

**SPECIAL PLANNING COMMISSION MEETING MINUTES
WEDNESDAY, SEPTEMBER 28, 2022, 6:30 PM
VIA WEBEX**

PLANNING COMMISSION MEMBERS PRESENT: Elizabeth Shay-Chair, Eric Plaag-Vice-Chair, Chris Behrend, Scott Boyd, John Tippet, Frank Veno, and Smith Warren

TOWN STAFF PRESENT: Jane Shook-Director of Planning and Inspections, Mike James-Senior Planner, Christy Turner-Senior Planner, Brandon Wise-Environmental Planner, Rick Miller-Public Utilities Director, and Brenda Henson-Board Secretary

OTHERS PRESENT: Chelsea Garrett, Allen Yates, Jason Gaston, Tucker Deal, and John Winkler

Call to Order

Chair Shay called the special Planning Commission meeting, held via WebEx and continued from the September 26, 2022 Planning Commission meeting, to order at 6:31 p.m.

Ms. Jane Shook, Director of Planning and Inspections, asked the Planning Commission to consider changing the order of the agenda to hear the Portofino Hotel case to be the second case heard due to the amount of time anticipated to address the Yates case.

Vic-Chair Plaag made a motion to move the Portofino Hotel case to be the second case heard. Commission Member Veno seconded the motion.

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

Approval of Planning Commission Meeting Minutes

Commission Member Tippet made a motion to approve the August 22, 2022 Planning Commission meeting minutes as written. Commission Member Warren seconded the motion.

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

Case PL05995-081822 Hampton, Barney – General Use Zoning Map Amendment

The Town of Boone has initiated the zoning of property on West Donnie's Drive (Watauga County PIN: 2829-18-8754-000) owned by Barney and Delores Hampton to RA Residential Agricultural or R1 Single-Family Residential. Zoning is to coincide with the property owner's voluntary annexation of the property. A Voluntary Annexation Petition from Barney and Delores Hampton requesting the Town to annex 1.004 acres contiguous to the Town of Boone primary corporate limits has been submitted and processed. The parcel is currently vacant. By direction of Town Council during the consideration of the annexation petition, zoning of the property is to be either RA Residential Agriculture or R1 Single-Family Residential with WS-IV Watershed Areas Protected Area (WS-IV-PA).

Chair Shay asked if the properties surrounding Mr. Hampton were zoned RA or R1. Mr. Mike James, Senior Planner with Town of Boone Planning and Inspections, replied that all of the surrounding properties that were located inside the Town's jurisdiction were zoned RA.

Vice-Chair Plaag noted that when the other surrounding properties currently located in the county were located in the ETJ, they were zoned RA. He stated that RA zoning allowed uses such as slaughter houses. He recommended the more restrictive R1 zoning instead of RA.

Commission Member Tippettt agreed with Vice-Chair Plaag. He stated that the surrounding properties were being used as single-family residences, so R1 made the most sense.

Commission Member Warren stated he supported zoning the property as R1.

First Motion and Vote: Commission Member Tippettt made a motion that the proposed amendment to the Town's zoning map to R1 is consistent with the Town's comprehensive plan and any other adopted plans of the Town that are applicable because the amendment is consistent with:

Comprehensive Plan Policy 2.3.3 Housing and Neighborhoods

A. The protection and rehabilitation of viable neighborhoods shall be encouraged to insure their continued existence as a major housing source and as a reflection of the area's image as an attractive, highly livable community.

C. Proposed residential development which would expose residents to harmful effects of incompatible development or to environmental hazards shall be prohibited.

C.1 Amend the zoning map and development regulations to prevent residential uses from locating adjacent to existing developments and other uses which may have characteristics which cannot be effectively mitigated.

H. The overall housing unit density for proposed infill residential development or redevelopment should be compatible with the average density of existing areas.

Vice-Chair Plaag seconded the motion.

Vote: Aye – All

Nay – None

The motion passed.

