

TOWN OF BOONE
SPECIAL HISTORIC PRESERVATION COMMISSION
MEETING MINUTES
January 11, 2022, 3:00 p.m.

Historic Preservation Commission Members in Attendance:

Chair Eric Plaag, Vice-Chair Bettie Bond, and Chuck Watkins

Student Member:

Council Liaisons: Virginia Roseman

Town Staff in Attendance:

Jane Shook-Director of Planning & Inspections, Jessica Mitchell-Long-Range/Special Projects Planner, Christy Turner-Senior Planner, and Marlene Crosby-Board Secretary

Call to Order

Chair Eric Plaag called the meeting of the Boone Historic Preservation Commission, held via WebEx, a video conferencing software, to order on Tuesday, January 11, 2022, at 3:00 p.m. He explained that this meeting is a continuation of January 4, 2022, Historic Preservation Commission meeting.

Adoption of Agenda

Chair Plaag explained that due to a lack of time to review the materials to be discussed at the January 4, 2022 meeting, it was the consensus of the HPC to approve another meeting for January 11, 2022, to discuss the following agenda items: Quasi-Judicial Historic Preservation Commission Rules of Procedure, Council's Store Historical Marker and the Town Street Project-Depot Street Report.

Quasi-Judicial Historic Preservation Commission Rules of Procedure

Member Watkins noted that he had already sent his proposed changes to staff for the HPC Rules of Procedure. Chair Plaag talked about the following list of proposed changes to the said Rules of Procedure from his review of the drafted rules:

1. Page 8 begins numbering issues that cause issues throughout the document and will involve changes to Reference numbers in the document.
2. Page 9, Question #10: change the title to **Can an applicant wave its objection to a Commission member participating in the hearing?**
3. Page 11, Question #8: change the title to **Can a person denied the right to intervene still participate in the case?**
4. Page 12, Question #2: First sentence change to: There are two types of participants in a **hearing** before the Commission: "Parties" and "Witnesses."
5. Page 15, Question #16: Modify the question "Is a record made of hearing before the Commission?" to "Is a recording made of the hearing before the Commission?"
6. Page 16, Question #1: Last paragraph, last sentence change to the word "witness'": **witness's.**
7. Page 20, Question #3F: Last sentence: remove the word "short" from "short agenda" (remove whole last sentence).

Additionally, Chair Plaag asked Ms. Jane Shook, Director of Planning and Inspections, the following question under number eight Pre-Hearing Procedures. He asked, what are the implications of hearing a case presented by a tenant who may not have gotten clearance from the owner? He further asked if a tenant could submit an application

without having already secured the property owner's permission. Ms. Shook said that most applications, including the Certificate of Appropriateness, normally have a place for property owner authorization. She said the applicant could either submit the property owner authorization with the application or submit other legal proof that they have the right to submit an application for proposed work. She said some leases contain those rights, and the application would have to provide that legal documentation. Chair Plaag confirmed that when the HPC hears a case, the HPC will see the property owner authorization in the meeting packet, and Ms. Shook agreed on the application and said authorization would be included.

Member Watkins referenced that page 12 of the rules assume in-person hearings. He suggested the text might need revisions to include provisions for meetings other than in-person.

Chair Plaag asked on page six for item number three: When and Where does the Commission meet? He mentioned that it specifies the meeting schedule. He asked if it would be appropriate to add language for specific circumstances involving a public health emergency or for other reasons determined valid by the Commission. The Commission reserves the right to meet in a virtual format, with other procedures to be modified by Town Staff as necessary, to approximate the same procedures that would otherwise apply." Ms. Shook said we only have authority currently to meet virtually because of the emergency executive order. She noted that once the order is rescinded, we will no longer have the authority to meet virtually. She suggested not modifying the procedure rules because we have a good way of communicating and having sign-up sheets with every meeting. She further stated that there are plenty of opportunities for people to speak. She believed the rules did not need revisions unless there was a modification to the general statutes. She said at that time to revise both the Board of Adjustment and Historic Preservation Rules of Procedure for that language. Chair Plaag asked Ms. Shook to consult with the Town Attorney on when and where the Commission meets.

