or herself. Mrs. Halliburton stated that Mrs. Hayhurst was not in violation of any zoning provisions. Mayor Owen made a recommendation that Council take a look at Mrs. Hayhurst's record logs first before moving forward with paying the Town Attorney to draw up a contract. Mrs. Halliburton stated that moving forward Mrs. Hayhurst could tell the police the next time they call that this service would cost \$75.00. Mayor Owen stated that she could do as she pleased and that this decision was up to Mrs. Hayhurst.

b. 124 Hawthorne Road – Councilman Miller motioned to reduce the water portion of the utility bill by 15%. Vice Mayor Piquet seconded and the motion passed unanimously.

c. Request to Begin Process of Watauga River Reclassification Process – Public Utilities Director Robert Heaton provided an overview for the Watauga River Reclassification Process. The Water and Sewer Study that has been completed for the Town included the issue of source water. It has been concluded that the only way to successfully provide water to the Town in the next 20 years is to have the ability to collect water from the Watauga River. A consultant that was a former employee for the Department of Environment and Natural Resources agreed with this move. The reclassification process will take 1-3 years to complete. It is imperative that this process be initiated now in order to move forward into the permitting and construction process. Councilman Miller motioned to begin the reclassification process. Vice Mayor Piquet seconded the motion and the vote passed unanimously.

d. Municipal Agreement for Inspection of Bridges on the Municipal Street System F.A. Project BRZ-NBIS – Councilman Holcombe motioned to approve the agreement. Vice Mayor Piquet seconded the motion and the vote passed unanimously.

e. Short Term Rental Business License Tax – Attorney Eggers stated that Council passed this ordinance last month however due to recent legislation passed at the State level Attorney Eggers has to ask that Council repeal the Short Term Rental Business License Tax legislation. Ordinance 2011-07 as written goes against this new Statute. As far as the rental permit that Council was looking to address current legislation states that the Town is unable to do that as well. Attorney Eggers stated that this has turned into a housekeeping matter. Councilman Holcombe motioned to repeal ordinance 2011-07. Vice Mayor Piquet seconded the motion and the vote passed unanimously. Councilwoman Keller asked if there was any other solution. Attorney Eggers advised that he would look further into this matter.

f. Public Hearing Request for Nonconforming Uses-Structural Alterations – Town Planner James Scott stated that there are approximately 100 houses that are built into the setbacks on Beech Mountain. This type of building occurred before the Town was incorporated. With the way the Towns' ordinances now stand these owners are not able to make any proposed additions to these structures even though the addition would be totally within the boundaries of the property. Mr. Scott stated that the Planning Board feels that this type of variance should be permitted and has created within this ordinance a separation between the definition of nonconforming use and nonconforming structure. Vice Mayor Piquet motioned to schedule a public hearing for Council's next regularly scheduled meeting. Councilman Holcombe seconded the motion and the vote passed unanimously.

g. Property Tax Refund – Vice Mayor Piquet motioned to approve the refund. Councilman Holcombe seconded the motion and the vote passed unanimously.

h. Annual Settlement – Manager Feierabend stated that the tax office is at 99% collection. Councilman Holcombe motioned to accept the annual settlement. Vice Mayor Piquet seconded the motion and the vote passed unanimously. Attorney Eggers stated that several properties have been turned over to his office for delinquency and that the Town is in the process of preparing to file foreclosure to either prompt payment or to generate payment.

i. Order to Collect – Councilman Miller motioned to approve the order to collect. Vice Mayor Piquet seconded the motion and the vote passed unanimously.

j. Tourism Development Authority Funding Proposal – Calder Smoot, Chairman of the Tourism Development Authority, stated that this was the proper time to move forward with developing a full time position as well as a part time position for the Tourism Development Authority. Vice Mayor Piquet stated that upon review of the proposal it did not address the funding of the Chamber of Commerce. Mr. Smoot stated that this would be up to the Chamber of Commerce and that the proposal before Council had the Tourism Development Authority incorporating the Chamber of Commerce employees as contract employees for the Tourism Development Authority. These employees would no longer have anything to do with memberships. Vice Mayor Piquet stated that if either the proposed Tourism Development Authority full time or part time employee work a Chamber of Commerce event then the Tourism Development Authority would need to be reimbursed. Mr. Smoot stated