Second Motion and Vote: Commission Member Tippettt made a motion that the Planning Commission recommends approval of Ordinance PL05995-081822 and believes approval is reasonable and in the public interest because the adjacent, existing land uses are all single-family residential. Vice-Chair Plaag seconded the motion.

Vote: Aye – All

Nay – None

The motion passed and approval was recommended.

Case PL05979-081222 Portofino Hotel – Conditional District Zoning Map Amendment

River Street Ventures, LLC has submitted a Conditional District Zoning Map Amendment application for property located at 970 Rivers Street (Watauga County PINs: 2900-78-7965-000, 2900-78-6979-000, and 2900-79-7027-000) to rezone the property B1 Downtown Core with a site-specific development plan for a two story, 20 room hotel (Use 3.09 Hotel, Small) and Use 15.01 (Parking Lot).

Vice-Chair Plaag stated he would be recusing himself from this case because he had participated in quasi-judicial action on this project as a member of the Historic Preservation Commission. Vice-Chair Plaag then muted himself and turned off the video to his screen.

Commission Member Veno stated he went by the property and looked underneath the building. He felt that, due to the condition of the building, it was time for it to go. Commission Member Veno stated that he liked the appearance of **the proposed project and was in favor of approval.**

First Motion and Vote: Commission Member Veno made a motion that the proposed amendment to the Town's zoning map is consistent with the Town's comprehensive plan and any other adopted plans of the Town that are applicable because the amendment is consistent with:

Comprehensive Plan Policy 2.1.1 Economic Development

- A. The Town shall protect and enhance a high quality of life, image, cultural amenities, and natural beauty as the most effective, long term component of an economic development strategy.
- B. New and expanding industries and businesses shall be encouraged which: 1) diversify the local economy, 2) train and use a skilled labor force and 3) increase area residents' incomes.
- C. The Town shall encourage the development of a well-balanced tourism trade as a primary element of the area's economic future. Investments in services, facilities, and proper growth management shall be employed in furtherance of this objective.
- D. Economic development efforts shall encourage the revitalization and reuse of currently unused or underutilized structures, sites and infrastructure in appropriately located areas.
- 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.
- F. New firms and expanding businesses that complement the natural resources and beauty of the region shall be especially recruited and encouraged.

Comprehensive Plan Policy 2.1.2 Commercial Development

- F. Commercial uses may be encouraged to develop by consolidation and expansion of existing commercially zoned property, only when such consolidation and expansion does not encroach upon a viable residential area.
- I. Office and institutional development may be encouraged as a transitional land use between residential areas and higher intensity commercial activities.

Comprehensive Plan Policy 2.1.5 Downtown

- A. A compatible design character for the downtown area, drawing upon the locality's original High Country small town features, shall be identified, reinforced and supported to put forth a quality image and sense of place.
- B. The Town, in concert with the downtown property owners and merchants, shall encourage public and private efforts to develop and publicize adequate and appropriately designed off-street parking lots in the downtown area.
- C. A variety of mutually compatible and supportive mixed uses shall be encouraged in the downtown area.
- D. Public and private developments shall be encouraged to incorporate local artistry into public and semi-public spaces downtown.
- E. Public and private development decisions in the downtown area shall exhibit a special concern for maintaining the intensive, pedestrian oriented character of the district.
- F. The maintenance and revitalization of downtown Boone, as well as planning for its future development, will reflect the realities and qualities befitting its geographical setting and function as a center of (1) commercial and service activities, (2) educational and cultural activities, events and (3) public services.

Commission Member Warren seconded the motion.

Vote: Aye – 6

Nay – None

Recused – 1 (Plaag)

The motion passed.

Second Motion and Vote: Commission Member Veno made a motion that the Planning Commission recommends approval of Ordinance PL05979-081222 and believes approval is reasonable and in the public interest because the plans presented will enhance the area greatly and mitigate environmental issues. Commission Member Behrend seconded the motion.

Vote: Aye – 6

Nay – None

Recused – 1 (Plaag)

The motion passed and approval was recommended.

Vice-Chair Plaag rejoined the meeting.

