

**PUBLIC HEARING MINUTES
MONDAY, MARCH 22, 2021, 6:00 P.M.
VIA WEBEX SOFTWARE**

COUNCIL MEMBERS: Rennie Brantz-Mayor, Connie Ulmer-Mayor Pro Tem, Sam Furgieue, Dustin Hicks, and Virginia Roseman

PLANNING COMMISSION MEMBERS: Elizabeth Shay-Chair, Eric Plaag-Vice Chair, Chris Behrend, John Tippet, Frank Venio, and Adam Zebzda

PLANNING STAFF PRESENT: Jane Shook-Director of Planning and Inspections and Brenda Henson-Board Secretary

OTHER TOWN STAFF AND REPRESENTATIVES PRESENT: John Ward-Town Manager, Allison Meade-Town Attorney, and Matt McGregor-Planning & Inspections Intern

OTHER ATTENDEES/PARTICIPANTS VIA WEBEX: Dalton George

Call to Order

Mayor Brantz called the Town Council to order at 6:05 p.m. and Chair Shay called the Planning Commission to order at 6:05 p.m. for the Public Hearing/Planning Commission meeting held via WebEx.

Approval of Meeting Minutes

Council Member Ulmer made a motion to approve the January 25, 2021 Public Hearing minutes. The motion was seconded by Council Member Hicks.

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

Vice Chair Plaag made a motion to approve the January 25, 2021 Public Hearing minutes. The motion was seconded by Commission Member Behrend.

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

Ms. Shook reviewed the general guidelines for each case presented at the Public Hearing and noted there was no one signed up to speak under Public Comment.

Case PL04196-090820 Compliance with Session Law 2019-111 UDO Text Amendment

Modify the Town of Boone Unified Development Ordinance (UDO) in order to bring the regulatory document into compliance with Part 1 of Session Law 2019-111 (Senate Bill 355), “An Act to Clarify, Consolidate, and Reorganize the Land-Use Regulator Laws of the State”.

Session Law 2019-111 contains two parts as follows:

- Part I: Provisions to Clarify and change the Land-Use Regulatory Laws of the State
- Part II: Provisions to Reorganize, Consolidate, Modernize, and Clarify Statutes Regarding Local Planning and Development Regulation.

Ms. Shook stated this request was to modify the UDO in order to bring the regulatory document into compliance with part one of Session Law 2019-111. She noted that Session Law 2019-111 contained two parts and part one contained provisions to clarify and change the land use regulatory laws of the State,

while part two contained provisions to reorganize, consolidate, modernize and clarify statutes regarding local planning and development regulation. Ms. Shook explained that the text being considered tonight was part one and she thought Ms. Meade had some clarifications. Ms. Meade noted that Council Member Furguele had sent some comments regarding the proposed text

Council Member Furguele felt the statutory language probably created more problems than it solved and asked if the proposed language was what they were forced to use in regards to Section 4.05.03 Discontinued Applications. Ms. Shook replied that General Statutes had changed and agreed that some of the changes were probably not for the better. Council Member Furguele noted the next section regarding Permit Choice was also numbered 4.05.03.

Ms. Meade explained that Session Law changed so that now when an applicant submits an application they can freeze the regulations available to them and choose whether they want to proceed with their entire development under the current regulations in place at the time they submit a permit versus, if there were changes down the line and perhaps additional development permits that have to be sought and obtained in order to complete a more complicated or larger development, they could pick and choose between which regulations they wanted to have applied to the development. Ms. Meade stated the concern was that folks would hear that a regulation was going to change in a way that would not be good for their development and they would quickly try to submit what was really an incomplete application in order to try to freeze the date. Council Member Furguele felt that section was particularly problematic and had seen people try to argue the vesting of an application in the past or try to submit which was like a sketch on the back of a napkin on the day before and Ordinance change.

