

Town of Boone
Town Council & Planning Commission Joint Meeting Minutes
June 13, 2011
6:00 PM

Town Council Members Present: Mayor Loretta Clawson, Mayor Pro-Tem Lynne Mason, Andy Ball, Rennie Brantz, Jamie Leigh, and Stephen Phillips

Planning Commission Members: Chairperson Bunk Spann, Vice-Chair Eric Woolridge, Don Dotson, Kimberly Marland, Tom Purpur, Greg Simmons and Shawna Rhyne

Staff Present:

Bill Bailey, Director of Planning and Inspection; Jane Shook, Planner and Christy Turner, Planner

Others Present: Greg Young, Town Manager and Sam Furguele, Town Attorney

CALL TO ORDER

Mayor Loretta Clawson called the meeting to order at 7:01 PM.

DISCUSSION OF PROPOSED TEXT AMENDMENT-BOARD APPOINTMENTS

Jane Shook presented Case 20110228 which was a proposed text amendment to modify language in the Unified Development Ordinance in Article III, Administrative Mechanisms regarding Board/Commission appointments. Ms. Shook outlined that Town Council requested that the Town Attorney draft language establishing guidelines for a person's qualifications to serve on the Board of Adjustment and Planning Commission, as well as to streamline appointment procedures to refill vacant ETJ positions in light of the Court of Appeals' decision in Macon County vs. Town of Highlands and the existing statutory language limiting mandated county commission appointments.

Chair Spann asked for clarification regarding the appointment process if a new area is brought into the Town's extraterritorial jurisdiction (ETJ). Mr. Bailey explained that when the ETJ is expanded, Town Council decides the proportion of representation based on census data. The County Commissioners would make the first appointment, then Town Council would appoint the position after it is vacated.

Chair Spann said that the board members should more than familiarize themselves with the relevant planning documents. The members should actually affirm their support for the adopted plans.

Council member Ball asked for clarification about what qualifies an applicant for appointment. Mr. Furguele responded that the Town has to determine what qualified is and right now qualified means the person has to be an ETJ resident.

Planning Commission Vice-Chair Woolridge asked how the County Commission appointed ETJ Board Members currently. Mr. Furguele stated that the UDO currently states that any opening be forwarded to the County Commissioners for them to make the appointment. He explained that at some point in the past, the County Commission had requested that the Town send two applications for each ETJ position, and for a number of years the County Commission made its selections from the applications sent to them by the Town. Mr. Furguele went on to explain that the number of appointments is proportional to the population of the ETJ. He said that in the proposed amendments, the qualifications between the Planning Commission and Board of Adjustment are different since the Board of Adjustment is in effect a court, and it has to enforce the regulations contained in the Unified Development Ordinance whether or not the members of the Board agree with the UDO provisions. In contrast, he said that the Planning Commission can recommend to the Town Council that it pursue paths different from those embodied in the adopted plans, and so he felt it was not appropriate to restrict PC membership to those who agree with existing policies and plans.

Mr. Furguele explained that there are four separate components in the proposed amendments; first, to establish the Town Council as the body which appoints all members except when there is

an expansion of the ETJ or an increase in ETJ membership due to population changes; second, to create a requirement for periodic reexamination of the proportion of ETJ representatives to Town representatives; third, to articulate some basic qualifications for people appointed to either board; and fourth, to provide that with respect to cases before the Board of Adjustment which involved property entirely in town, only town members of the BOA would participate, with a reduced quorum of five, as opposed to the eight members which sit in current cases and would continue to participate in ETJ cases. He pointed out that this quorum change would be beneficial to applicants since they would only have to get four supporting votes to get a special use permit or variance instead of the current six or seven. He mentioned that State law allows a panel of five.

Discussion ensued regarding the different points of Staff's recommendation regarding commission appointments.

Mayor Clawson recognized the first public speaker who was Nathan Miller, Chairperson of the Watauga County Board of Commissioners. Mr. Miller thanked the Council for their support on the water request for the old Watauga High School Site and said it appeared they would need more. He went on to explain that the County Commission is elected in part by people of the ETJ and that's their only mechanism to receive representation. Mr. Miller said he was appearing in his official capacity as Chair of the Watauga County Commission and that he was not a resident of the Town or ETJ. Mr. Miller said that he and Mr. Furgiuele had talked about General Statutes Section 160A-362 and the Macon County v. Highlands case, and found that their opinions were different. He said that the Macon County case was mostly a standing case, and that the part of the decision relating to appointments only said that the plaintiff had not provided adequate support for his position and did not endorse the idea of a town making ETJ appointments. Mr. Miller stated that at the Intergovernmental Retreat that the bodies had talked about working together, but if the County's appointment rights were taken away, then it would not show how the governing entities were cooperating. Mr. Miller also stated that there is nothing that he reads in the statute that says that ETJ members can't serve as Chair or Vice-Chair.

Deborah Greene was the next speaker who was a resident of the county. She said she was not a resident of the Town of ETJ but wasn't far from the ETJ and thought her property might be brought into the ETJ in the future. She explained that the county or ETJ residents do not have elected representation on the Town Council so the County Commissioners should be able to appoint people so the ETJ population has a voice on the boards. Ms. Greene believed that the proposed amendment is a power play between the boards.

Phil Templeton was the next speaker. He said he couldn't understand why the law is being changed and wanted someone to tell him why. Mr. Templeton said that the statute is complicated and didn't know why the town was bothering with it. He disagreed with Chair Spann's statement that Commission/Board members had to affirm their support for the Town's adopted planning documents. Mr. Templeton said that his daughter and son had applications submitted for Town boards for years and had never been appointed. He said that all the boards had members that had passed a litmus test and simply rubber stamped decisions.

Matt Snyder said he had two concerns about the proposed changes. The first was regulation without representation. He believed the ETJ would have a voice through the County Commissioner's appointments. Mr. Snyder was also concerned that everyone has to agree to certain standards and encouraged appointment of people who don't agree with everything because the Town may get new ideas and some change.

Wayne Greene who was also a resident of the county, but not of the Town or ETJ, said that the people who live in the ETJ are disenfranchised. He believes that County Commissioners are supposed to appoint board members from the ETJ and that case law isn't always right. He also believes that it's a bad thing that people in the ETJ can't vote.

Jim West, a resident of Blowing Rock, said he is a member of the Blowing Rock Planning Board and a former member of Watauga County Planning Board. He read a statement from Citizens Plan for Watauga and stated that he believes the ordinance translation is going in the wrong direction. He handed out excerpts of the statute to Town Council and the Planning Board. He stated that he was a fan of intergovernmental cooperation.

ADJOURNMENT

There being no more persons who had signed up to speak, Mayor Clawson adjourned this meeting at 6:45 PM.

Mayor Loretta Clawson

Christy Turner, Planner