PUBLIC HEARING MINUTES
MONDAY, FEBRUARY 26, 2018 AT 6:00 P.M.

COUNCIL MEMBERS: Mayor Rennie Brantz, Mayor Pro-Tem Loretta Clawson, Marshall Ashcraft, Sam Furgiuele, Lynne Mason, and Connie Ulmer (arrived at 6:12 p.m.)

PLANNING COMMISSION MEMBERS: Chairman Connor Boyle, Abie Bonevac, Alan Lee, and Elizabeth Shay

PLANNING STAFF PRESENT: Jane Shook-Director of Planning and Inspections, Christy Turner-Senior Planner, Brian Johnson-Urban Design Specialist, Marty Little-Planner, and Brenda Henson-Board Secretary

OTHERS PRESENT: John Ward-Town Manager and Allison Meade-Town Attorney

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CALL TO ORDER

Mayor Brantz called the Town Council to order at 6:03 p.m.

Commission Chairman Boyle called the Planning Commission to order at 6:03 p.m.

APPROVAL OF MINUTES

Council Member Furgiuele made a motion, seconded by Mayor Pro-Tem Clawson, for Town Council to approve the February 26, 2018 Public Hearing minutes as written.

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

Commission Chairman Boyle referred to an email sent to Town Council and Planning Commission by the Town attorney prior to the February 26, 2018 Public Hearing regarding her opinion that the Town would not likely be open to litigation by developers as a result of recent changes in State Statute in particular to the 2030 Land Use Plan. Commission Chairman Boyle stated he recalled Council Member Furgiuele disagreed with Ms. Meade's opinion and he would like to see that reflected in the minutes on page 7.

Mayor Brantz agreed that was the tenor of the discussion.

Council Member Furgiuele disagreed stating he believed what he said was that it was impossible to evaluate the risks and he was not prepared to take that risk after he asked how much money the Town had spent defending lawsuits.

Ms. Meade felt it would be a good idea to attach the memo she had sent to the February 26, 2018 Public Hearing minutes. She went on to explain her memo, noting the 2030 Plan posed no greater risk because the State law just changed terminology. Previous terminology stated that action of the Council had to be consistent with the Comprehensive Plan and any other applicable plan while new Statute language stated action of the Council had to be consistent with the Comprehensive Plan. Ms. Meade further explained that the definition of Comprehensive Plan now included all other applicable plans. She felt this new language posed no change to the 2030 Plan. Ms. Meade added that State law does now require a slightly different consistency statement and the regulatory setup has become more complicated which could arguably provide a small handle for litigation but she felt there was no particular additional risk posed by the 2030 Plan.

Mayor Brantz asked if Planning Commission could approve the minutes with Commission Chairman Boyle's amendment. Council Member Furgiuele stated he would like to see the language first. He stated he did not agree with the characterization and he did not want to rehash the whole thing, noting it was unpleasant and members of Planning Commission were yelling at him and admonishing him. Council Member Furgiuele stated he had no objection to Ms. Meade's memo being attached to the minutes but he did not agree with the characterization and if there is any language change he would like to review it, not on the fly, but at the next meeting.

Commission Member Shay stated she could not remember the exact language used at the February Public Hearing but remembered hearing there was a sense of urgency to act quickly because having both the planned development process and the 2030 Plan on the books while waiting to address deficiencies was a danger.

Commission Chairman Boyle asked if Planning Commission could go ahead and vote to approve the minutes with his suggested amendment regarding Ms. Meade's memo containing her opinion of low risk and Council Member Furgiuele's disagreement with that opinion.

Ms. Meade felt that a modification of the Public Hearing minutes by Planning Commission should be brought back to Town Council for their approval as well.

Council Member Furgiuele stated he would acknowledge he believed there was a bigger and costly risk than Ms. Meade believed. He stated his memory was that Ms. Meade did not feel there was no risk but that there was less of a risk than he believed there was and he was willing to have that put into the minutes. Council Member Furgiuele expressed some confusion about why those disagreements are so important and felt the discussion became a personal attack on him. Council Member Fugiuele stated he had never seen minutes that covered every single item and everything that was said. He felt all of the actions were currently reflected in the minutes that were produced which the Council just adopted. Council Member Furgiuele was unsure if the Planning Commission thought pursuing this would help people assassinate his character.