Council Member Furguele noted that the introductory line in the Discontinued Applications section stated that 4.05.03 applied to applications that had been deemed complete, but subparagraph B appeared to describe something which, by definition, was incomplete in that the administrator was asking for additional information. He stated he found that to be confusing and it seemed like a potential conflict.

Ms. Meade stated her view of what Planning did, especially on complicated, larger developments was that they think a bona fide, complete application could come in yet, as they work through the process and all the vast UDO requirements, they might find that there were certain areas where additional information was required in order to ascertain that the development fully complied with the UDO.

Council Member Furguele referred to page 19 of the packet where the definition of a complete as containing all of the information necessary for the permit issuing authority to decide whether the development would comply with all the requirements of the Ordinance. He felt that indicated that everything had to be turned in before the application was deemed complete. Ms. Meade replied that an application could be deemed complete for purposes of accepting the application in that it complied with the requirements of Exhibit A and it contained everything that they believed was a good faith submittal. At the same time, especially as Staff worked through the process for larger developments, there could still be requests for information that have to be responded to that would be covered by 4.05.03(B).

Ms. Shook explained the process currently used to accept an application. She stated that when the administrative staff took an application they were not always aware of every component that might be needed for review so the application was accepted to begin the review process. Ms. Shook stated that determination of whether or not the application was complete was not really done until the project manager assigned to that case began review. Items that are missing or incomplete trigger review comments. Council Member Furguele stated he was not concerned about the procedure but about the ambiguity. He stated it was hard for him to reconcile and saw a potential for a lot of arguments because the determination of whether an application was complete or incomplete could give an applicant the option of going under different Ordinance regulations. Council Member Furguele was concerned that this could have huge consequences. He stated he did not see how Staff could say that an application was

complete until they had everything they needed to determine that the application complied with all aspects of the UDO unless the definition was changed as to what constituted a complete application in the prior section. Ms. Meade replied that she did not think it was possible not to require additional information that might not be recognized up front, especially for larger projects. She explained that the application might look complete on its face but the project manager could not do all the review up front, just in the course of determining completeness. Ms. Meade stated, as she understood plan review, this could happen frequently with many components of a plan application.

Vice Chair Plaag stated it sounded like what Council Member Furgiuele was trying, in part, to guard against was the applicant who presented all of the required forms and documentation for an application but maybe it was somewhat flagrantly presenting a plan that did not comply with the UDO. He stated that he shared that same concern in the case where somebody might submit an application that they know did not fit just to get something in. Vice Chair Plaag suggested building in a preliminary review by staff for things that were obvious inconsistencies with the UDO and that the Certificate of Completion could only be granted when the project in general met and conformed to zoning and other requirements for that proposed project.

Ms. Meade replied that they might be able to add an additional phrase or clause to 4.05.01 that addressed not only completeness but general compliance with the UDO. Ms. Shook stated she liked Vice Chair Plaag's idea but noted that sometimes Staff struggled to get one review done and additional reviews took additional time. She suggested trying to standardize certain things that project managers would look at within the first 10 days of an application submittal to determine if there were additional items that needed to be submitted. Ms. Shook felt that would be easier to achieve than an actual pre-review.

Council Member Furgiuele suggested revising the definition of what constituted an application being deemed complete to say substantially complete, unless the Statute required the deemed complete wording. He felt that Section 4.05.03 Discontinued Applications should not say that an application that had been deemed complete and accepted for processing shall be deemed withdrawn but should instead say that an application for processing shall be deemed withdrawn if the criteria in 4.05.03(A) or (B) were met.

Ms. Shook referred to packet page 18 in Section 4.05.01 C. that read *If an application is deemed incomplete, it shall be rejected with comments, as appropriate, by the Administrator. Any resubmittal shall be reviewed and processed as a new application.* She stated that did not necessarily mean that an applicant would have to reapply but that that any information that was resubmitted would be viewed as if it was a new submission. Vice Chair Plaag suggested adding a clause that basically stated the application would be considered a new application with an effective date as of the determination that the new submittal was complete and that way there would be no question about when the triggering date would be if the application was deemed incomplete.

