

MINUTES
BEECH MOUNTAIN TOWN COUNCIL
Regular Meeting – April 8, 2014

I. CALL TO ORDER

Mayor Owen called the regular meeting of the Beech Mountain Town Council to order at 4:02 p.m., Tuesday, April 8, 2014 in the Town Hall Council Chambers. Other Council Members present were Alan Holcombe, Paul Piquet, Cindy Keller and E. 'Rick' Miller. Town Attorney Stacy C. Eggers, IV. was present. Staff members present were Town Manager Randy Feierabend; Administrative Assistant Dara Barnes, Town Planner James Scott, Public Utilities Director Robert Heaton, Public Works Director Riley Hatch, Fire Chief Robert Pudney, Finance Officer Nancy Johnson, Parks and Recreation Director Sandy Carr, Tourism Development Authority Coordinator Amy Morrison, Building Inspector John Merritt and Police Chief Jerry Turbyfill.

II. Invocation – Dewey 'Cyclone' Brett 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. March 11, 2014 Regular Meeting – Councilman Miller motioned to approve the March 11, 2014 Regular Meeting Minutes. Councilman Holcombe seconded the motion and the vote passed unanimously.

b. March 11, 2014 Closed Session – Vice Mayor Piquet motioned to approve the March 11, 2014 Closed Session Minutes as amended. Councilman Miller seconded the motion and the vote passed unanimously.

VI. Public Hearing

a. Public Hearing to Amend Town Burning Regulations – Vice Mayor Piquet motioned to open the public hearing. Councilman Holcombe seconded the motion and the vote passed unanimously. Town Planner James Scott explained that the proposed amended regulations before Council added clarity. 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

Darcy Gsteiger of 115 W. Shamrock Lane asked if an in ground fire was considered enclosed. Manager Feierabend advised of the Town's policy.

Lee Wittmann of 102 Rainbow End stated that in the past he and others had cleared brush and burned it. Mr. Wittmann asked if this would still be permitted with the new fire ordinance.

Fred Pfohl of 501 Beech Mountain Parkway congratulated Town Planner James Scott on his new family addition.

VIII. New Business

- a. Resolution 2014-02: A Resolution by the Town Council of the Town of Beech Mountain North Carolina Urging the Watauga County Commission to Maintain the Ad Valorem Method of Distribution of Sales Tax in Watauga County** – Councilman Holcombe motioned to adopt and send Resolution No. 2014-02. Councilman Miller seconded the motion and the vote passed unanimously. Resolution No. 2014-02 is attached as Exhibit A and incorporated by reference as if fully set out within these minutes.
- b. Water Plant Project Update** – Benjamin Thomas, P.E. West Consultants stated that preliminary plans have been drawn. It is hopeful that plans will be ready for submittal to the North Carolina Department of Environment and Natural Resources Public Water Supply section on May 15, 2014. Mr. Thomas stated that the United States Department of Agriculture has been reviewing the Towns application. Once the Towns application has been approved at this level it will go to the Washington D.C. office for final approval. Mr. Thomas showed diagrams of the planned project stating that right now the goal was to have the plans approved with the loan being offered by late summer, then the project could be put out to bid in the fall and equipment can be put on order. In that case, ground could be broken in the spring of 2015. Councilwoman Keller asked that the exterior elevations of the building be provided. Mr. Thomas asked that Council provide feedback on the existing finishing.
- c. West Consultants Long Term Contract** – Attorney Eggers advised Council that the agreement before Council was fair and that the construction inspector rate of reimbursement was changed from the previous draft. Vice Mayor Piquet motioned to approve the contract. Councilman Miller seconded the motion and the vote passed unanimously.
- d. FY 13/14 Tourism Development Authority Capital Expenditure Approvals – Amended Proposal** – Brian Barnes, Chairperson of the Tourism Development Authority, reviewed the previous Tourism Development Authority Capital Expenditure Approvals and what monies had been spent where thus far in the current fiscal year. Councilwoman Keller questioned the cost and purpose of a \$3,500 ice machine. Mr. Barnes informed Council that the total proposed expenditures were \$53,380 and that this left \$8,000 that the Tourism Development Authority was asking Councils permission to be earmarked for future capital projects which the committee, comprised of two Tourism Development Authority members and two Council members, be permitted to make decisions on what projects to move forward on. Council agreed to the joint committees' recommendation.
- e. Tourism Development Authority Request for Town Funding of Fireworks** – Councilman Holcombe motioned for the Town to pay for 100% of the fireworks this 2013 – 2014 fiscal year with the condition that the Tourism Development Authority reimburse the Town 50% of the cost in the 2014 – 2015 fiscal year. Councilwoman Keller seconded the motion and the vote passed unanimously.