Commission Chairman Boyle replied that he felt minutes should accurately reflect what transpired. He added that Council Member Furgiuele's perception that the discussion was a character assassination by the Planning Commission was not accurate. Council Member Furgiuele responded that it reflected on the Code of Ethics in regards to personal attacks on people as versus discussion of the topic and he felt like that line was crossed.

Commission Member Shay stated she was a little less inclined to approve the minutes after hearing there was a perception of personal attacks coming from the Planning Commission and felt that no such thing happened. Commission Member Shay stated there were a few corrections she would like to make to the minutes. In the fourth paragraph on page 7 of the minutes she requested that the first sentence be amended to say 'Commission Member Shay questioned why the 2030 Plan should be repealed when *Town Council felt there were so many poor projects* built under the UDO.' Commission Member Shay also requested an amendment to the first sentence of paragraph four on page 9 of the minutes to read 'Commission Chairman Boyle stated he agreed with what Commission Member Shay said *and* did not agree with striking the whole thing out of the UDO and eliminating the Planned Development process even temporarily.'

Commission Member Lee seconded what he considered Commission Member Shay's motion to approve the February 26, 2018 Public Hearing minutes as amended.

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

Ms. Meade stated she was clear on Commission Member Shay's two amendments but was not clear on what the Commission is actually adopting with respect to the prior issue that was discussed. Commission Chairman Boyle explained that the amended minutes should include reference to Ms. Meade's memo containing her opinion that retaining the 2030 Plan would only pose a minimal risk while Council Member Furgiuele's opinion differed in that he believed there would be a much greater risk.

It was noted that Town Council had adopted the minutes as they were.

CASE PL01340-022718 SETBACK & HEIGHT MODIFICATIONS – UDO TEXT AMENDMENT

At the January 8, 2018 Planning Retreat, Council requested modification of UDO Articles 15, 16 and 34 to address the following:

1. Remove setback exemptions for mixed-use in UDO Section 15.11
2. Clarify how a building must be "setback" in its entirety to meet secondary height allowances
3. Prohibit replacement of buildings in the B1 with a building of higher height without conditional district rezoning including amending Section 15.11.02(D) to only apply to vacant land as of date of adoption of regulation.

Staff presented draft text to Council in February, which was then sent on to the March 2018 public hearing. Council requested Staff modify the text as follows:

1. Modify the mixed-use regulations in order to encourage applicants to preserve existing significant or historic trees, provide landscaped courtyards, landscaped greenspace, plazas or pocket parks and other pedestrian oriented amenities between the primary façade and the street.
2. To remove the interior setback exemptions for mixed-use developments, with the possibility that this may be retained after discussion.

Ms. Shook presented the case as outlined in the meeting packet. She outlined the modifications as follows:

15.11.02(D) New projects *on property which was vacant as of February 1, 2018* shall be a least two floors above the primary streel level. Ms Shook explained this change was to only allow higher heights on property that is currently vacant, not where a building was torn down for new development. She noted this was located in Section 15.11 which deals with multi-family mixed-use developments.

Ms. Shook noted modifications on packet pages 17, 18, and 19 were all the same and the language would read: In the area between the primary façade and the street the applicant is encouraged to preserve existing significant or historic trees, to provide landscaped courtyards, landscaped greenspace, plazas, pocket parks, and other pedestrian oriented amenities. Ms. Shook stated language was removed from the text regarding setback exemptions in the B2 and B3 that allowed the buildings to be closer to the street.

16.08.04 Height in the B1 Central Business District
Ms. Shook noted that all of the existing language would be retained and the modification would add the following language:
(B) An existing building may not be demolished and replaced with a building of greater height unless approved under the Conditional District Zoning Map Amendment process set forth in Article 9 herein.

(C) The height of existing buildings may not be increased unless approved under the Conditional District Zoning Map Amendment process set forth in Article 9 herein.

(i) Addition or modification of the features exempted in Subsection 16.08.08 do not trigger the requirement for the Conditional District Zoning Map Amendment process.

Ms. Shook explained that exempt items, if they had to be modified on an existing building, would not trigger that process.

Ms. Shook noted there had been some question regarding parapets and whether or not they should be exempted from the height requirement and felt this topic should be discussed at this hearing even though text had been added as seen in the Staff Report. She noted that subsequent conversations from Council would lead to changes and she recommended removing the changes regarding the parapet from consideration. She did note that parapet was previously not defined in the UDO and the definition could be added.

Council Member Furgiuele read the definition of parapet as a low wall at the top of the façade of a building and asked what the range of allowed heights would be. Discussion ensued regarding parapet wall heights. Ms. Shook noted that parapet walls varied in height depending on the project.