Ms. Meade noted that the statutory language did not talk about complete or deemed complete. She stated that all the statutory language said was that if the land development regulations were amended between the time a development permit application was submitted and a development permit decision was made, the applicant got their permit choice. Ms. Meade felt the statutory language did not give much protection so Staff had attempted to give the language some teeth so that the Town did not have bad faith applications being filed.

Council Member Furgiuele stated he was not against the policy but thought there were ambiguities in the section. He stated his next point was if an application was not deemed complete at the six-month period referred to in 4.05.03(B), what would the trigger date be if there were multiple requests for additional information. He also asked if the applicant failed to respond for six months, should there be a requirement that the sunset date be included in the notice.

Ms. Shook stated there was a court case that came out of Ashe County that kind of dealt with an administrator basically making a determination that application was complete but then later requested additional information. She explained that Staff normally included in a review letter to the applicant standardized language about errors and omissions, responsibilities of the applicant, and the timeframe in which the applicant has to respond. Council Member Furguele suggested adding into that review letter that if the applicant did not respond within six months, their application would be considered discontinued and withdrawn, which would start the clock running on somebody filing an appeal to the Board of Adjustment about Staff's decision. Ms. Shook replied that Staff currently does that. She explained that the ordinance currently stated that if an applicant did not respond within 30 days their application was considered withdrawn so that type of language was nothing new. Ms. Meade stated she preferred this to be a practice but not include it in the UDO because that would be the most protective for the Town.

Council Member Furguele then referred to packet page 25, Section 4.08.10(B) Site-Specific development plans and asked if the phrase intentionally and voluntarily was statutory language. He expressed concern that there was no real definition of voluntarily, citing instances such as financing and disputes with the engineers or architects. Ms. Meade replied that this language was straight out of the statute. She stated that definitions of substantially, intentionally and voluntarily could be crafted but anytime there was a dispute, the parties were going to argue over what the legislature meant in the law so she did not know that adding a definition in the UDO would help. Ms. Meade noted that Subsection C fleshed out and attempted to define substantially commenced and that was their best attempt to try to come up with a justifiable, defensible definition. She noted there was no case law addressing what substantially commenced meant and felt the term was likely to present fertile ground for litigation.

Council Member Furguele then referred to packet page 44, Section 6.02.03(B)(5). He felt the word "for" in the first line should be struck because it did not read well. Ms. Meade replied that the language came from the statute but felt it might just be a grammatical error and felt it was okay to remove that word. Council Member Furguele noted the same language was used on packet page 70, Section 9.09.04(A)(1). and the word "for" should be removed there as well.

Council Member Furguele referred to packet page 73 under the definition of Dwelling Unit that read *A unit providing complete living facilities for one or more persons, including permanent provisions for living sleeping, eating, cooking and sanitation.* He questioned if there was such a thing as permanent living, sleeping, eating, cooking or sanitation. Ms. Shook replied that the language came out of the building code and they were required under General statute to now use the building code definitions for Dwelling and Dwelling Unit. She explained that the permanent provisions for living sleeping, eating, cooking, and sanitation would be those elements of the dwelling itself, not necessarily the people or how that dwelling or dwelling unit was being occupied. Ms. Meade stated that the law said the Ordinance could not use definitions that were inconsistent with the building code and she did not see any reason that the word permanent could not be struck.

Vice Chair Plaag stated he did not like the idea of dwelling unit being defined as a single unit and would prefer a room or rooms forming a space and providing complete living facilities for one or more persons, including permanent provisions, etc. Ms. Meade stated they could take that under consideration.

Ms. Meade referred to page 70 which spoke to the conditions that could be imposed by the Town Council in the case of a Conditional District. She noted that this language was copied from the Board of Adjustment's language however, this language should not be as limiting as the Board of Adjustment's language. Ms. Meade explained that conditions on a Conditional District were allowed with the written consent of the applicant and conditions could be imposed that did not meet the description in Section

9.09.04(A)(1) if the applicant consented. She noted that some phrasing would need to be changed and those revisions would be presented to Town Council reflecting this evening's discussions.