- f. *Budget Amendments*** – Councilman Miller motioned to approve the Part Time Building Maintenance Worker budget amendment. Vice Mayor Piquet seconded the motion and the vote passed unanimously. Councilman Holcombe motioned to approve the Sales Tax budget amendment. Vice Mayor Piquet seconded the motion and the vote passed unanimously.
- g. *Audit Contract*** – Manager Feierabend provided a staff overview to Council of the pros and cons of each firm that had submitted a request for proposal. Manager Feierabend recommended that Council consider increasing the penalties in the contract. Vice Mayor Piquet motioned for the Town to stay with Bryce Holder and Associates. Councilman Miller seconded the motion. After much discussion the motion failed 3 to 2 against with Mayor Owen, Councilwoman Keller and Councilman Holcombe voting nay. Mayor Owen motioned for the Town to Contract with Misty Watson, CPA, PA and to increase the penalty to \$200 per day. Councilman Holcombe seconded the motion and the vote passed unanimously.
- h. *Avery County Comprehensive Transportation Plan Demographic Projections*** – Town Planner James Scott explained the process to Council and that the committee is projecting a .7% growth rate. Vice Mayor Piquet motioned to approve the Avery County Comprehensive Transportation Plan Demographic Projections. Councilman Holcombe seconded the motion and the vote passed unanimously.
- i. *Red Cross Amateur Radio Antenna*** – Fire Chief Bob Pudney explained that this Red Cross Amateur Radio Antenna would be a component of the shelter at Buckeye Recreation Center. Fire Chief Pudney stated that there would be no cost to the Town or liability. Watauga Amateur Radio Club operators would be responsible. Councilman Holcombe motioned to approve the Red Cross Amateur Radio Antenna with the conditions that the contract include maintenance and upkeep being the responsibility of the Watauga Amateur Radio Club. Councilman Miller seconded the motion and the vote passed unanimously.
- j. *498 St. Andrews – Utility Adjustment Request*** – Public Utilities Director Robert Heaton provided Council with a brief explanation of events. After much discussion Council took no action.
- k. *Order to Advertise Delinquent Property Taxes*** – Vice Mayor Piquet motioned to advertise the delinquent property taxes. Councilwoman Keller seconded the motion and the vote passed unanimously.

IX. *Old Business*

- a. *Vote on Ordinance to Amend Town Burning Regulations*** – Councilman Holcombe motioned to approve the ordinance to amend the Towns’ burning regulations. Vice Mayor Piquet seconded the motion and the vote passed unanimously. Ordinance No. 2014-04 is attached as Exhibit B and incorporated by reference as if fully set out within these minutes.

X. *Town Manager and Staff Reports*

Budget Dates – Manager Feierabend asked Council what days they would like to schedule budget meetings. Council determined that they would hold this discussion at their next regularly scheduled Council meeting.

Other Water Projects – Public Utilities Director Robert Heaton informed Council that the Grassy Gap Aeration Diffusers were replaced. Mr. Heaton stated that this was an item that staff was planning on doing but that the North Carolina Department of Environmental Natural Resources Division of Water Resources and Division of Water Quality asked if the Town could go ahead and complete the project. Mr. Heaton stated that the cost was \$6,900. Mr. Heaton informed Council that the 10” check valve on the backwash pump line was also replaced due to the old one breaking over the Martin Luther King weekend. This is located at the Water Treatment Plant. The cost was \$5,500.00. Mr. Heaton advised that the line had to be rebuilt due to the fact that a new type of valve was installed. Mr. Heaton stated that the Town has sent a letter to Tom Reeder, Acting Director of the North Carolina Department of Environment and Natural Resources Division of Water Quality and Director of the Division of Water Resources, regarding the Towns 609 request for the Watauga River Intake Project.