Member Watkins asked on page 16 about the item which has the burden of proof. Chair Plaag said that ultimately, any one of the parties to a case, whether they're an intervening party, the Town, or the applicant, carries the burden of proof to sustain their argument in terms of influencing the Commission on making a decision or finding of fact about what is being proposed. Chair Plaag further explained his understanding of this section describing the HPC as not a judicial body. He stated that the standards of either a preponderance of the evidence or beyond a reasonable doubt do not apply to this setting. Chair Plaag also added that the HPC would be applying the standards to scenarios that arise when people are proposing to do work.

Member Watkins asked about item number 3A on page 18 if there is a procedure for this other member to be selected as Chair to avoid a split vote, for example. He also asked if the Chair recuses himself, how is the role of Chair decided either among the HPC members or if the Vice-Chair takes that role. Chair Plaag said this is a good question because of the current Town Code, the HPC cannot select the Chair, and the HPC recommends a Chair and Vice-Chair to Council. He further explained that the decision is based on Council's recommendations based on applications and appoints positions as they see fit, with the option to decline to appoint a recommended person. Chair Plaag thought the language should be amended to state that if the Chair cannot serve, for whatever reason, either for absence or recusal, that the Vice-Chair would serve. He asked if it is the intention of Council, in such a situation where both the Chair and Vice-Chair were unable to serve, that the remaining members would select amongst themselves a person to serve as Chair for the purposes of that hearing. Ms. Shook responded and stated there is an error in the Unified Development Ordinance, specifically in Article Two for the Historic Preservation Commission. She said the error is in the UDO language rather than the rules. She noted she could make the correction for Council's agenda and approval. She said the proposed correction will not make it on Council's January 2022 agenda but will add to the next public hearing agenda.

Discussion ensued on subpoenas. Chair Plaag asked about subpoenaing individuals, for instance, those of specific expertise, following a circumstance at a previous Board of Adjustment case. He wanted to know if other members could ask for individuals to be subpoenaed or if only the Chair could.

Ms. Shook explained that neither the HPC Chair nor a member of the HPC has the right to subpoena. She explained that the Chair would subpoena if a party requested someone to speak, as the Chair is the judge and not the participants making the case. She noted that a party would be the one to request a subpoena. In reference to the above Board of Adjustment case, it was her understanding that the response to the subpoena request is that it was not allowed; further, there was a request to recuse themselves, which she did not believe the BOA Chair said to the board member that they needed to be recused. She was not positive if there were additional conversations with either the Town Attorney or that particular board member. She further mentioned there was a recusal that evening by the board member.

Discussion ensued on clarifying the subpoena language. Chair Plaag explained that he asked about this topic to make sure he understood page 11, item number 9. Can a person be compelled to appear as a witness or provide documents? He read this section, "Under State Law, the Commission Chair has the power to issue subpoenas to require the attendance of witnesses, or to compel the production documents or other evidence." He explained that an individual could read the section to mean the Chair can decide to subpoena people that he or she might think have evidence or are valuable witnesses. Chair Plaag recommended the language be made more clear that any subpoenas that the Chair is issuing, in a quasi-judicial power, are from the parties requesting witnesses or materials made available, and that the power to subpoena lies with the Chair, rather than the Chair deciding what witnesses he or she might want to hear on a given case. He further explained that this is not the intention based on what Ms. Shook said; however, this is how the language reads right now.

Chair Plaag recommended that the language be written more clearly regarding the subpoena power for any Commission member. He further recommended that the language be made clearer for the HPC in terms of practice. He said it is the HPC's job to hear the cases and the evidence that the parties choose to present, whether it's the best evidence or not. Ms. Shook noted that in parts of the HPC's discussion with the applicant, there might be further discussion of additional information or locations where an applicant may be able to find additional information; however, she continued to explain that it is still upon the applicant to initiate and bring the evidence. Ms. Shook explained the process, and she said she thought one solution would be instead of denying an application that there may be other ways to bring back additional information versus tabling a case. She said when would ask the Town Attorney about the request for additional information related to the HPC.

Discussion ensued on an opposing party. Chair Plaag said an opposing third party could interpret the HPC's advisory discussion, such as consultations, as *ex parte* communication. He explained that a case being heard is often noticed, nobody gets a notice about the consultations, and the applicant is given direct advice by the HPC. Ms. Shook talked about her concern with the consultations being considered *ex parte* communication. She said that other jurisdictions offer consultations prior to the meeting and discuss the general logistics of a case. Chair Plaag noted he does not want the HPC to set themselves up for a conflict in the future. Chair Plaag said that somewhere in the Pre-Hearing Procedures, there should be a question that addresses the consultation process as permitted under State law. He further mentioned that the School of Government might have an opinion that

has ruled that consultations are acceptable. He said this would be for both the HPC members and the parties to expect a consultation.