Commission Member Veno asked how this would affect the Comprehensive Plan. Ms. Meade replied that this would not affect the Comprehensive Plan one way or the other but the changes enacted in 160D were relevant to the Plan. Chapter 160D contained a reference to the fact that a planning jurisdiction must have a reasonably-updated Comprehensive Plan, and guidance from the NC School of Government was that 15 years might be considered the outside limit for a reasonably-updated Plan and the Town's Plan was 15 years old. She stated she would be going to Council next month with a suggestion that Council direct staff to undertake an update of the Plan. She felt that trying to do a community-wide, major revision might not be in the cards for a few years but Council could disagree.

Vice Chair Plaag explained, because there were new members both on the Planning Commission and Town Council, that when the 2030 Plan was essentially abandoned there was an assurance made to the public that the Town would revisit the 2030 Plan proportions that were attractive within that plan and incorporate them into a revised Comprehensive Plan. He stated he did not want that to be forgotten as part of this review process. Chair Shay asked if there was not an update to the Comprehensive Plan in 2018. Ms. Shook replied that modifications were made to the Comprehensive Plan in 2018 to the Environmental Health Section 2.2.5 and was an update for that one section only. Chair Shay asked about the work the High Country Council of Government was doing on the Comprehensive Plan. Ms. Shook replied that the work was put on hold.

Council Member Furgiuele stated he was the primary culprit on the disappearance of the 2030 Plan. He noted the thing that had always given him consternation about the Town's Comprehensive Plan was that it listed a lot of things that often were competing values and there was no guidance at all for the boards that were making the decisions. Council Member Furgiuele stated the Town wanted to encourage economic development and to protect neighborhoods but which was the higher priority. He stated the reason that he was concerned about the High Country Council of Government just drafting a document that merged the 2030 Plan and the old Comprehensive Plan was that, although they were quite skilled, they did not have the guidance he thought they needed from the Town on to how to prioritize things in the document and he felt it was really important going forward to try to do that because any decision for any development in this town had to be justified using the Comprehensive Plan. Council Member Furgiuele stated the Town needed a Plan with organized values that would work when it came to actually deciding about a particular application.

Vice Chair Plaag asked what Planning Commission's role would be during their meeting after Town Council adjourned. Ms. Shook replied that Planning Commission could make recommendations to move forward with areas highlighted that required staff to revise language and that language would be brought back to Council for their determination.

Ms. Shook briefly reviewed the changes suggested during the public hearing as follows:

- Packet page 18 Section 4.05.01 C. – revise text
- Packet page 19 Section 4.05.02 Application Complete – revise text
- Packet page 21 Section 4.05.03 – correct formatting and numbering issues
- Packet page 44 Section 6.02.03 B. 5. – remove the word "for" from the first line
- Packet page 70 Section 9.09.04 A. 1. – remove the word "for" and revise text
- Packet page 73 Dwelling Unit - look at definition for dwelling unit

Adjournment of Town Council

Council Member Roseman made a motion for Town Council to adjourn at 7:00 p.m. The motion was seconded by Council Member Hicks.

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

Rennie Brantz, Mayor

Brenda Henson, Board Secretary

Elizabeth Shay, Planning Commission Chair

Continuation of Planning Commission Meeting

Approval of Meeting Minutes

Commission Member Behrend made a motion to approve the February 22, 2021 Planning Commission meeting minutes. The motion was seconded by Commission Member Veno.

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

Chair Shay asked if Planning Commission would be discussing the Downtown Core and Interface this evening. Ms. Shook replied that they would discuss it but not in detail because it was not on the agenda for this meeting. She stated they would be talking about scheduling a special meeting to discuss the Downtown Projects. Ms. Shook noted that Council had scheduled a joint meeting with all the boards for April 20, 2021 at 6pm.

