

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
October 21, 2021**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order virtually at 6:00 p.m. Mayor Rennie Brantz presided. Council members present included Mayor Pro-Tem Connie Ulmer, Sam Furguele, Dalton George and Nancy LaPlaca. Staff present included Town Manager John Ward, Town Clerk Nicole Harmon, Finance Director Amy Davis, Fire Chief Jimmy Isaacs, Police Chief Andy LeBeau, Planning Director Jane Shook, Administrative Support Specialist Laney Pilkington, Public Works Director Rick Miller, Deputy Public Works Director Todd Moody, Downtown Boone Development Coordinator Lane Moody, Sustainability and Special Projects Manager George Santucci, Cultural Resources Director Mark Freed, Planner Christy Turner, and Human Resources Director Dale Presnell. Town Attorney Allison Meade was also in attendance.

ANNOUNCEMENTS

Mr. Ward announced that the Town's separate live-stream streaming equipment stopped working during Tuesday night's meeting, and indicated that a new system was on order. He then updated Council on the local Covid-19 numbers and the local early voting numbers.

Mayor Brantz announced the following board vacancies:

BOARD OF ADJUSTMENT

One alternate position

COMMUNITY APPEARANCE COMMISSION

One regular position; One student position

DOWNTOWN BOONE DEVELOPMENT ASSOCIATION

One board appointed position

HISTORIC PRESERVATION COMMISSION

Four regular positions; One student position

TRANSPORTATION COMMITTEE

One position (Cooperative Extension)

One resident position (Alternative Transportation)

One resident position

One student position

WATER ADVISORY COMMITTEE

Five regular positions; One student position

TENTATIVE AGENDA ADOPTION

Mr. Ward announced changes which were made to the agenda earlier in the day which included the removal of a Requested Appearance by Kim Carter. Upon a motion by Ms. LaPlaca, seconded by Mr. George, Council voted to approve the agenda as presented.

VOTE:	Aye:	LaPlaca, George, Furguele, Ulmer
	Nay:	None
	Absent:	Roseman

PUBLIC COMMENT

Dr. Eric Plaag of Boone made the following statement:

“As the individual who drafted the historic district design standards that were later revised and recommended by the HPC, and as a citizen of Boone, it feels important to mention two things in response to Dr. Steve Owen's recent blog post (<https://aire-nc.org/2021/10/14/the-town-of-boone-facades-climate-and-matters-of-priority/>)

);

1) The downtown historic district standards DO NOT require that solar panels be kept "out of sight, if not out of town." Such an allegation is utterly absurd. The standards repeatedly mention solar and encourage its placement so that it achieves maximum efficiency while also not being visible from primary elevations at street level (for example, see the commercial property standards, Sections 7.3, 7.6, 7.6D, and 10.5). That's very different from the accusations Dr. Owen has thrown about carelessly in his remarks during the public hearing and in his blog. In fact, I have long been a proponent of rooftop solar on the roofs of the buildings along King Street, particularly the south side of the street, where solar arrays would be neatly hidden from primary elevation streetview by existing, historic parapets without impeding solar collection. As a member of the DBDA several years ago, while simultaneously working for the establishment of the downtown historic district, I floated the idea of forming a DBDA solar collective in cooperation with the Town that would create a sprawling, rooftop solar array that would offset much of Downtown Boone's energy consumption. I also installed a 4.7kw rooftop solar array on my own home in 2015 as one of the few residential adopters of rooftop solar in Town limits (you can follow the stats here if you are so inclined: <https://monitoringpublic.solaredge.com/solaredge-web/p/site/public?name=Plaag%204.7kW#/dashboard>). For Dr. Owen to suggest that I or other members of the HPC are not advocates for clean energy or that we are ambivalent to rooftop solar is both offensive and fundamentally incorrect.

2) Folks who are a lot smarter than Dr. Owen and I at the National Park Service--which oversees historic preservation programs like the National Register of Historic Places and provides guidance to states on administration of Local Historic District standards--have already come up with standards for placement of solar arrays on historic properties. You can read that guidance (with photo examples) here: <https://www.nps.gov/tps/sustainability/new-technology/solar-on-historic.htm>. The proposed design standards for the Downtown Boone Historic District were written to comply with this federal guidance. NC state law also makes it clear that guidance on placement of solar arrays so that they do not interfere with the special character of the district is completely appropriate. See 160D-944.D: https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_160D/GS_160D-944.pdf.