Condemnation, Pre-Condemnation and Repair Status List – Manager Feierabend advised Council that a building inspections housing condition report was on the table in front of Council.

Mayor Owen stated that Council would take a short break at 5:36 p.m.

- XI. Closed Session – Pursuant to NC GS 143-318.11(a)(3) Attorney Client Matters** – Upon motion by Vice Mayor Piquet at 5:45 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, including Beech Mountain v. Genesis Wildlife Sanctuary. Vice Mayor Piquet motioned to exit closed session at 6:05 p.m., which was seconded by Councilman Miller. The motion passed unanimously.

XII. Other Business

Note: Due to the absence of Administrative Assistant Dara Barnes, the following minutes were taken by Town Attorney Eggers.

Contracts – Council Member Miller stated that he was not comfortable with Department Heads being in a position to contractually obligate the resources of the Town without approval from either the Town Council or the Town Manager. Manager Feierabend stated that he would advise his department heads that they should not sign any new, non-recurring contracts for goods or services without the approval of the Town Manager.

- XIII. Adjourn** – Councilman Miller motioned to adjourn the meeting at 6:07 p.m., which was seconded by Councilman Holcombe. The motion passed unanimously. The meeting was adjourned at 6:07 p.m.

Minutes approved by Town Council on May 13, 2014

Respectfully Submitted By:

Dara Barnes, Administrative Assistant

Respectfully Submitted By:

Attorney Stacy Eggers IV

ATTEST:

Jennifer Broderick, CMC
Town Clerk

Richard H. Owen, Mayor

ATTACHMENT(S)
TO
MINUTES

EXHIBIT A – Resolution No. 2014-02: A Resolution by the Town Council of the Town of Beech Mountain North Carolina Urging the Watauga County Commission to Maintain the Ad Valorem Method of Distribution of Sales Tax in Watauga County

EXHIBIT B – Ordinance No. 2014-04: An Ordinance to Amend the Town of Beech Mountain Regulations Regarding Burning the Outdoor Fires

RESOLUTION No. 2014-02

**A RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF BEECH MOUNTAIN
NORTH CAROLINA URGING THE WATAUGA COUNTY COMMISSION TO
MAINTAIN THE AD VALOREM METHOD OF DISTRIBUTION OF SALES TAX IN
WATAUGA COUNTY**

WHEREAS, N.C. Gen. Stat. §105-472 provides for the allocation of sales tax between cities and counties within North Carolina; and

WHEREAS, N.C. Gen. Stat. §105-472(b) allows a Board of County Commissioners to determine, on a yearly basis, whether such allocation is made on a per capita distribution or an ad valorem distribution; and

WHEREAS, the ad valorem method of sales tax distribution recognizes the value of property is distributed equitably throughout Watauga County; and

WHEREAS, in early 2013, Watauga County Commission members voted to change the sales tax distribution method to ad valorem from per capita, to be a realized revenue benefit for three of its four municipalities; and

WHEREAS, the Town of Beech Mountain appreciates its good working relationship with Watauga County and the ability of the Town and County to address issues within the community to the mutual benefit of the citizens of both the Town of Beech Mountain and Watauga County; and

WHEREAS, the Town of Beech Mountain is willing to continue to assist Watauga County in addressing its financial needs with sales tax revenue should the ad valorem method be used in determining sales tax distribution for the fiscal year of 2014 – 2015; and

WHEREAS, a mutually financially beneficial relationship was established for the fiscal year of 2013 – 2014 between the Town of Beech Mountain and Watauga County; and

WHEREAS, the Town of Beech Mountain would like to continue this shared prosperity for the fiscal year 2014 – 2015 providing for, as part of its budgetary process, an amount equal to sixty percent (60 percent) of the increase in gross revenues accruing to the Town over and above the amount which would have otherwise been realized under the per capita method, to costs and expenditures as requested by Watauga County.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Beech Mountain, North Carolina, hereby urges the Watauga County Commission to exercise their authority during the month of April to maintain the ad valorem method of sales tax distribution in Watauga County.

Adopted this the 8th day of April, 2014.