that events such as the OZ event generate lodging so the Tourism Development Authority will still be assisting in these types of events. Councilman Holcombe concurred that this type of reimbursement needs to take place and suggested that hours be logged in the manner that Attorney Eggers billed for his hours of service. Councilman Miller stated that the Tourism Development Authority would be solely responsible for employee raises. Mayor Owen stated that there is a lot of positive movement however things are progressing forward so quickly with this proposal that not only is the Tourism Development Authority gaining a full time employee and part time employee but the Town is gaining these employees as well. Mayor Owen asked that the proposed 1.5% revenue paid to the Town be increased 3% because of the additional administrative responsibilities that Town staff will have to undertake. Manager Feierabend stated that the proposed part time employee ours needs to be adjusted down from 30 hours weekly to 29.5 hours weekly. Mayor Owen asked Attorney Eggers to address any concerns with regards to the proposal and whether there needed to be a contractual agreement in place. Attorney Eggers stated that there did need to be an agreement in place for hours, superiors, performance review, discipline, termination and such. Mayor Owen stated that this agreement would need to be put in place. Vice Mayor Piquet motioned to accept the proposal under the condition that the 1.5% monies to the Town be increased to 3%; that the Chamber of Commerce reimburse the Tourism Development Authority for any work that these two employees perform for them and that Attorney Eggers prepares the contractual agreement that all parties sign off on. Councilman Holcombe seconded the motion and the vote passed unanimously. Council indicated that the employees would be incorporated into the Towns' payroll on the first Monday of a pay cycle after the agreement was signed.

k. Veterans – Councilman Holcombe stated that the proposed event to celebrate those who had served our nation has grown a lot larger than originally anticipated with there already being one hundred and thirty veterans on the list that he had been compiling. As a result Councilman Holcombe proposed that a separate event be held for these individuals down at Buckeye Recreation Center with the goal being that this event would be held during the month of September. Council determined that Councilman Holcombe, Vice Mayor Piquet and Urs Gsteiger of 318 N. Pinnacle Ridge would form the committee.

IX. Old Business

a. Vote on Ordinance to Establish Wind Energy Systems as a Conditional Use in the Town of Beech Mountain – Town Planner James Scott stated that it was important to keep in mind that these are conditional uses and that the Planning Board would retain the ultimate say so and on whether or not this would be in harmony with the mountain. Councilwoman Keller expressed her concern over the fact that with the way this ordinance is written the issue of someone's back yard being someone else's front yard has not been dealt with. Mayor Owen asked about the decibel levels of these types of systems. After much discussion Council concluded that modifying the decibel level in the ordinance would protect other homeowners. Councilman Holcombe motioned to pass the ordinance with the decibel level being set at 10. Vice Mayor Piquet seconded the motion and the vote passed unanimously. Ordinance No. 2011-13 is attached as Exhibit A and incorporated by reference as if fully set out within these minutes.

X. Town Manager and Staff Reports

Council Meeting Schedule – After much discussion Council decided that moving forward Councils regularly scheduled meeting would be held on the second Tuesday of the month at 3:00 p.m. at Town Hall.

September 13th Regular Council Meeting – After much discussion Council decided that the September 13, 2011 regularly scheduled Council meeting would be rescheduled for September 20, 2011 at 3:00 p.m. at Town Hall.

High Country Municipal Association – Manager Feierabend stated that Beech Mountain will be hosting the High Country Municipal Association meeting at 6:30 p.m. at Town Hall on Thursday, August 18th. There will be a meal served at 6:00 p.m.

Codification – Manager Feierabend stated that the Town Clerk would be initiating the codification process at the close of this meeting for all legislation passed from the period of February 9, 2011 through August 9, 2011.

Water Meter Project Financial Update – Manager Feierabend stated that the Water Meter Project is two-thirds of the way finished and that the project was running on budget.

Mountain Electric – Manager Feierabend stated that Public Works Director Riley Hatch and Alvin Ingram of Mountain Electric are working together to clear the Town right of ways.

Investment Accounts – Manager Feierabend informed Council that staff continues to look for opportunities for the Towns monies to grow.