Given that you will be voting on this matter on Thursday, it also feels appropriate to remind Council that Council Member LaPlaca is the Senior Energy Analyst for Dr. Owen's organization. She is listed as a member of his "Team" at this website: <https://aire-nc.org/about-aire/#team>."

Ms. LaPlaca commented that she believed the reason there was a lack of solar in Boone was because it was too complicated for people to obtain it.

ADOPTION OF ITEMS ON THE CONSENT AGENDA

Mayor Pro-Tem Ulmer made a motion, which was seconded by Ms. LaPlaca to approve the minutes as amended. After no amendments were offered, Mayor Pro-Tem Ulmer amended her motion to approve the following meeting minutes as presented on the consent agenda:

August 3, 2021 Special Town Council Meeting

August 6, 2021 Special Town Council Meeting
August 17, 2021 Regular Town Council Meeting
August 19, 2021 Regular Town Council Meeting
September 14, 2021 Regular Town Council Meeting
October 6, 2021 Special Town Council Meeting

VOTE: Aye: Ulmer, LaPlaca, George, Furguele
 Nay: None
 Absent: Roseman

COUNCIL MATTERS

TOWN MANAGER UPDATE

Mr. Ward updated Council on the following topics:

1. **Utility Maintenance:** Utility Operations Crews have completed installation and maintenance work of approximately 415 feet of 6-inch sewer service line in Cherry Brook Lane. Asphalt paving repairs are now complete.
2. **AMI Meter System:** We are continuing to install the new type water meter with 1,245 (58 newly installed from the August update) or 21% installed to date. Additionally, we anticipate more information from our system developer/equipment supplier regarding best data gathering and system communication point locations within the next few weeks. Once these locations have been determined, we anticipate meter replacement and network development to escalate.
3. **CDBG-I ~ Deck Hill Water storage tank replacement:** The best project development option has been identified and subsequent property appraisal has been received. We are continuing to negotiate with the property owners representative working toward acquisition and achieving project milestones.
4. **Tree Planting:** The Landscape Division has ordered 15 trees and 10 Mountain Laurel to be planted around the Greg Young Water Intake. Hopefully, our supplier will dig these trees soon so we can get them installed this fall. As with so many things, trees have been hard to obtain this year.
5. **Boone Greenway Skate Park:** Artisan Concrete Services began skate park construction on September 13th and has made great progress over the last month. All concrete work should be completed this week with final grading around the structure taking place next week. The Town would like to thank Chandler Concrete Company and Mr. Joe Temple for donating the first 40 yards of concrete to this project! This donation allowed additional features to be included in phase 1 that were unexpected. Additionally, staff has identified a unique area beside the Greenway Trail to construct a rain garden, which will help slow and absorb storm water runoff from the skate park site. The garden will utilize native plants to create essential habitat for pollinators, which in turn helps the natural food chain and local agriculture. Mr. Ward noted the fundraising and advocacy of JP Pardy from Recess Sports in making this park a reality.
6. **Hybrid Vehicle:** The Public Works Department has ordered its first fully hybrid truck, a Ford F-150. This vehicle will be assigned to the Facilities Maintenance Division and is expected to be delivered in 24 to 28 weeks.
7. Discussions are ongoing regarding the development of a 1-2 megawatt solar array at the landfill, as well as additional options with New River Light and Power. The DBDA is also looking into options of roof-top solar on the new Queen Street steps.
8. Department heads recently held a meeting regarding the Bolick Farm master plan.
9. Sustainability Update: sustainability will be incorporated into the new municipal complex by way of solar, electric power, and additional tree plantings on site.