Case PL05764-060822 Yates Family Properties – Conditional District Zoning Map Amendment

Yates Family Properties LLC is requesting a Conditional District Zoning Map Amendment to rezone property located at the end of Chase Hill Drive (Watauga County PIN: 2920-00-9240-000) from R3 Multi-Family Residential to R1 Single Family Residential with a site-specific plan for a major architecturally integrated subdivision of 14 single-family lots (Use 1.01 – Single-family Residential). The applicant is proposing an architecturally-integrated major subdivision of 14 single-family home sites and accompanying amenities on an extension of Chase Hill Drive. The requested Conditional District Approval will also include subdivision plat approval.

Chair Shay noted that Planning Commission members should have received an email containing a digital version of the handouts and written statements presented at the Public Hearing on September 26. Vice-Chair Plaag asked Ms. Shook to share on the screen the photos of flooding in the neighborhood as well as the landslide hazard map that showed a high probability of a landslide on the slope behind some of the houses joining the subject property. Some Planning Commission members indicated they had not had an opportunity to review the items in the email. They took a few moments to review.

Chair Shay asked if R1 and R3 zoning had different stormwater requirements. Mr. Brandon Wise, Environmental Planner with Town of Boone Planning and Inspections, explained that pre and post run-off had to be the same and this was not different in and R1 or R3 zone. Chair Shay asked about impervious area in an R3 zone. Mr. Wise replied that R3 property with a watershed designation allowed development up to 24% of the total land area. Ms. Shook added that the use changed watershed requirements, not the zoning.

Commission Member Behrend stated she drove down Chase Hill Drive and she did not see how the road could be widened without taking a lot of property. She felt that the proposed development would cause an increase in traffic and would be a hindrance to the neighborhood. Ms. Shook noted that the road would be widened within the right-of-way.

Commission Member Tippettt stated he also went to Chase Hill Drive. He noted that the road narrowed in front of existing houses. He asked if the road was currently paved up to Mr. Yates' property. Mr. Mike James, Senior Planner with Town of Boone Planning and Inspections, replied that the pavement did not currently go all the way to Mr. Yates' property. He explained that Mr. Yates would have to build an extension to the end of the existing Chase Hill Drive that would meet town standards. Ms. Shook added that there was discussion at the Public Hearing regarding extending the street. She stated that Mr. Rick Miller, Public Works Director, had indicated that Chase Hill Drive was a town street and the applicant was aware that he would have to pay the costs associated with the extension.

Vice-Chair Plaag noted that the original layout of Chase Hill Drive was as a private street. He stated that GIS still showed the street as private, not Town. Vice-Chair Plaag added that, although Mr. Miller said Chase Hill Drive was a town street that had been maintained by the town for 20 years, there was no formal

easement recorded. Vice-Chair Plaag noted that the 45' easement to the applicant's property exceeded the town's right-of-way width. Ms. Shook responded that the town's GIS mapping showed Chase Hill Drive as a town street. She explained that streets that were dedicated to the town were not always recorded. Mr. Miller added that Chase Hill Drive was on the town's Powell Bill map and the town received funds from the state for the road. He stated that Mr. Yates could not build whatever he wanted for the road, noting that it had to meet town standards.

Chair Shay stated she felt a property owner had the right to develop their property. Even though Mr. Yates had requested a downzoning of the property, she was still concerned with the density and flooding in the area. Chair Shay added that it was not Mr. Yates' responsibility to right the wrongs of others.

Vice-Chair Plaag stated that the property owner had the responsibility to not add issues to an already vulnerable situation. He noted that Mr. Yates bought the property in 2019. Because Mr. Yates was a Watauga County native and realtor, Vice-Chair Plaag felt that Mr. Yates should have known the history of the area. Vice-Chair Plaag stated that he had lived in the area for 11 years and had studied the flooding in Watauga County. He expressed concern with the forecast for Hurricane Ian in that it could be somewhat like the flood of 1940. Vice-Chair Plaag stated he had witnessed at least two 500-year flooding events since moving to Boone. He noted that the flooding photos presented by neighboring property owners indicated there had been several 100-year flooding events. Vice-Chair Plaag felt it was careless and reckless to place homes in a floodplain. He expressed concern about possible landslides and felt that fill dirt in the floodplain would increase flooding. Vice-Chair Plaag stated he was strongly opposed to the proposed development.