Council Member Furgiuele referred to information that was provided to Council previously regarding the Town of Blowing Rock's ordinance that addressed things like domes and items on top of a structure that were not to be occupied. Council Member Furgiuele asked Ms. Shook if it would be profitable to include language in Boone's UDO that states these types of architectural features cannot be occupied. Ms. Shook felt that would be a helpful clarification and this could be included in the modifications to be presented to Town Council next month. Council Member Furgiuele was in agreement.

Ms. Meade felt parapets should be in a separate paragraph and thought the Blowing Rock methodology should be used regarding screening of features or equipment. Ms. Shook stated staff was working on that language.

Ms. Shook asked if the modified language in 16.08.08(D) should be returned to its original language until next month when there would be additional changes. Ms. Meade felt that would make sense. This was also the consensus of Town Council.

Commission Chairman Boyle asked if, for instance, the Melanie's building was torn down they could not go above one floor to rebuild unless they went through a Conditional District Zoning Map Amendment process. Ms. Shook replied that was correct.

Ms. Meade asked Ms. Shook to describe the Conditional District Zoning Map Amendment process. Ms. Shook explained that an applicant would have to provide a site plan with an application to appear before Planning Commission and Town Council for a Public Hearing, they would then receive recommendations from the Planning Commission, and then move on to Town Council for a final decision. This process would require adjacent property owner notification prior to the hearing. Ms. Meade added that this would be a legislative decision made by Town Council.

Mayor Brantz asked if this would be the procedure that would have to be followed in order to allow an increased height. Ms. Shook replied that was correct. Ms. Meade clarified that this process applied to properties in the B1.

At 6:34 p.m. Mayor Brantz opened the floor for public comment.

Bob Flanigan was the first speaker. He asked the Council to make no further changes to the UDO in reference to setbacks and heights until the Comprehensive Plan could be updated. Mr. Flanigan stated he understood the legal reasons for repealing the 2030 Plan temporarily due to inconsistencies with the UDO and he trusted that Council would move forward promptly with the merger and incorporation of the good parts of the 2030 Plan with the Comprehensive Plan. Mr. Flanigan felt the proposed ordinance changes did not take into account the economic sustainability of the changes and the effects on the property owners. He felt that placing these restrictions on small businesses could likely devalue their property. Mr. Flanigan suggested these changes could restrict or halt development and that would affect the tax base which helps cover salaries of police and fire personnel and public servants. Mr. Flanigan cited buildings with historical significance such as Farmers Hardware and Mast General Store that were built right up to the sidewalk and thought it seemed inconsistent with the idea of setbacks downtown. Mr. Flanigan stated that decisions should not be taken without full consideration of their impact on the overall situation of the Town of Boone and the direction it is going.

Ms. Meade stated it was her understanding that setbacks in the B1 would not change and would remain a 0' setback. Ms. Shook stated that was correct, noting the only modifications to mixed-use in Section 15.11 were for development in the B2 and B3 and did not include any modifications to development in the B1.

The next speaker was Bill Ellis. Mr. Ellis stated he was with McCrae & Associates, owners of the Goodnight Ham Processing Plant on Howard Street. Mr. Ellis relayed his company's desire to build a hotel on that property, noting it was not an easy process, and the more zoning hoops there were to go through the harder it becomes to get a flag hotel to agree. Mr. Ellis stated they were currently speaking with a flag hotel that, under the current ordinance, could build 4 stories or 42'. His fear was that a change in the ordinance would cause the hotel to back out and they might be forced to build something less in height like student housing. Mr. Ellis felt the proposed ordinance would make it difficult to build a hotel downtown and asked that properties that have a plan for development be grandfathered. He felt a nice boutique hotel would be good downtown but stated it would need to be 4 floors in order to make it financially feasible. The building currently on the property is only 2 floors so under the new ordinance they would not be able to build 4 floors without a Conditional District Zoning Map Amendment.

The next speaker was Tucker Deal. Mr. Deal stated he was a young professional that lived downtown. He felt this proposal would be a severe impediment to the redevelopment of Howard Street and stifle the use of single story buildings. Mr. Deal addressed the Conditional District process and explained that a property owner could develop plans and secure financing but because the conditions that could be placed upon them in the CD process are unknown, the conditions could cause the project to fall through. He stated he could understand applying the height restrictions to single story buildings with substantial historic significance but to generally apply it any height building it clearly adds an unnecessary expense. Mr. Deal implored the Council to slow down a little bit and be a little more deliberate in their consideration of these changes. He asked that Council focus on getting the Comprehensive Plan/2030 Plan merger completed and adopted then moving forward changes to the UDO can be made that would be consistent with that plan.