Mr. Furguele asked whether recognition would be given to Chandler Concrete and others for their donation to the skatepark. Mr. Ward confirmed that they would be recognized. Ms. LaPlaca thanked Sustainability and Special Projects Coordinator George Santucci for the progress being made in terms of sustainability and solar. Mr. Ward added that there is a new rate proposal by New River Light and Power that would be going before the utility commission. He also indicated that Ms. Shook would be presenting the SolSmart workplan at next month's Town Council meeting.

TOWN ATTORNEY UPDATE

Ms. Meade updated members on the progress of the title opinion for the Howard Street project. Mr. Ward indicated that once the title opinion had been submitted to the USDA, it would take approximately one month at minimum before the Town was given the go-ahead to move forward with the bid process for contractors. Once a contractor was selected, Mr. Ward stated that a preliminary project schedule could be developed.

BOARD LIAISON REPORT

Mayor Pro-Tem Ulmer reported from the Downtown Boone Development Association that the Boone BOO! was coming up on Sunday, October 31st. She also noted that the AppalCart was now advertising their new double decker bus.

Mr. George reported that the Sustainability Committee had recently discussed the trash trout and what types of trash are being collected, and noted that the committee was exploring ways to obtain a second trash trout in the future.

APPOINTMENT TO BOARD OF ADJUSTMENT

Mr. Ray introduced himself to Council, and indicated that even if he was not elected to Council next month, he still wanted to serve the Town of Boone. Mr. Furguele nominated Mr. Ray to serve on the Board of Adjustment as an alternative member. Mr. George asked to recuse himself from the vote since he and Mr. Ray were currently running against each other in the municipal election.

VOTE: Aye: Ulmer, Furguele, LaPlaca
 Nay: None
 Absent: Roseman

Mr. Ray's term will expire on June 30, 2022.

CONSIDERATION OF CASES HEARD AT THE SEPTEMBER 27, 2021 PUBLIC HEARING

Case PL05007-081221: SLD II, LLC General Use Zoning Map Amendment

Ms. Shook presented recommendations from the Planning Commission on Case PL05007-081221 SLDII, LLC General Use Zoning Map Amendment. Mr. Furguele made a motion to approve the ordinance as presented and that the proposed amendment to the Town's zoning map is consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that are applicable because of Comprehensive Plan Policy 1.1 Overall Objectives for the Boone Comprehensive Plan Community Appearance and Community Character: Blend the built environment with the natural, scenic, and historic character of a High Country small town. Especially discourage commercial strip development, cluttered signage, and "cheap" apartment buildings. Comprehensive Plan Policy 2.1.1 Economic Development D. Economic development efforts shall encourage the revitalization and reuse of currently unused or underutilized structures, sites and infrastructure in appropriately located areas. Comprehensive Plan Policy 2.3.2 Community Character B. Multiple and appropriate adaptive reuse of historic resources shall be encouraged. E. Factors in determining preferred locations for high density residential development shall include: close proximity to the university, employment or shopping centers; access to major thoroughfares and the transit system; the availability of public services and facilities; and compatibility with

adjacent land uses. Comprehensive Plan Policy 2.3.2 Neighborhoods and Housing H. The overall housing unit density for proposed infill residential development or redevelopment should be compatible with the average density of existing areas. Mayor Pro-Tem Ulmer seconded the motion.

VOTE: Aye: Furgiuele, George, LaPlaca, Ulmer
 Nay: None
 Absent: Roseman

Mr. Furgiuele made a second motion to approve the proposed amendment to the Town's zoning map and to adopt Ordinance PL05007-081221 to rezone the portion of the property from R1 Single-Family to R3 Multiple-Family and believes approval is reasonable and in the public interest because there is currently a lone parcel that no longer represents the surrounding area, and the entire section has become an area devoted to multi-family housing, and that it is in the best interest of the Town to make that area homogenous. He added that the multifamily housing there served moderate and low income residents, one of the few areas in Town where this was true. He echoed Planning Commission Plaag's concerns that by incrementally rezoning parts of the surrounding area in previous years, the Town had undermined the viability of an existing, affordable single family residential neighborhood, making the point that our neighborhoods are so small, rezoning a single parcel can have a ripple effect. Mayor Pro-Tem Ulmer seconded the motion. Mr. Ward pointed out that this area was connected by the new sidewalk system on Highway 194 to make it more walkable for people who lived in the area. Ms. LaPlaca felt that this was beneficial in that more people could live in the area without having to own cars.