Chair Shay stated she took Mr. Yates at his word that he wanted to build something beautiful, but she was conflicted.

Commission Member Behrend stated she was also concerned with flooding and agreed with Vice-Chair Plaag's comments.

Commission Member Tippet stated he agreed with Vice-Chair Plaag except he was not a hard no. He added that he would prefer to have nothing at all developed on the property. Commission Member Tippet suggested that the town look into the possibility of buying the property to preserve. He noted that if Mr. Yates' request was denied he could develop the property as R3 with higher density.

Commission Member Veno felt that if the developer wanted to develop the property as R3, he would have to go through the same process. Commission Member Veno stated he was not as concerned with traffic because he saw a crane and tree cutting trucks on that street today. He did feel that construction noise could be disturbing to the neighborhood for years. Commission Member Veno stated that he did quite a bit of research for this case about watersheds and he still did not know a lot about them. He noted that a 100 or 500-year flooding event would still happen regardless of whether or not this subdivision was approved. Commission Member Veno expressed concern that the new houses would likely flood. He stated he would reluctantly vote to deny the project. Commission Member Veno asked about a manhole he saw on Chase Hill Drive. Mr. Miller replied that the manhole was the main sewer outfall for the area and it was located on the subject property.

Commission Member Warren echoed the same issues as Vice-Chair Plaag and Commission Member Veno. He stated that reading the letters from the neighbors caused him to think more seriously about flooding. Commission Member Warren added that he was leaning toward denying the project.

Vice-Chair Plaag stated that, during the public hearing, Elizabeth Underwood with the New River Conservancy strongly recommended placing the homes in the floodplain on stilts instead of using fill dirt. Vice-Chair Plaag suggested, if approved, there be a condition that piers be utilized to elevate the homes

in the floodplain instead of using fill dirt. Mr. Wise, noted that the preferred term was to “elevate” the homes since elevation could occur in a variety of manners including piers or crawl spaces.

Ms. Chelsea Garrett, attorney for the applicant, stated Mr. Yates would be willing to elevate the homes located in the floodplain.

Mr. Jason Gaston, engineer for the project, noted that lots 2, 3, 14, and 15 were located in the 100-year floodplain and they could do piers there. However, he noted that there would not be as much stormwater control with the homes on stilts. Mr. Gaston added that those homes would have to get flood insurance and provide their own stormwater systems.

Vice-Chair Plaag asked which lots were located in the 500-year floodplain. Mr. Gaston replied that lots 4, 5, 6, and 7 were not located in the 500-year floodplain.

Vice-Chair Plaag asked if the applicant would be willing to elevate the homes in both the 100 and 500-year floodplains. Mr. Yates asked Vice-Chair Plaag why he preferred elevating the homes over placing fill dirt. Vice-Chair Plaag replied that it was because of Ms. Underwood’s concerns of using fill in the floodplain. He stated that erosion of the fill dirt could undercut the pads and cause environmental concerns in the trout stream. Vice-Chair Plaag felt that elevating the homes would provide more mitigation.

Mr. Yates stated he was unsure of the cost comparison between elevation and fill. Mr. Gaston stated that the fill dirt would be more compacted and stable than the existing soils on site. He added that, due to the method of deposition, the soils existing on site would be looser and more susceptible to erosion than properly compacted fill dirt. Mr. Yates stated he would be willing to set aside a certain amount from each home or lot sell to help start a fund with the neighbors for stream restoration.

Ms. Shook stated that the Planning Commission could make a recommendation for approval or denial of the Conditional District to Town Council and suggest conditions they felt were appropriate. However, the applicant might still need some time to consider the implications of the suggested conditions. She felt the applicant would have time for this consideration before Council made their final decision.