Mayor Owen stated that Council would take a break at 8:06 p.m.

XI. Closed Session – Pursuant to NC GS 143-318.11(a)(3) Attorney Client Matters and NC GS 143-318(a)(5) Acquisition of Real Property – Upon motion by Councilman Holcombe at 8:18 p.m., seconded by Councilman Miller, the Council voted unanimously to go into closed session pursuant to NC GS 143-318.11(a)(3) for Attorney Client Matters and NC GS 143-318.11(a)(5) Acquisition of Real Property. Vice Mayor Piquet motioned to exit closed session at 8:46 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 8:47 p.m. The motion carried unanimously.

Minutes approved by Town Council on September 20, 2011.

Richard H. Owen, Mayor

ATTEST:

Jennifer Broderick, Town Clerk

EXHIBIT A

Ordinance Number 2011-13

(9 pages)

Ordinance NO. 2011-13

TOWN OF BEECH MOUNTAIN, NC

**AN ORDINANCE TO ESTABLISH 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 154.091 and 154.117 are hereby amended to read as follows:

WIND ENERGY SYSTEMS

§154.006 DEFINITIONS.

- (a) *Wind Energy Systems-Commercial*: A system that converts wind energy into electrical or mechanical power. Such systems may include tower(s) and associated control or conversion electronics. These systems may exist as a stand-alone use on a tract of land and produce the majority of their power for redistribution and use at locations other than the tract of land on which the system resides.
- (b) *Wind Energy Systems-Accessory*: A system that converts wind energy into electrical or mechanical power. Such systems may include tower(s) and associated control or conversion electronics. These systems are located on the same tract of land as a permitted residential dwelling or commercial building and produce the majority of their power for use on-site.

§154.091 PERMITTED USE TABLE.

- (A) P = Permitted.
- (B) C = Allowed as a conditional use.

(C) Blank space = Not permitted.

	<i>Single-Family</i>				<i>Multi-Family</i>			<i>Commercial</i>		<i>Public</i>	<i>Resort</i>
	R-1	R-2	R-2A	MH	2	R-3A	R-3B	CS1	CS2	PS	BMR
Wind Energy Systems- Commercial	<input type="checkbox"/>									<input type="checkbox"/>	
Wind Energy Systems- Accessory	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>				<input type="checkbox"/>	<input type="checkbox"/>		

CONDITIONAL USES

§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 of 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.

(Q) *Wind Energy Systems- Commercial.*

(1) *Purpose.* The purpose of this Section is to regulate the wind power turbines and other wind energy systems in order to preserve the character of the mountain and to protect its citizens from potential nuisances caused by these systems, while also allowing for the clean and renewable energy provided by these systems should they meet certain criteria.

(2) *Definitions.* For the purpose of this chapter, certain words or terms used herein are defined as follows:

(a) *Wind Energy system Height:* The height above the original natural grade of the land on which the system sits (at its highest point directly beneath the

footprint of the system) to the tip of the turbine blade when it reaches its highest elevation.

(3) *Standards for Wind Energy Systems.* 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:

(a) Wind Energy system Height: Height shall be limited to 100 feet.

(b) Site Location and Setback: No part of a wind energy system (including overhanging blades or appurtenances) shall be closer to surrounding property lines than the height of the wind energy system unless a NC Registered Professional Engineer certifies the fall zone of the wind energy system and appurtenances will be within the setback area proposed. In addition, no wind energy system shall be located closer to an inhabited structure on adjacent property than 3 times the height of the wind energy system. Furthermore, a wind energy system may not be located closer to another wind energy system than 5 times the height of the wind energy system. No wind energy system may be located on a tract of land less than five (5) acres in area. No part of a wind energy system (including overhanging blades or appurtenances) may be located within the required building setbacks on a lot or tract.

(c) Building Permit Requirements: A building permit shall be required. Building permit applications for wind energy systems shall be accompanied by standard drawings of the wind energy system structure, including the tower, base, and footings. An engineering analysis of the tower certified by a licensed professional engineer which includes standards for ice/wind loading shall also be submitted. This analysis may be supplied by the manufacturer.