VOTE: Aye: Furgiuele, George, LaPlaca, Ulmer
 Nay: None
 Absent: Roseman

Case PL05025-082321: B1 Downtown Boone Expansion General Use Zoning Map Amendment

Before presenting Planning Commission recommendations, Ms. Shook thanked staff and committee members for their work over the years on the historic district. Council members thanked staff for their work on the project. Mr. Furgiuele felt that what was presented was forward looking to the future, while trying to protect against haphazard development. He indicated that he agreed with all of the recommendations of the Planning Commission, except the removal of the properties which individual property owners had requested to be removed, but noted that he would support their proposal. Mr. Furgiuele stated that the reason he disagreed with this recommendation was because those changes were in response to the complaints of people who he believed to be self-interested in their own property and were not looking at the general interest of the Town. He noted that some of the people who had advocated for the removal of their own properties had not hesitated to take advantage of inappropriately zoned areas which had allowed the building of incompatible multifamily housing in the backyards of a viable, moderate-income single family residential neighborhood. Mayor Pro-Tem Ulmer felt that housing in the area was difficult, and acknowledged the hard work that went into this project. Ms. LaPlaca appreciated the work that went into the project, but believed that the work was not lost if Council did not vote, allowing the incoming Council to vote on the project, and indicated that she could not vote in favor of this amendment. Ms. Ulmer suggested she agreed with Ms. LaPlaca's statement that a vote on this topic should be delayed until the new Council was sworn in. Mayor Pro-Tem Ulmer suggested that at least the vote be delayed until November when Ms. Roseman was able to attend the meeting. Mr. Ward noted that there was no way to guarantee that everyone would be in attendance at the November meeting. Mr. Furgiuele disagreed with delaying until November or pushing the vote to the next Council, and stated that the current Council had been involved in these discussions for the past two years, and had attended multiple public hearings at which members of the public had offered their feedback. He believed delaying the vote would be an abdication of the responsibility accepted by Council members when they were elected to their positions. Mr. George stated that while these projects predated his tenure on Council, he was in support of voting on them tonight. Mr. Furgiuele asked Ms. Meade whether, if Council were to vote on this project tonight and if it passed, despite opposition from some Council members, Ms. Roseman could propose reconsideration at the next meeting she attended. Ms. Meade confirmed that Ms. Roseman could make such a proposal, but the action could not be reversed at that meeting and the matter would have to go back to public hearing. Mr. Furgiuele made a motion that the proposed amendments to the Town's zoning ordinance and zoning map for the B1 Downtown Expansion