Vice Chair Plaag asked if the intention was for Planning Commission to have had their special meeting prior to the April 20 joint meeting. Ms. Shook replied that it would be nice, if possible. She explained that the April 20 meeting was for staff to present plans for a website and some communication plans for public input.

Ms. Shook noted that the Community Appearance Commission would be doing some work at their meeting Wednesday evening regarding rooftop additions.

Commission Member Veno asked if the first part of 160D was already a done deal. Ms. Shook replied that all of 160D was now law. She explained that part one was made effective immediately and part two had a delayed effective date but all jurisdictions will have to have their ordinance changed by July 1, 2021.

Case PL04196-090820 Compliance with Session Law 2019-111 UDO Text Amendment

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Vice Chair Plaag asked Ms. Shook to summarize the areas of concern. Ms. Shook stated there was an overall concern of how and when staff determined an application was complete and how staff would notify the applicant that the application was complete. She stated that the idea was not to have someone come in and submit an application that was really just trying to beat the time clock to get in before an Ordinance change. Ms. Shook felt working out and making it clear when an application would be deemed complete was necessary so that the six-month time frame could be triggered. Chair Shay asked what motivated the choice of the six-month period and Ms. Shook replied that it was from the General Statutes.

Vice Chair Plaag expressed concern that the proposed language did not address the problem of someone who was trying to hurry through and submit something that they knew was not UDO compliant to technically meet the definition of complete.

Ms. Shook stated there was a difference between being complete and addressing review comments. She felt an application was complete when the applicant had submitted all related plans including grading, Special Flood Hazard, landscape plans, landscape details, stormwater plans, and stormwater calculations, if applicable. Ms. Shook explained that as staff began review of the submittal they may find errors or items missing from plans and she felt those types of issues would trigger review comments and would not necessarily mean the application was incomplete.

Vice Chair Plaag asked about applications that were brought before boards that left lots of ambiguity in their plans and seemed to be incomplete. Ms. Shook replied that the Ordinance allowed an applicant to go forward even if staff did not think the application was complete and the permit issuing authority deemed whether or not the application was complete.

Ms. Shook noted that the language on packet page 44 Subsection 6.02.03(B)(5) was almost exactly the language as the language on packet page 70 Subsection 9.09.04(A)(1). She stated the word “for” would be struck from both areas. The language on page 70 would need to be revised to show that conditions would be agreed to in writing by the applicant. Vice Chair Plaag asked if that was specifically for Conditional Zoning and Ms. Shook replied that was correct.

Ms. Shook referred to packet page 73 noting there would be revisions to the dwelling unit definition. Chair Shay stated she had no problem with the definition being a single unit and she also had no problem with the word “permanent” provisions for living sleeping, eating, cooking, and sanitation. She felt that meant the Town wanted real kitchens rather than hot plates and places that actually supported what seemed like permanent residences rather than things sort of cobbled together. Ms. Shook stated the definition was consistent with the State Building Code.

First Motion and Vote: Vice Chair Plaag made a motion that the proposed amendment to the Town's zoning ordinance as intended to be amended by Town Council, through discussion of the several areas outlined at the beginning of this discussion, and in alignment with a discussion taking place during both the joint hearing and this meeting, is consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that are applicable because it complies with:

Comprehensive Plan Policy 2.1.1 Economic Development

- E. The Town shall encourage a public service and regulatory environment conducive to business recruitment and expansion, while at the same time enhancing the area's physical and human resources.
- E.1. Continue to look for ways to make development regulations and permit procedures more predictable and timely. Evaluate opportunities for administrative review and permit issuance for development projects which, due to their small size or relatively minor impacts, may not require review by a formal public commission or board.

The motion was seconded by Commission Member Veno

Vote: Aye – All
Nay – None

The motion passed.