Ms. Shook said she would discuss the following topics with the Town Attorney.

1. Should rules include the possibility of changing the meeting type (remote) based on the public health situation and the North Carolina Executive Order?
2. Page 18, Question #3A: Concern with the process if the Chair and Vice-Chair are not available; concern seems to be relative to Article 2, which can be amended via a text amendment.
3. Page 11, Question #9: Concern on the language of subpoenas and the power of the Chair.
4. Concern of ex-parte contact with consultations.
5. Guidance from HPC to the applicant requesting additional information – can it come back, can it be tabled, can HPC ask for additional information?

Motion and Vote:

Member Watkins made a motion, seconded by Vice-Chair Bond, to recommend approval of the proposed Historic Preservation Commission Quasi-Judicial Rules of Procedure, as amended through discussion at this meeting and with possible changes to the areas that the Historic Preservation Commission raised concerns about as determined by Council.

Vote: Aye – All

Nay – None

The motion passed.

Motion and Vote:

Vice-Chair Bond made a motion, seconded by Member Watkins, that the Historic Preservation Commission authorize Chair Plaag to speak at the next Council meeting to answer any questions on the Historic Preservation Commission Quasi-Judicial Rules of Procedure.

Vote: Aye – All

Nay – None

The motion passed.

Motion and Vote:

Vice-Chair Bond made a motion, seconded by Member Watkins, to authorize Chair Plaag to speak on behalf of the Historic Preservation Commission to answer any questions that might arise at the next Council meeting on the proposed Hayes-Bryan-Greene Cemetery historical marker report.

Vote: Aye – All

Nay – None

The motion passed.

Councill's Store Historical Marker

Chair Plaag began the discussion and explained that he had emailed the HPC members the Councill's Store Historical Marker Report draft for their review. He said that while writing the report, he found conflicting claims about the origin of the Councill's Store post office, and he had done his best to address that in the report.

He said that the HPC's job is to be truthful about the history that we commemorate or interpret. He said he had done the best to find the first Jordan Councill, Jr. store. He said he searched for the original deed for the Daniel Boone Hotel. He hoped to find some earlier deed references for the W. B. Councill property that was sold to create the said hotel. He said he could find a deed of trust, which is a mortgage, for the hotel but could not find an actual deed. He said he could not find a recorded transaction for the sale of that parcel.

Discussion ensued on proposed changes to the Councill's Store Historical Marker. Chair Plaag asked for feedback from the HPC members on the proposed historical marker report. Member Watkins explained that with markers like this, anything that can be left out should be left out in the interest of space and clarity. He recommended that Chair Plaag revise the historical marker text, not necessarily from the historical marker report, to remove the "Boon, later Boone" reference. He explained to Chair Plaag that the historical marker report was fine. Chair Plaag confirmed that it had been recommended to move the following word from the proposed historical marker text, "Boon." Vice-Chair Bond agreed with this proposed change and suggested spelled "Boone." Chair Plaag pointed out that in many of the initial references to the new Town of Boone in 1849 and 1850, the word was spelled "Boon." He said he was asked by High Country Magazine why the name was spelled that way; he explained that initially, people did not know how to spell Boone's name due to variant spelling practices. He further explained that he suspected the naming of the county seat was intended to be a reference in some way to Daniel Boone. He said there was a clear assumption at the time, based on local tradition, that Daniel Boone probably had some connection to the general Watauga County area.

Discussion ensued on the funding and placement of the Councill's Store Historical Marker. Chair Plaag asked the HPC to recommend to Council the funding for the marker and a decision on the placement of the Councill Store Historical Marker.

Motion and Vote:

Member Watkins made a motion, seconded by Vice-Chair Bond, to recommend that the amended Councill Store Historical Marker report be sent to Council along with the request for funding for the historical marker and a decision on the placement of the historical marker to be done as soon as possible.

Vote: Aye – All

Nay – None

The motion passed.

Chair Plaag added a friendly amendment, and he suggested to include in the recommendation to Council that the funding for the manufacturing and installation of the historical marker be approved by Council, and for the Planning Staff and Mr. Ward and the Public Works Department to work with Sewah Studios to begin fabrication of the said historical marker.