project are consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that are applicable in light of the following provisions of the Comprehensive Plan section 1.1 Overall Objectives Community Appearance and Community Character: Blend the built environment with the natural, scenic, and historic character of a High Country small town. Especially discourage commercial strip development, cluttered signage, and "cheap" apartment buildings; Open Space Integrate open space and greenways into the urban fabric of the Town. Preserve the countryside by discouraging suburban sprawl. Avoid development in floodplains, on ridgetops, and on steep slopes; Environmental Quality Address and monitor growth factors and activities that contribute to water, air, light, and noise pollution; Automobile Transportation Maximize the efficiency of existing facilities, but not at the expense town and neighborhood character and livability. Build or expand transportation facilities and parking areas as needed, but with care. Work to reduce auto dependency, use, and congestion; Pedestrian Movement Encourage a system of sidewalks, paths, crosswalks and compact development patterns which make it easy to get around Boone on foot; Downtown Support and enhance the cultural and historic significance of downtown Boone, and affirm its appealing, pedestrian orientation; Neighborhoods Ensure the livability of neighborhoods, especially through land use and traffic planning; Comprehensive Plan Policy 2.1.1; 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; D. Economic development efforts shall encourage the revitalization and reuse of currently unused or underutilized structures, sites and infrastructure in appropriately located areas; 2.1.2 Commercial Development; A. Uncontrolled strip development along the areas through streets shall be prohibited. The undesirable effects of existing strip development shall be reduced and/or reconfigured when redevelopment opportunities permit. New strip development on isolated single lots along through streets shall be discouraged; B. Commercial and Office Development shall be encouraged to locate in planned shopping centers, office parks and mixed-use developments to stop the proliferation of strip development; C. Community/Commercial Centers shall be located adjacent to a major street and contain or be adjacent to other appropriate community facilities; 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; 2.2.1 Transportation H. Policies that have the effect of reducing automobile dependency, use and congestion in the heart of the urban area shall be supported; Community Character 2.3.2 A The identification restoration and active use of structures, buildings, monuments, and neighborhoods of historic or architectural significance shall be encouraged as a means of enhancing their economic and cultural value to the planning area; 2.3.2 B Multiple and appropriate adaptive reuse of historic resources shall be encouraged; 2.3.2 D The destruction of significant architectural, historic, scenic, natural and archaeological resources in the planning area shall be discouraged; 2.3.2 E New development, redevelopment and rehabilitation of structures and sites shall occur in a manner which is consistent with the neighborhood and architectural context of the immediate area, and supportive, whenever possible, of Boone's original community character as a High Country small town; The Community 2.3 B. Properly planned, mixed use developments that promote efficient provision of public services shall be encouraged within the Urban Growth Area; 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; 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. Mr. George seconded the motion, and stated that this project predates his time on Council, and he did not want the project to come across as being rushed, but that given the amount of outreach and work that has been put into the project, that he felt it to be entirely reasonable. Mayor Pro-Tem Ulmer objected to the motion because she said that the references to the preservation of historical assets were inappropriate. Mr. Furguele attempted to explain that part of the new zoning requirements was to have construction be "sympathetic" to existing historical structures and that was the reason he believed it was appropriate to include those provisions from the Comprehensive Plan. Ms. Meade also explained that that the relationship of the proposed new appearance standards with the proposed historic district. Mayor Pro-Tem Ulmer asked if she could abstain from the vote, and Ms. Meade explained that all members should vote, but that if she abstained, that it would be counted as a yes vote.

VOTE: Aye: Furguele, George
 Nay: LaPlaca
 Absent: Roseman
 Abstain: Ulmer

Mr. Furguele made a second motion that the Town Council approves the proposed amendments to the Town's zoning ordinance and zoning map and adopts the ordinance set out in the packet on the issue, as revised by the recommendations of the Planning Commission, and believes approval of the UDO text and zoning map amendments for the B1 Downtown Expansion project is reasonable and in the public interest because this proposal fully realizes important policies in the Comprehensive Plan, it is an important step toward protecting the downtown and the entrances to the downtown corridors and preserving the look of the downtown, and meets many goals of the comprehensive plan. He added that the work was the result of many years of study by staff and much work by many volunteers. Mayor Pro-Tem Ulmer seconded the motion.

VOTE: Aye: Furguele, George, LaPlaca, Ulmer
 Nay: None
 Absent: Roseman

**Case PL05043-083121 Downtown Boone Local Historic District – General Use Zoning Map Amendment/
Case PL05063-090921 Downtown Boone Local Historic District – UDO Text Amendment**

Ms. Shook summarized Case PL05043-083121 Downtown Boone Local Historic District – General Use Zoning Map Amendment/ Case PL05063-090921 Downtown Boone Local Historic District – UDO Text Amendment. Mr. Furguele then made a motion that the proposed amendments to the Town's zoning ordinance and zoning map to create the Downtown Boone Local Historic overlay with the modifications that have been outlined, except not including the Planning Commission's recommendation regarding landmarks is consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that are applicable because it is consistent with the Comprehensive Plan and policies and overall objectives for the Boone Comprehensive Plan including Economic Development Acknowledge the area's natural beauty, university, and medical center presence as the Town's greatest assets for economic development and jobs creation. Treat them accordingly; Community Appearance and Community Character Blend the built environment with the natural, scenic, and historic character of a High Country small town. Especially discourage commercial strip development, cluttered signage, and "cheap" apartment buildings; Downtown Support and enhance the cultural and historic significance of downtown Boone, and affirm its appealing, pedestrian orientation; Public Involvement Encourage active public involvement and volunteerism to expand the effectiveness of community planning and action; 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. Mayor Pro-Tem Ulmer seconded the motion. Mr. Ward asked for clarification on the expected date of implementation for budgeting purposes. Ms. Shook also asked for clarification on the date of implementation, and noted that it would take staff a couple of days to roll out text changes, map changes and forms on the website.