James Milner was the next speaker. Mr. Milner stated he was the president and owner of Appalachian Commercial Real Estate. He felt since he had been involved with the last three building sales in the B1 district he was privy to some knowledge of what exactly is happening downtown. Mr. Milner stated the owners of these three buildings have bought them with the intention of making them better. He felt it was ludicrous to think Town Council would put the Conditional District Rezoning process onto these specific owners in the B1. Mr. Milner stated the barrier to entry into the Town of Boone in terms of development continues to be high and this only makes it higher and it becomes more and more frustrating. Mr. Milner stated it seemed like Council was in retaliation mode because they had a development they did not like. He went on to say that development in the Town of Boone was going to occur with an ordinance to follow but making change after change creates uncertainty and frustration. Mr. Milner stated that a CDR was site specific and had nothing to do with the building height and is the precursor to planned development. Mr. Miller noted that development could be good.

John Winkler was the next speaker. Mr. Winkler spoke about parapet heights and noted that a 2' height did not take into consideration things like snow. He felt the height should be at least a 4' minimum in order to conceal air conditioning units or allow railing for rooftop restaurants. Mr. Winkler asked that these things be considered when looking at parapet heights and felt that a 2' parapet served no purpose.

Council Member Furgiuele asked if it was correct that in order for conditions to be placed on Conditional District approval the applicant has to agree to those conditions. Ms. Meade replied that was correct. Council Member Furgiuele asked if it was correct that Council cannot impose conditions on a project unless those conditions are agreed upon by the applicant. Ms. Meade stated that was correct.

With no further questions or public comment, Mayor Brantz closed the public hearing for this case at 6:48 p.m.

CASE PL01341-022718 GOVERNMENT USE RECREATION FACILITIES IN M1 - UDO TEXT AMENDMENT

At the February 2018 Council Meeting, Council requested modification to UDO Article 15 to allow Government Use Recreation Facilities in the M1 Manufacturing Zoning District. Council requested this amendment be sent to the March 2018 Public Hearing.

Ms. Shook presented the case as outlined in the meeting packet noting this text amendment would allow the skate park or other government recreational uses proposed by the Town to be located in an M1 zoning district. Currently all zoning districts do allow government use recreation facilities but such facilities were not allowed in the M1. Ms. Shook stated this amendment would include all 3 categories of recreation facilities and would be permitted by right, subject to transitional zone requirements. She noted that the Town currently owns at least two large M1 tracts.

Mayor Brantz asked if this would allow other types of recreational uses than skate parks. Ms. Shook replied that this would allow only government operated recreation facilities.

Council Member Ashcraft asked if government uses included the university. Ms. Meade replied that educational uses were separate from government uses. Ms. Shook agreed that this would not apply to the university or educational uses.

Ms. Meade asked if it made sense to have transitional zone requirements considering it a government use and directed by the Town.

Mr. Ward stated it was his understanding that the skate park would go in under Category 2 with no outdoor lighting but it could have outdoor lighting in the future.

Ms. Meade explained that there could be the situation of Council approving the outdoor lighting of the facility and then the case having to go to the Board of Adjustment for transitional zone consideration and being turned down, which could create some awkwardness for the Town. Ms. Meade stated she wanted to make sure Council was aware of the possibility.

Council Member Furgiuele felt that, whether a facility was publicly or privately owned, outdoor lighting could affect neighboring properties so the Special Use Permit proceeding would give those who live nearby the opportunity to come and be heard about any possible negative impacts and give the Board an opportunity to look at ways to mitigate the impacts.

Mayor Brantz asked if the Town risked any liability for the skate park. Ms. Meade replied there would be liability but expected there would be insurance much like everything else that the Town does. She stated there would need to be some policies and procedures in place with respect to maintenance. Ms. Meade added that this would not be some new type of liability that the Town does not already deal with.

Council Member Ulmer questioned transitional zones and Ms. Meade provided a brief description.

Council Member Clawson stated she liked transitional zones. She thought they were very effective and felt for the neighbors in the area that would be affected by the lighting.

Council Member Furgiuele asked if transitional tones could be addressed through a Conditional District process instead of the Special Use Permit process. Ms. Shook replied that was correct but noted that all mitigation measures would still have to be proven.