Chair Plaag added that once the historical marker has been approved, the Planning Staff, Mr. John Ward, and the Town Attorney will work with Sewah Studios to put the marker together. He said that hopefully, we would have the Hayes-Bryan-Greene Cemetery marker in May or June of 2022.

Chair Plaag asked for a recommendation for the HPC to authorize Chair Plaag to present the Councill's Store Historical Marker report to Council at their next meeting.

Motion and Vote:

Vice-Chair Bond made a motion, seconded by Member Watkins, to recommend that the Historic Preservation Commission authorize Chair Plaag to speak on their behalf to present the Councill's Store Historical Marker Report at the next Council meeting.

Vote: Aye – All
Nay – None
The motion passed.

Ms. Jessica Mitchell, Long-Range-Special Projects Planner, pointed out that the recommendations from tonight's meeting would go on Council's February agenda.

Discussion ensued on the location of the Council's Store Historical Marker. Chair Plaag said the historical marker report suggests two possible locations for said marker. He said the first location is the raised planter area at the sidewalk immediately east of the driveway to the Town parking lot, next to Town Hall. He explained this as the only location to place it without interfering with the Vietnam Memorial. He said there would have to be more flexibility about locating the marker within that space. He mentioned that no one else is likely to be against it being placed there, as long as it is somewhere in that area.

Chair Plaag talked about the second possible location for the historical marker. He said the other location is the bulb out immediately east of the intersection of Grand Boulevard and King Street. He asked Ms. Christy Turner, Senior Planner if we could use that location. Ms. Turner said that when the HPC worked on the Ginseng Historical Marker, it had to be a state historical marker to be placed in the North Carolina Department of Transportation right of way. She said she would check with Mr. Carson Fisher at the Department of Transportation for this concern.

Vice-Chair Bond suggested placing the historical marker on the corner of Grand Boulevard and King Street. Ms. Turner said she would find out from NCDOT if the marker could be placed there.

Town Streets Project – Depot Street

Chair Plaag explained that he did not have the opportunity to complete the Depot Street Report. He asked that this agenda item be continued at the February 1, 2022 HPC meeting.

Other Discussion

Vice-Chair Bond began the discussion and proposed that the HPC meeting date be changed from the first Tuesday to the second Tuesday of the month. She asked why the meeting was moved to the first Tuesday of the month. Chair Plaag explained it was because of a Council meeting occurring on the same day of the month as the HPC meeting.

Ms. Shook explained she had talked with Mr. John Ward, Town Manager, and Ms. Allison Meade, Town Attorney, on the possibility of changing the meeting dates. Ms. Shook said they had all agreed that the second week of the month was the only week any Town Staff involved with meetings or the Town Attorney could take time off from work without having to get an alternate to fill in for town meetings. Ms. Shook noted that the Council meetings had been moved to the second and fourth Wednesdays of the month. Chair Plaag noted that he prefers to keep the HPC evening meetings at 6 p.m.

Motion and Vote:

Vice-Chair Bond made a motion, seconded by Chair Plaag, to recommend that the Historic Preservation Commission meetings be moved from the first Tuesday of the month to the second Tuesday of the month at 6 p.m. beginning on March 1, 2022.

Vote: Aye – All
Nay – None

The motion passed.

Ms. Shook asked Member Watkins about his plans for leaving the HPC since his term is expired and another member has been appointed to the HPC. Member Watkins said he would leave the HPC when convenient to do so. Ms. Shook noted that staff would need to update the HPC roster to show a vacancy for his seat on the Commission. Council Liaison Roseman said that Council would announce a vacancy for his seat when Member Watkins leaves the Commission.

Chair Plaag suggested the following agenda items for the February 1, 2022 HPC meeting: Boone 150 Plans - (January 23 Event), Cemetery Mapping Programming, Council Update on Cemetery Designation, Hayes-Bryan-Greene Cemetery Marker, Watauga County Jail Designation Report, Review of Town Streets (Depot Street Report), CLG Application, and the five Certificate of Appropriateness cases.

Adjournment

Vice-Chair Bond made a motion, seconded by Member Watkins, to adjourn the meeting at 4:36 p.m.

Vote: Aye - All

Nay – None

The motion passed.

Eric Plaag, Chair

Marlene Crosby, Board Secretary