

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
November 18, 2021**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order electronically at 6:00 p.m. on Thursday, November 18, 2021. Mayor Rennie Brantz presided. Town Council members present included Mayor Pro-Tem Connie Ulmer, Sam Furgiuele, Virginia Roseman, Nancy LaPlaca and Dalton George (entered the meeting at 6:55 p.m.). Staff present included Town Manager John Ward, Town Clerk Nicole Harmon, Finance Director Amy Davis, Planning Director Jane Shook, Deputy Public Works Director Todd Moody, Downtown Boone Development Coordinator Lane Moody, Public Works Director Rick Miller, Environmental Planner Brandon Wise, Senior Planners Christy Turner and Michael James, Sustainability and Special Projects Manager George Santucci, Administrative Support Specialist Laney Pilkington, Deputy Planning Director Stacey Miller, Cultural Resources Director Mark Freed, Police Chief Andy Le Beau, Fire Chief Jimmy Isaacs, and Long Range Planner Jessica Mitchell. Town Attorney Allison Meade was also in attendance.

ANNOUNCEMENTS

Mayor Brantz congratulated Mr. Ward on the receipt of the Outstanding Town Manager award from the High Country Council of Governments. He then 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

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

Upon a motion by Mayor Pro-Tem Ulmer, seconded by Ms. LaPlaca, Council voted to approve the agenda as presented.

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

PUBLIC COMMENT

Amanda Roberts stated that she and her husband owned a home in Boone that they remodeled after it spent five years on the market. She added that since they travel frequently for ministry work, they rent the home out via AirBnB and that it would hurt them financially if the Town discontinued short-term rentals. Mr. Furgiuele asked Ms. Roberts which zoning district her property was in, and how she managed her property when she and her husband were out of town. Ms. Roberts indicated that she managed her property remotely, that a neighbor cleaned the property for her and was available if something went wrong at the property. She noted that she was out of town about 40% of the year, and pointed out the positive financial impact AirBnB's had on the area's economy. Ms. Roberts added that she lived in Crestview Estates, and staff pointed out that these potential regulations would not apply to her property since she did not live within the Town limits.

Jason English of Boone stated that he was a real estate agent, and believed there were different points of view to AirBnBs. He indicated that he often encouraged people to invest in short term rental property located outside the Town limits because he felt the properties could harm neighborhoods in Town. Ms. LaPlaca asked whether Mr. English understood the difference between short term rentals and homestays, and his opinion of both. Mr. English indicated that he did not have a definitive opinion on either.

David Wall of Boone expressed concern at the fact that he was surrounded by student rentals and a fraternity house which were both allowed, but that short term rentals could potentially be disallowed. He indicated that he and his wife were careful about who they chose to rent their short term rental property to, and felt that if college students were allowed to rent, who came and went almost as often short term renters, then they should be able to rent their property out to short term renters as well.

ADOPTION OF ITEMS ON THE CONSENT AGENDA

Upon a motion by Ms. LaPlaca, seconded by Mayor Pro-Tem Ulmer, Council approved the following items on the consent agenda:

February 20, 2020 Regular Meeting Minutes
September 16, 2021 Regular Meeting Minutes
October 19, 2021 Regular Meeting Minutes
October 21, 2021 Regular Meeting Minutes
Budget Amendments:

-Legal Services (Appropriated Fund Balance) \$2,500 Appropriate funds for legal services related to Human Relations Committee
-Legal Fees (HPC) \$5,000 Advertising Legal -P&I (HPC) \$2,000 Supplies – P&I (HPC) \$500
Transfer funds from HPC to Legal Fees, Advertising- Legal & Misc. Supplies in P&I

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

COUNCIL MATTERS

TOWN MANAGER UPDATE

Mr. Ward updated Council on the following topics:

- Blowing Rock removed its emergency order and mask mandate
- Traffic Signal Replacement: The Public Works Department recently replaced the traffic signal at State Farm Road and Boone Heights Drive intersection. This replacement consisted of new light heads, wiring, and all control modules. As part of this replacement, new signalized pedestrian crossings were installed along with ADA compliant curb ramps. We're currently in the process of replacing the signal infrastructure at the Shadowline Drive/State Farm Road intersection, which will include new signalized pedestrian crossings as well.
- Downtown Sidewalks: Greene's Construction has completed brick paver sidewalk installation in front of the Downtown Post Office. This will wrap up sidewalk work in our downtown area until next spring. To summarize our efforts this summer toward the Downtown Streetscape Plan, 6 new black street light poles were installed and 3 more are ordered, 15 black trash receptacles have been installed, and over 9,600 square feet of brick paver sidewalks were installed.
- Sidewalks and Curb Ramps: The Facilities Maintenance Division has installed over 1,500 feet of new sidewalk and curb & gutter this summer. We now have a little over 18 miles of town maintained sidewalks. Additionally, 9 curb ramps have been replaced for ADA compliance.
- Staff is working to bring a bank of Tesla car chargers to the area.
- Howard Street update: Staff is continuing to work through the certification process. The goal is to have everything lined up to go out to bid in the spring. Mr. Furgieuele asked whether any of the money under the new infrastructure bill might be available to support this project. Mr. Ward indicated that staff was

looking into that possibility. He suggested that it was his recommendation that even if funding was available, that it be used in other areas of the Town since hotel/motel tax revenue was being used to fund the Howard Street project.

- AMI Meter System: We are continuing to install the new type water meter with 1,255 (only 10 newly installed from the October update due to programming equipment issues) 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 soon. Once these locations have been determined, we anticipate meter replacement and network development to escalate.
- 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.
- The Town of Boone Skatepark has opened, and Mr. Ward shared pictures with Council. Mr. Furgiuele stated that he hoped as the Council changed that the work of JP Pardy, Jeannine Underdown-Collins and others without whom this would not have become a reality be recognized.
- NCDOT Prioritization list: The Boone Bypass scored the highest on the statewide mobility scale at 77.85, the next highest for our region was the Meadowview Drive intersection realignment.
- Updated trash and recycling pick-up schedule was shared.
- Southern small city resilience report has been completed by the Research Triangle Institute, and will be sent out soon and displayed on the Town website.
- The new Town website has been completed (Mr. George entered the meeting at 6:55 p.m.).
- Sustainability update: The Town is currently at 25% renewable energy through New River Light and Power with the hydroelectric power project. Staff is nearing the end of negotiations with Blue Ridge Energy for a proposal to come before Council for solar power generated through the Caldwell County solar array. The project could be implemented as soon as 2023 and could give the Town access to 100% renewable energy for all Town operations. Mr. Santucci also recently attended the NC Stormwater Association meeting and is working to learn and prepare for the impending MS4 designation. He will be working with the Town's new Environmental Planner, Brandon Wise to get ready for enhanced stormwater opportunities and grant funding. Staff has also been working on UDO text amendments to address solar energy and EV charging systems. Staff plans to work with the New River Conservancy and volunteers to plant 174 trees at the Bolick property this Saturday.
- The state budget was adopted today, and it did not include three policy provisions inserted by the house that could have proven concerning for municipalities. The first would have eliminated local stormwater rules to prevent flooding. The second was a proposal that would have prevented local governments from regulating short term rentals. The third was a measure that would have eliminated local tree ordinances and only allowed local tree removal and protection rules by legislative act. Mr. Ward indicated that these concerning policies did not pass, but other policies did, including a policy for existing billboards which were impacted by road construction to allow for relocation rather than removal. The other policy that passed was for small cell wireless measures that limited fees on the placement of equipment on municipal owned poles and could affect local oversight of the placement of communication related infrastructure on local right of ways. He indicated that staff would work with Ms. Meade to ensure that the Town had rules to meet the new state requirements.

Mr. Furgiuele asked whether the previously requested flashing speed limit signs had been received and utilized. Chief Le Beau indicated that staff had received one at no cost through the Governor's Highway Traffic Safety Program, and that the sign had been being moved around Town to different locations. Mr. Furgiuele asked that moving forward, staff and Council would start to push the idea of a multimodal path that went from the intersection of Highway 105 and the 105 Bypass into the Town or at least into the University in order to start to reduce some of the traffic from that direction and to provide people alternative ways to get into Town.