Second Motion and Vote: Vice Chair Plaag made a motion that the Planning Commission recommends approval of the proposed amendment to the Town's Zoning ordinance and believes approval is reasonable and in the public interest because it brings the Town's UDO into compliance with recent statutory changes at the state level and cleans up language from prior editions of the UDO that may have caused confusion. The motion was seconded by Commission Member Behrend.

Vote: Aye – All
Nay – None

The motion passed.

Anti-Homeless Architecture

Ms. Shook introduced Dalton George and Matt McGregor. She noted the Mr. McGregor was an intern for Planning & Inspections and Mr. George was the one who brought this topic up in front of Council last month.

Mr. George stated he worked with a group called Boone Fair Housing. He explained that he had basically asked for a resolution from Town Council and, by relation, the Planning Department to commit to never implementing any sort of anti-homeless architecture in the Town of Boone such as slanted benches, spikes under bridges, and things like that.

Ms. Shook stated that Council assigned this topic to the Planning Commission to review and make recommendations that could eventually lead to Town Code or UDO changes. She noted that Mr. McGregor would be researching other jurisdictions and how or if they regulate this topic. Ms. Shook stated the priority for Planning Commission right now was the B1 Downtown Projects, but this assignment had been put on their task list and this was just an introduction so members could begin thinking about and researching the topic as time allowed.

Commission Member Behrend asked for a longer list of examples of things that would be detrimental to the homeless. Mr. George stated he could prepare a more extensive list and provide that to Planning Commission members within a week or two. Ms. Shook added some examples she had seen were benches that were interrupted with bars or handles so people could not lay down and low walls with bars on them to discourage people from laying on the surface.

Vice Chair Plaag felt it might be helpful for Planning Commission members to see a model ordinance as well as examples of particularly onerous ordinances against the homeless so that they could get an idea of what was really bad. Ms. Shook agreed and stated that, at the very least, she would have Mr. McGregor report back before he left at the end of the semester with what he had gathered up to that point.

Other Matters

Commission members discussed scheduling a special meeting to consider the Downtown Projects. It was the consensus of the Commission to meet on Monday, April 5, 2021 at 6:00 p.m.

Ms. Shook noted that a new Planning Commission member, Amanda Halbert, had been appointed and would likely be joining at the next meeting.

Commission Member Veno noted that Vice Chair Plaag had mentioned the two important things for the Commission to look at which in the Downtown Projects was the Designation Report and the Survey Report and asked if there was anything else they needed to concentrate on other than the clean copy of the

ordinance change. Vice Chair Plaag replied that Commission members might want to look at the recommendations in the Survey Report because they informed the Designation Report but felt the Designation Report was of the most importance right now.

Ms. Shook stated she felt there was a portion of the Design Guidelines that they may need to go ahead and adopt right away regarding how a Certificate of Appropriateness was obtained.

Vice Chair Plaag added that Commission members should be familiar with the Secretary of the Interior Standards for Rehabilitation, which was a list of 10 items that were contained in the Design Standards document.

Ms. Shook explained that there were three separate documents that go along with the Downtown Boone Local Historic District; the survey report that Council had already accepted, the Design Guidelines, and the Designation Report. Ms. Shook suggested Commission members concentrate their review of the Downtown Projects documents to pages 1-30. She stated she would send out a separate email containing a clean copy of the UDO text, pages 1-30 of the Design Guidelines, and the Designation Report.

Vice Chair Plaag reminded everyone to look at the National Park Service materials on rooftop additions as this would be a part of the B1 discussions.

Ms. Shook noted that the topic of rooftop additions was on the Community Appearance Commission's agenda for their next meeting. She stated the CAC's recommendations on rooftop additions in the B1 Downtown Core and Interface areas would be forwarded to everyone as soon as possible.

Adjournment of Planning Commission

Vice Chair Plaag made a motion to adjourn the meeting at 7:50 p.m. The motion was seconded by Commission Member Veno.

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

Elizabeth Shay, Planning Commission Chair

Brenda Henson, Board Secretary