With no further questions or public comment, Mayor Brantz closed the public hearing on this case at 6:59 p.m.

ADJOURNMENT OF TOWN COUNCIL

Council Member Furgiuele made a motion to adjourn Town Council at 6:59 p.m. The motion was seconded by Mayor Pro-Tem Clawson.

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

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Mayor Rennie Brantz **Board Secretary Brenda Henson**

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Planning Commission Chairman Connor Boyle

At 7:07 p.m. Commission Chairman Boyle proceeded with the business of the Planning Commission.

<u>APPROVAL OF PLANNING COMMISSION MEETING MINUTES</u>

Commission Member Bonevac made a motion, seconded by Commission Member Lee, to approve the February 26, 2018 Planning Commission meeting minutes as written.

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

<u>CASE PL01298-020218 REMOVAL OF BOONE 2030 LAND USE PLAN REFERENCES – UDO TEXT AMENDMENT</u>

Ms. Shook reminded Commission members that they did not take action on this case at the February Public Hearing. She stated that Town Council did vote to repeal the Boone 2030 Land Use Plan and this text amendment would only remove any references to the 2030 Plan from the UDO. Ms. Shook also noted that if the Planning Commission did not take action on this amendment tonight, enough time had elapsed that Town Council could proceed with action on this amendment without Planning Commission's recommendations.

Commission Chairman Boyle made a motion that the Planning Commission take no action on this request. The motion was seconded by Commission Member Bonevac.

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

<u>CASE PL01340-022718 SETBACK & HEIGHT MODIFICATIONS – UDO TEXT AMENDMENT</u>

Commission Chairman Boyle stated he was generally okay with the proposal as it related to setbacks but did not agree with the height proposal. He felt the proposed text was much too restrictive. Commission Chairman Boyle stated that not approving either one of these, setback or height, would not give him any heartburn.

Commission Member Lee agreed that the height regulations seemed too restrictive.

Commission Member Shay asked where the proposed text came from. Ms. Shook replied that Town Council discussed this topic at the Planning Retreat and staff was directed to propose the text. Ms. Shook noted that Council had seemed concerned that the current regulations encouraged demolition and replacement of existing buildings with building of height heights.

Commission Member Bonevac did not feel this text amendment was the best idea.

Commission Member Shay stated she did not see the underlying justification.

Commission Member Bonevac stated she would like to review the height study that was done by the Town. Ms. Shook directed Commission members to the Town's website where the height study could be viewed in the March 22, 2018 Town Council meeting packet.

Commission Member Lee made a motion to table discussion of this text amendment until the next meeting in order to give Commission members more time to review the height study. The motion was seconded by Commission Member Bonevac.

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

CASE PL01341-022718 GOVERNMENT USE RECREATION FACILITIES IN M1 - UDO TEXT AMENDMENT

Commission Chairman Boyle asked what 'regularly scheduled' recreation activities meant. Ms. Shook stated that meant the facility would be open when it was advertised to be open. Commission Member Boyle referenced transitional zone requirements and noted that with the Town running the facility one would think the Town would be considerate of any negative impacts.

Commission Member Shay felt this request was in keeping with the Comprehensive Plan.

First Motion and Vote: Commission Member Bonevac made a motion that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that are applicable because it follows suit with various recreation activities set forth in Comprehensive Plan policy 2.2.3 Parks, Recreation & Open Space, specifically Subsection A. The motion was seconded by Commission Member Lee.

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

Second Motion and Vote: Commission Member Bonevac 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 the amendment is consistent with Comprehensive Plan policy 2.2.3(A) Parks, Recreation & Open Space. The motion was seconded by Commission Member Lee.

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

OTHER MATTERS

Commission Chairman Boyle asked about the status of the Comprehensive Plan merger. Ms. Shook stated Council would be giving Staff direction at the next Council meeting.

Election of Officers

Commission Chairman Boyle announced his resignation from the Planning Commission, effective at the close of this meeting.

In light of Commission Chairman Boyle's resignation, Commission Member Shay made a motion to table election of officers until more Commission members could be present. The motion was seconded by Commission Member Lee.

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

ADJOURNMENT OF PLANNING COMMISSION

Commission Chairman Boyle made a motion to adjourn the meeting at 7:34 p.m. The motion was seconded by Commission Member Lee.

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

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Planning Commission Chairman Connor Boyle **Board Secretary Brenda Henson**