(d) Compliance with other applicable laws: Wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports. Evidence of compliance or non-applicability shall be submitted with the application. Wind energy systems must also comply with any other applicable state or local laws, including the "Ridge Line Law" (NCGS 113A-205 et seq.).

(e) Utility Notification: No wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

(f) Appearance: Wind energy systems shall maintain a galvanized finish or be painted to conform to the surrounding environment to reduce visual obtrusiveness. No wind energy system should have any signage, or writing or pictures that may be construed as advertising placed on it at any time. In addition no flags, streamers or decorative items may be attached to the wind energy system.

(g) Removal of Defective or Abandoned Wind Energy Systems: Any wind energy system that is not functional shall be repaired by the owner or removed. In the event that the Town becomes aware of any wind energy system that is not operated for a continuous period of 6 months, the Town will notify the landowner by registered mail and provide 45 days for a written response. In such a response, the landowner shall set forth reasons for the operational difficulty and provide a reasonable timetable for corrective action. If the Town deems the timetable for corrective action as unreasonable, the Town shall notify the landowner and such landowner shall remove the energy system with 120 days of receipt of said notice.

(4) *Procedure and Permit Application:* Prior to the application for a Conditional Use Permit being submitted to the Board of Adjustment, the applicant shall provide a copy of the application to the Planning Board for a review of the impacts of such proposal. The Planning Board may make findings on the impact of the proposed wind energy system that may be submitted to the Board of Adjustment and if submitted shall be considered in the Board of Adjustment's decision.

(a) In addition to the items and information required in 154.116 for a Conditional Use Permit, applications for wind energy systems shall contain the following information:

(i) The complete name, address, telephone number, and e-mail address of the applicant and any authorized representative.

(ii) The signature of the person who prepared the application, if prepared by an agent or consultant of the applicant.

(iii) The role of the permit applicant in the construction and operation of the wind power project.

(iv) The identity of any other wind power project located in the State in which the applicant, or a principal of the applicant, has an ownership or other financial interest; the operator of the wind power project if different from the applicant; and the name of the person or persons to be the permittee if a site permit is issued.

(v) The applicant shall state in the application whether a certificate of public convenience and necessity for the system is required from the North Carolina Utilities Commission and, if so, the anticipated schedule

for obtaining the certificate. The Town may ask the Utilities Commission to determine whether a certificate of public convenience and necessity is required for a particular wind power project for which the Town has received a site permit application. The Town shall not approve a project requiring a certificate unless and until such certificate is issued by the Utilities Commission. If a certificate is not required from the Utilities Commission, the permit applicant shall include with the application a discussion of what the applicant intends to do with the power that is generated.

(vi) The permit applicant shall include the following information about the site proposed for the wind power project and any associated facilities:

- (a) A recent survey of the boundaries of the parcel on which the proposed wind turbine is to be located.
- (b) The location of other wind energy systems in the general area of the proposed wind power project.
- (c) The applicant's land rights within the boundaries of the proposed site.

(vii) The permit applicant shall provide the following information regarding the design of the proposed wind power project:

- (a) A project layout, prepared by a design professional, including a map showing the proposed location of the energy system(s).
- (b) A description of the turbine(s) and tower(s) and other equipment proposed to be used in the wind power project, including the name of the manufacturers of the equipment.
- (c) A description of the project electrical system, including transformers at both low voltage and medium voltage.
- (d) A description and location of associated facilities.

(viii) An applicant for a site permit shall include with the application an analysis of the potential impacts of the wind power project, proposed mitigative measures, and any adverse environmental effects that cannot be avoided, in the following areas:

- (a) Demographics, including people, homes, and businesses.
- (b) Noise. The applicant shall provide information regarding the volume (in decibels) that the proposed system would create and the

distance at which a person of average hearing could hear such system.

(c) Visual impacts. The applicant shall provide a map or other study that illustrates the locations from which the proposed wind energy system will be visible.

(d) Public services and infrastructure

(e) Cultural and archaeological impacts.

(f) Recreational resources.

(g) Public health and safety, including air traffic, electromagnetic fields, and security and traffic.

(h) Hazardous materials.

(i) Land-based economics, including agriculture, forestry, and mining.

(j) Tourism and community benefits.

(k) Topography.

(l) Soils.

(m) Geologic and groundwater resources.