VOTE: Aye: Furguele, George, LaPlaca, Ulmer
 Nay: None
 Absent: Roseman

Ms. Shook and Mr. Ward raised concerns about when this new ordinance, which would require new forms and procedures would start, and asked that consideration be given to a delay to allow staff to gear up for implementation. Mr. Furguele asked when Ms. Shook and Mr. Ward recommended the policy become effective. Mr. Ward noted that Ms. Shook would have several administrative tasks to complete before they would be able to roll this out, and asked members to be mindful of the cost. He then suggested that staff bring back a recommendation of budgeted funds to accommodate attorney fees for additional evening meetings, as well as other costs. Mr. Ward also stated that this action had spurred two very large projects in the middle of downtown that were applied for today in order to get in before the deadline. Mr. Furguele responded that when the Town passed the community appearance standards, there was a property owner on Blowing Rock Road who put in an application for plans that he believed were never intended to be pursued on the day before the deadline.

in an attempt to circumvent the community appearance standards and be able to make deep cuts into the hillside. He indicated that this property sat vacant to this day and was an eyesore on one of the Town's main corridors. For this reason, Mr. Furguele stated that he was reluctant to delay the effective date of this ordinance. Mr. Furguele noted the Wade Brown and Turner Law buildings were also unnecessarily torn down right before a more enhanced procedure was to go into place to make it more difficult to tear down historic properties. He acknowledged the logistical problems that might be involved, but firmly believed that the changes should be effective immediately. Mr. Ward responded that he was only advocating for funding of what staff had been asked to do.

Mr. Furguele then made a motion to approve the proposed amendment to the Town's zoning ordinance and zoning map and believes approval of the UDO text and zoning map amendments to create the Downtown Local Historic District is reasonable and in the public interest because it is consistent with many of the Comprehensive Plan policies that have been in place and have reflected the stated wishes of this community, and because it is a benefit to the community at large and for the ordinance to be effective immediately. Mr. George seconded the motion. Ms. Meade noted that there were two different issues being considered in terms of effective dates, the first being the legal effective date of the ordinance, and stated that if it was not today, then the legal change would be suspended until whatever time was set forth for the effective date. She added that implementation was the second issue, and indicated that just because the ordinance was effective this evening, did not mean that it would be fully implemented this evening in the sense that there may not be forms on the website. Ms. Meade clarified that the two dates did not have to go hand in hand, but believed a legal uncertainty would be created by delaying the effective date of the ordinance. Mr. Furguele stated that the reason he was not willing to delay this project by even a week was because the Town had already lost so many historic buildings, and legal uncertainty should be avoided. The motion carried unanimously.

Mayor Brantz called for a break at 8:18 p.m. Council reconvened at 8:29 p.m.

DISCUSSION & REVIEW OF EXISTING TOWN OF BOONE NOISE ORDINANCE

Mr. Ward suggested discussing the next two agenda items at the same time since they were closely related. Chief LeBeau reported that there were nine complaints at Ransom during the time of his study, and noted that seven of those nine times were in compliance and that three were in non-compliance. He indicated that the police department initiated an effort to reach back out to all the business owners in the downtown area which resulted in 36 compliance checks across the entire period between last month's meeting and tonight's meeting. Chief LeBeau indicated that during the 36 compliance checks, there was not a single violation identified. Mr. Furguele noted that what he was proposing was between the hours of midnight and 2:00 a.m., while the information presented by Chief LeBeau was for the hours between 11:00 p.m. and 1:00 a.m. He added that for two businesses, he believed the police department resolved the issues, but believed that the ordinance should still be changed so that people living in a mixed use situation could have a peaceful existence during sleeping hours. Mr. Furguele commented that he was not suggesting that there not be any sound, but was suggesting that the sound be contained indoors. He then read his agenda request:

"As brought forward by Angela Kelly at one of the town council's recent meetings, there has recently been a significant increase in the level of outdoor and amplified music in the downtown. This development was essentially authorized by a change in the noise ordinance by a prior town council on a 3-2 split vote in 2015, with Lynne Mason and the Mayor voting against the change. That change authorized a decibel level at or near property boundaries of 75 decibels, a very loud level at that time of day. Even though the Boone Police Department was able to secure the cooperation of the specific businesses who were producing the music which led to Ms. Kelly's appearance, I believe we should act. The town continues to encourage mixed use development in business districts, and there are therefore more people living in those zoning districts. They deserve the consideration of commercial establishments during hours when most people are trying to sleep. I therefore propose that the town council authorize the amendment of section 82.06 of the noise ordinance to drop the 75 decibel limit from midnight on until 2:00 a.m. from Thursdays through Sundays to 60 decibels, to match the allowable noise level on Mondays through Thursdays during those hours."

Mr. Furguele noted that he was not singling out music, but stated that loud mufflers were also a problem that he hoped would be addressed in the future. Chief LeBeau suggested that currently four warnings were to be given

on a rolling 12 month period, and believed that four warnings may be more than Council wanted to continue to give in the future. Mr. Ward gave examples of different decibel readings. Mr. Furgiuele stated that he would be satisfied with changing the decibel reading to 65 only between the hours of 12:00 a.m. to 2:00 a.m. Mayor Pro-Tem Ulmer made a motion to amend the noise ordinance to change the decibel limit to 65 during the hours of 12:00 a.m. and 2:00 a.m. Mr. Furgiuele seconded the motion. Mr. George stated that he was hesitant to vote for this since it was difficult to measure decibels effectively at some levels. Ms. Meade noted that she would need to reduce this to writing before the ordinance was actually changed. Ms. LaPlaca gave a “thumbs-up” to indicate her agreement with Mr. George’s comments. In a response to a question raised, Chief LeBeau stated that calls for service would increase, and noted that this type of enforcement was easier than mufflers since the bars did not move. Mr. George commented that two violations over a rolling 12 month period would be sufficient in his view. Mr. Furgiuele agreed with this statement, but expressed his frustration with the lack of support for a more peaceful time between midnight and 2 a.m. from Council members who live in protected neighborhoods and were themselves unaffected by noise in the business districts. In response to Mr. Furgiuele’s statement, Mayor Pro-Tem Ulmer withdrew her motion. Mr. Furgiuele then made a motion to instruct Ms. Meade to bring back to the November Town Council meeting an amendment to the noise ordinance to reduce the number of warnings for music venue noise violations over a rolling 12 month period from 4 to 2 in the business district section. Mayor Pro-Tem Ulmer seconded the motion.

VOTE: Aye: Furgiuele, Ulmer, LaPlaca, George
 Nay: None
 Absent: Roseman

REQUEST TO AMEND NOISE ORDINANCE TO LIMIT VOLUME OF OUTDOOR LIVE MUSIC

REQUEST REPORT ON PROGRESS BY THE TOWN IN REGARDS TO HAYES BRYAN CEMETERY

Mr. Furgiuele asked that the Town Attorney give a progress report at the next meeting to identify those with the authority to allow the Town to place a historical marker at the Hayes Bryan Cemetery, and for Council to consider authorizing the creation of an appropriate marker. He then read a comment from Ms. Mary Moretz expressing her frustration that two years following her request for the historic marker, the deed for the cemetery had still not been located. Mr. Ward indicated that this project was put in a queue with many other projects that were in front of it. He also noted that funds still existed in the historic preservation fund that could be used to pay for the historic marker if approved. Ms. Meade felt that it was unfortunate the way this item was worded, because it was only in March of this year that she was directed to research the matter. She added that, while it had taken longer than she would like, there was and remained a long list of projects that she had understood to be in line ahead of it. Ms. Meade stated that she had not finished the project, but had spent a number of hours on it, and planned to speak about it in closed session next month. She indicated that she planned to advise Council next month that there were different places where a historical marker might be placed, and that the Town could take over any cemetery that qualified as an abandoned cemetery. Mr. Furgiuele stated that he was agreeable to the Historical Preservation Commission making the recommendation as to where the potential marker would be located if approved.