Ms. Shook asked Mr. Gaston to clarify if the road and driveway pads were proposed to be elevated with fill dirt and compacted. She asked how this would be affected if the homes were elevated on piers instead of fill. Mr. Gaston replied that the road was proposed to be elevated with fill and he would recommend that the driveway pads also be elevated. Ms. Shook noted she wanted to ensure that the Planning Commission understood that the road would still be elevated with the current design if the homes were elevated rather than placed on fill.

Vice-Chair Plaag suggested that the road and parking pads not be elevated on fill dirt on lots 4-7. He again asked for a condition that all of the houses be elevated that were located in either the 100 or 500-year floodplain. Commission Member Veno was agreeable with Vice-Chair Plaag’s suggestions, but did not feel that they would alleviate the environmental issues.

Vice-Chair Plaag stated that Planning Commission was a recommending body and Town Council could either accept Planning Commission’s recommendation or reject it and vote however they chose. He explained that even if Planning Commission recommended denial, they could still suggest conditions that might help mitigate some issues if Town Council decided to approve the request.

Chair Shay stated she was uncomfortable limiting a property owner’s ability to develop their property. She added that she did not see traffic as a huge concern. However, Chair Shay was concerned with the flooding issue.

Ms. Shook asked Mr. Wise if there was a base flood elevation for the 500-year floodplain. Mr. Wise replied that there was not. He felt that any elevation in the 500-year floodplain would likely follow the base flood

elevation requirements of the 100-year floodplain. Mr. Wise noted that the Town of Boone does not regulate the 500-year floodplain, only the 100-year floodplain and the floodway. He added that, after a little research, he found that the road was not required to be elevated, but it was preferred.

Vice-Chair Plaag suggested another condition that a retaining wall be constructed behind lots 4-13 because they were adjacent to a landslide hazard area. Mr. Yates replied that there had been no slope issue there for 30 years other than the erosion that was being caused by the neighboring property owners' gutter drains, which he had offered to let them extend to run into his swale. Mr. Yates did not feel that a retaining wall would correct the landslide hazard.

Mr. Gaston noted that the area in question was on the neighboring property and was considered a steep slope. He asked if Vice-Chair Plaag was requesting that they build a retaining wall on someone else's property. Vice-Chair Plaag replied that the retaining wall could be built on Mr. Yates' property along the affected area. Mr. Garrett replied that lots 4, 5, 6, and 7 would have some cut slopes and they could do a retaining wall there.

Ms. Shook asked how tall the retaining wall would be. Mr. Gaston approximated the wall to be 7.5' if they had to lower the road. Ms. Shook asked how all of the suggested changes would affect the stormwater. Mr. Gaston replied that the stormwater would definitely be changed. He stated they might have to have a smaller detention pond just for the road and each lot might have to have individual stormwater management. Ms. Shook noted that she wanted to ensure that the Planning Commission understood the overall impacts of the requested conditions to the final design.

Ms. Garrett offered as a condition that Mr. Yates would set aside \$1,000 at closing for each lot sold to address community issues, as well as place in the POA covenants that each property owner has to contribute \$25 per month for maintenance projects.

First Motion and Vote: Vice-Chair Plaag made a motion that the proposed amendment to the Town's zoning map is not consistent with the Town's comprehensive plan and any other adopted plans of the Town that are applicable because the amendment is in direct contradiction to:

Comprehensive Plan Policy 2.1.1 Economic Development

A. The Town shall protect and enhance a high quality of life, image, cultural amenities, and natural beauty as the most effective, long term component of an economic development strategy.

Comprehensive Plan Policy 2.2.5 Environmental Health

C. Development activities in the 100-year floodplain or near lakes or streams shall be carefully controlled. If development must occur, low intensity uses such as open space, recreation and adequately buffered agricultural or forestry activities shall be preferred.

D. Runoff and drainage from development activities shall be of a quality and quantity as near to natural conditions as possible, with special emphasis given to critical watershed areas.