Richard H. Owen, Mayor
Town of Beech Mountain

Ordinance No. 2014-04

TOWN OF BEECH MOUNTAIN

**AN ORDINANCE TO AMEND THE TOWN OF BEECH MOUNTAIN
REGULATIONS REGARDING BURNING AND OUTDOOR FIRES**

WHEREAS, The Town of Beech Mountain strives to protect the safety and welfare of its citizens and visitors; and

WHEREAS, The Town of Beech Mountain's current ordinances had several discrepancies that left it unclear as to whether outdoor fires were allowed and what standards governed them; and

WHEREAS, Many homeowners desire to have outdoor fires for recreational purposes in a safe and reasonable manner; and

WHEREAS, The Town of Beech Mountain believes that outdoor recreational fires can be safe and compatible with the Town's neighborhood atmosphere if regulated by certain requirements.

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

SECTION I. The Town of Beech Mountain Code of Ordinances, Sections: §50.07
'Burning or Burying Solid Wastes,'
§90.03 'Open Burning,'
are hereby adopted by the Town Council and codified as follows:

§ 50.07 BURNING OR BURYING SOLID WASTES.

(A) Refer to Section 90.03 of this Code for regulations regarding burning.

(B) No person may bury or cause to be buried any solid waste for purposes of disposal.

§ 90.03 BURNING.

(A) *Definitions*. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PERSON. Any individual, firm, partnership, corporation, association, public or private institution, political subdivision or government agency.

PORTABLE OUTDOOR FIREPLACE. A portable, outdoor, solid-fuel-burning fireplace that may be constructed of steel, concrete, clay or other noncombustible material. A portable outdoor

fireplace may be open in design, or may be equipped with a small hearth opening and a short chimney or chimney opening in the top.

FIXED OUTDOOR FIREPLACE. An outdoor, solid-fuel-burning fireplace that is intended to be permanent in nature and fixed in location. Such fireplaces are commonly constructed of stone or masonry units.

(B) *Purpose.* The purpose of this section is to regulate outdoor burning in order to protect the public from the hazards of uncontrolled fires and pollution. This ordinance shall not be construed to apply to:

i. Approved gas-fueled appliances used in accordance with their manufacturer's instructions and any other applicable laws.

ii. Fixed outdoor fireplaces provided such fireplaces are constructed and utilized in accordance with the standards for chimneys and fireplaces contained in the North Carolina State Building Code and any other applicable laws.

(C) *Standards.* No person shall willfully burn or cause to be burned any fire within the corporate limits of town, unless the following criteria are met:

1. Attendance. Any fire shall be constantly attended until the fire is extinguished.

2. Extinguishment capability. Extinguishment capability shall be provided in accordance with the provisions of the North Carolina State Fire Code.

3. Location. Fires shall be sited in accordance with the provisions of the North Carolina State Fire Code.

4. Enclosure. Fires shall be surrounded by a non-combustible enclosure, such as a rock-rimmed fire pit or a pre-manufactured enclosure such as a portable outdoor fireplace. Standards for other than approved pre-manufactured enclosures shall be as follows:

i. The enclosure shall have non-combustible walls of at least 6 inches, provided that the height of the fuel materials within the enclosure may be no greater than the height of the walls at the time the fire is ignited.

5. Conditions which could cause a fire to spread shall be eliminated prior to ignition.

6. Materials permitted to be burned as fuel. Only natural, unprocessed fuels (i.e. unprocessed, natural wood, sticks (kindling), and bark) shall be burned as fuel. No other fuels are permitted.

7. No open fires shall be permitted when prohibited by local, state, or federal law such as during burning bans.

(D) *Enforcement.* In addition to the general penalties provided in Section §11.01 of the Town of Beech Mountain Code of Ordinances, the following shall apply to violations of this Section:

1. Fires in violation of this Section shall be required to be immediately extinguished or brought into compliance.

2. The Town Manager or designee charged with enforcing this Section shall have the authority to extinguish fires or abate hazards related to this Section.

SECTION IV. 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 V. 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 VI. 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 8th day of April, 2014.

This Ordinance Adopted the 8th day of April, 2014.

Richard Owen, Mayor

Attest:

Jennifer Broderick, CMC
Clerk to the Board