REQUEST FOR LIST OF LOCAL ORDINANCES FOR WHICH CRIMINAL PENALTIES CAN BE IMPOSED

Mr. Furgiuele asked that in light of action by the NC General Assembly invalidating criminal penalties for many sections of the municipal code and prohibiting the imposition of criminal penalties for certain violations, such as zoning, the Town Attorney provide a list of local ordinances for which criminal penalties could be imposed at the November Town Council meeting. At that time, Mr. Furgiuele asked that Council make decisions as to whether there should or should not be penalties relative to those where criminal law enforcement was still available. Ms. Meade noted that criminal penalties were no longer permitted for enforcement of the UDO to the best of her knowledge, and that conforming amendments to the UDO and minimum housing ordinance, would have to be handled separately from conforming amendments to other portions of the Town

Code because amendments to the UDO and minimum housing ordinances were required to go through the formal public hearing/Planning Commission consideration process. She indicated that she had already proposed to Ms. Shook that staff would bring text directly to public hearing in November since Council had no choice but to implement the changes required by the new state law effective December 1, 2021. Ms. Meade stated that she would come back with a more extensive amendment to the Town Code at next month's meeting. Mr. Furguele asked that where criminal penalties were still allowable, that Council go through and vote yea or nay on whether or not they should be criminalized. Ms. Meade indicated that Council decriminalized the general penalty in the Town Code a number of years ago, and noted that section 10.99 of the Code specifically applied only a civil penalty unless otherwise stated in each code. She believed that to a large extent, what Mr. Furguele was suggesting had already been done, but that she would go back through and make sure everything in the Code was allowable under the state law.

CONSIDERATION OF PROPOSED SALE OF POLICE DEPARTMENT PROPERTY

James Milner with Appalachian Commercial Real Estate presented a letter of intent to purchase the surplus property known as the Town of Boone Police Department located at 1500 Blowing Rock Road. He stated that based on the appraisal that the Town received in January of this year, he believed this was a good offer to consider starting the upset bid process for. Mr. Milner reminded members that Council could choose to not move forward at any time during the process. He added that the site was surveyed at 3.711 acres, but that there was a FEMA flood hazard area at the rear of the site that was unusable. The potential buyer's representative stated that he would be paying over one million dollars per usable acre for this land, which was consistent with South Florida land prices. He added that he had to stop at the price offered because he felt that was all that potential tenants would pay. The buyer noted that only 2.8 acres of the land was usable and that the price per acre was even higher when this was taken into consideration. Mr. Milner stated that comparable property recently purchased at 135 Hardin Street went for \$1,350,000 for .98 acre. The upset bid process was explained, and administrative concerns were expressed by staff. Mr. Ward noted that staff was currently working on the site plan for the new municipal complex at the Bolick property, but had not yet received approval from Council to move forward. He indicated that the project was at least a year or two out before being able to go out to bid, and worried about the cost of the leasebacks for both the Police Department building and the Public Works building on which the Town was already paying rent to the buyer. Mr. Ward also expressed concern at the potential for having to move Public Works and Police into different buildings if the project was not completed before the leases ran out. Mr. Furguele believed that since the next Council would be the ones who would be making the decisions on the money being borrowed and would have to budget any rental payments required by the agreement, the decision should be delayed until Mr. Ward had more information on the costs and projected time line for construction of the municipal complex project. Mr. Milner indicated that the potential buyer would be willing to work with the Town on its timetable on extending the due diligence period. It was the consensus of Council to not take any action on the proposal at this time.

ADJOURNMENT

Upon a motion by Mayor Pro-Tem Ulmer, seconded by Mr. George, Council voted to adjourn the meeting at 10:28 p.m.

VOTE: Aye: Ulmer, George, LaPlaca, Furguele
 Nay: None
 Absent: Roseman

Nicole Harmon, Town Clerk

Rennie Brantz, Mayor