E. Development which preserves the natural features of the site, including existing topography, streams and significant trees and vegetation, shall be reflected in the Town's Development Standards.

F. Recognizing the economic and environmental costs of commercial and residential stormwater runoff, innovative stormwater management techniques such as permeable sidewalks, driveways, and parking areas shall be encouraged.

Comprehensive Plan Policy 2.3.2 Community Character

D. The destruction of significant architectural, historic, scenic, natural and archaeological resources in the planning area shall be discouraged.

Comprehensive Plan Policy 2.3.3 Housing and Neighborhoods

B. Street system designs which discourage through traffic on purely local streets while allowing for free circulation within the neighborhood shall be encouraged.

C. Proposed residential development which would expose residents to harmful effects of incompatible development or to environmental hazards shall be prohibited.

Commission Member Warren seconded the motion.

Commission Member Tippet expressed concern that Mr. Yates could develop this property as multi-family without board approval. He asked that the town identify areas like this for possible acquisition to help protect the environment. Ms. Shook noted that this topic was something Town Council was currently considering.

Vote: Aye – All

Nay – None

The motion passed.

Second Motion and Vote: Vice-Chair Plaag made a motion that the Planning Commission recommends denial of the proposed amendment to the town zoning map and believes denial is reasonable and in the public interest because the proposed development is likely to exacerbate flooding conditions in this area, endanger the safety and well-being of residents upstream from this project, endanger the safety and well-being of residents of the proposed project, and create environmental conditions that could be destructive to the adjacent tributary of the East Fork of the New River, which is not only a dedicated trout stream but is also a source for the Town of Boone's drinking water. Furthermore, completion of this project is likely to increase costs for Boone taxpayers as a result of flooding-related emergency services and is generally not in keeping with the stated goals in the Comprehensive Plan. The motion was seconded by Commission Member Behrend.

Vote: Aye – All

Nay – None

The motion passed and denial was recommended.

Planning Commission members discussed conditions they would like to place if Town Council decided to approve the request.

Motion and Vote

Vice-Chair Plaag made a motion that, if Town Council approves the requested Conditional District, the following conditions be placed on the approval:

1. Within the development, any lots located in the 100 year floodplain and the 500 year floodplain shall not have the road and parking pads be built on fill dirt.
2. For areas of steep slope on the property, the applicant shall utilize a retaining wall where there is currently landslide hazard area as determined by the North Carolina Geological Survey.

Commission Member Behrend seconded the motion.

Vote: Aye – All

Nay – None

The motion passed.

Motion and Vote

Chair Shay made a motion that, given increasing development pressure and changing conditions, Planning Commission recommends that Town Council take advantage of this case to consider tools that may address the challenges our community and property owners face, such as transfer of development rights to redirect development away from sensitive areas, low-impact development, inclusionary zoning, partnerships between developers and existing neighborhoods, and other potentially useful strategies. Commission Member Tippettt seconded the motion. Vice-Chair Plaag wished to amend the motion to have Town Council include this particular parcel in their consideration. Chair Shay and Commission Member Tippettt accepted the amendment.

Vote: Aye – All

Nay – None

The motion passed.

Other Matters

Ms. Shook stated that the text amendment case for signs would be placed on the November Public Hearing agenda. She noted that there would be a couple of other large cases on that agenda.

Commission Member Veno asked if it would be possible for Planning Commission members to receive some training on watersheds. Vice-Chair Plaag agreed with Commission Member Veno, noting that it would be good for members to have more knowledge on this topic. Ms. Shook replied that she would research the opportunities and put it on the workplan.

Vice-Chair Plaag felt there was a lack of details in neighborhood meeting notes and asked if staff could request for details before placing those notes in the meeting packets. Ms. Shook replied that staff would discuss this internally.

Adjournment

Vice-Chair Plaag made a motion to adjourn the meeting at 9:14 p.m. Commission Member Tippettt seconded the motion.

Vote: Aye – All

Nay – None

The motion passed.

Elizabeth Shay, Planning Commission Chair

Brenda Henson, Board Secretary