(n) Surface water and floodplain resources.

(o) Wetlands.

(p) Vegetation.

(q) Avian, impact assessment that includes an indication of the type and number of birds that are known or suspected to use a project site and the area surrounding that site.

(r) Wildlife.

(s) Rare and unique natural resources.

(ix) The permit applicant shall describe all of the following:

- (a) The manner in which the wind power project, including associated facilities, will be constructed.
 - (b) How the wind power project will be operated and maintained after construction, including a maintenance schedule.
 - (c) The anticipated schedule for completion of the wind power project, and shall identify the expected date of commercial operation.
 - (d) The energy expected to be generated by the wind power project.
- (x) The permit applicant shall include the following information regarding decommissioning of the wind power project and restoring the site:
- (a) The anticipated life of the wind power project.
 - (b) The estimated decommissioning costs in current dollars.
 - (c) The method and schedule for updating the costs of decommissioning and restoration.
 - (d) The method of ensuring that funds will be available for decommissioning and restoration.
 - (e) The anticipated manner in which the wind power project will be decommissioned and the site restored.
- (xi) The permit applicant shall include in the application a list of all known federal, state, and local agencies or authorities, and titles of the permits they issue that are required for the proposed wind power project.

(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:

- (a) Use: Accessory systems are to be located on the same tract of land as a permitted residential dwelling or commercial building, and are to be designed such that their primary function is to produce energy for consumption by the residential dwelling or commercial building with which they share the lot or tract of land.

- (b) Frequency: A maximum of one (1) Wind Energy System-Accessory unit is permitted per lot.
- (c) Site location and Setback: Accessory units are not permitted in street yards (the portion of the yard that abuts a street or road and is nearer to the street or road than the primary structure on the lot). Wind energy systems may not be located in or overhang above the required building setbacks for a lot or tract.
- (d) Height: Accessory units may not extend to a height of greater than fifteen (15) feet above the highest point of the structure to which they are accessory or 50 feet in total height, whichever is lesser. Total height shall be measured vertically from the highest point of the wind energy system to the ground. Mounding of dirt or rocks to achieve an artificially high ground level shall not be considered in this calculation.
- (e) Noise: Units cannot produce more than 10 decibels when in operation, measured at the lot line.
- (f) Operation: Units are required to have a cut-in speed of at least seven (7) miles per hour. "Cut-in speed" is the wind velocity at which a wind energy system begins operation.
- (g) Compliance with other applicable laws: Wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports. Evidence of compliance or non-applicability shall be submitted with the application. Wind energy systems must also comply with any other applicable state or local laws, including the "Ridge Line Law" (NCGS 113A-205 et seq.).
- (h) Appearance: Wind energy systems shall maintain a galvanized finish or be painted to conform to the surrounding environment to reduce visual obtrusiveness. No wind energy system should have any signage, or writing or pictures that may be construed as advertising placed on it at any time. In addition no flags, streamers or decorative items may be attached to the wind energy system.
- (i) Building Permit Requirements: A building permit shall be required. Building permit applications for wind energy systems shall be accompanied by standard drawings of the wind energy system structure, including the tower, base, and footings. An engineering analysis of the tower certified by a licensed professional engineer which includes standards for ice/wind loading shall also be submitted. This analysis may be supplied by the manufacturer. An NC Registered Professional Engineer must certify that the fall zone of the wind energy system and appurtenances will be within the boundaries of the property on which it is located.
- (j) Utility Notification: No wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to

install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

(k) Removal of Defective or Abandoned Wind Energy Systems: Any wind energy system that is not functional shall be repaired by the owner or removed. In the event that the Town becomes aware of any wind energy system that is not operated for a continuous period of 6 months, the Town will notify the landowner by registered mail and provide 45 days for a written response. In such a response, the landowner shall set forth reasons for the operational difficulty and provide a reasonable timetable for corrective action. If the Town deems the timetable for corrective action as unreasonable, the Town shall notify the landowner and such landowner shall remove the energy system with 120 days of receipt of said notice.

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 9th day of August, 2011.

This ordinance adopted this the 9th day of August, 2011.

Richard H. Owen, Mayor

Attest:

Jennifer Broderick, Clerk