TOWN ATTORNEY UPDATE

Ms. Meade indicated that based upon her review of the title records, lack of clarity in those records and estate law, it was her advice that Council could go ahead and direct the Historic Preservation Commission to proceed with figuring out a good location and type of marker to be placed in or near the Hayes-Bryan cemetery. It was the consensus of Council that the HPC should come back with a proposal for where a marker should be placed

and the verbiage to be included, and to allow the commission to consult with Ms. Meade and Mary Moretz about the placement of the marker to the extent they feel it necessary.

Ms. Meade noted that she would be sending a letter before this Council's term ended to the Attorney General's office requesting guidance with respect to Charlie Wallin's service on both the County Commission and the ABC Board.

Ms. Meade indicated that in regards to a matter raised by Mr. Furgiuele whether further action could be taken with respect to predatory towing and booting practices, she planned to bring the matter back to Council. She added that in speaking to Chief Le Beau, it seemed clear that booting companies were trying to discourage people from using credit cards to pay to remove booting devices from their vehicles as soon as possible and instead insisting on cash payments, which she considered problematic.

In regards to vehicles queuing in public roads for fast food restaurants, Ms. Meade stated that she did not believe there to be state law that clearly applied. She suggested that she draft a regulation that would be geared toward the businesses, since they were the ones who were benefiting from the patrons who were lined up in the roads. Ms. Roseman stated that since she worked on Blowing Rock Road, she believed it to be a safety issue when vehicles blocked traffic to line up for fast food. Mayor Pro-Tem Ulmer agreed, and wondered if it was illegal for patrons to block traffic for this purpose.

Mr. Furgiuele stated that it was his recollection regarding the ABC Board discussion that the propriety of the County Attorney representing private entities in a potentially antagonistic relationship with the Town was also discussed, and that she was asked to inquire of the Attorney General as to the appropriateness of this. Ms. Meade answered that this was not her recollection, and that it was her opinion that this type of inquiry would be an accusation of conflict of interest against the attorney to the State Bar. She added that she did not see a conflict of interest in her view, but that the matter could be discussed in closed session. Mr. Furgiuele disagreed and asked Ms. Meade directly whether she would feel comfortable representing private parties against the County at the same time she represented the Town. She stated that she would not engage in such a practice as she would be concerned it might affect her effectiveness on behalf of the Town. But, she stated, the question of conflict of interest was an issue for the County as the client of the County Attorney, and not the Town's concern.

Ms. Meade applauded Planning and Inspections staff for their work on the minimum housing forms and language recently posted on the website.

BOARD LIAISON REPORT

Mayor Pro-Tem Ulmer announced the upcoming lighting of the Jones House Christmas Tree.

APPOINTMENT TO HISTORIC PRESERVATION COMMISSION

Mr. Furgiuele nominated Ms. Willis for the student position on the Historic Preservation Commission. Hearing no further nominations, Mayor Brantz called for a vote:

VOTE:	Aye:	All
	Nay:	None

Ms. Willis' term will expire on June 30, 2022.

CONSIDERATION OF CASES HEARD AT THE OCTOBER 25, 2021 PUBLIC HEARING

Case PL05168-100621 Short-Term Rentals (Homestay & Vacation) - UDO Text Amendment

Ms. Shook indicated that the text presented at the Public Hearing was revised further based on that discussion, and presented the changes included in the packet. Mr. Furgiuele asked whether Ms. Shook was confident that

the members of the Planning Commission understood the difference between homestay rentals and vacation rentals since it seemed to him that a lot of the discussion about the controls on vacation rentals implied that they thought they were talking about homestay rentals in the low density residential districts. Ms. Shook responded that she believed Planning Commission members did understand the difference between the two. She continued listing the changes, with Mr. Furguele taking issue with the registry requirements listed in number six. He stated that he believed it to be an invasion of privacy and failed to see what use it was to the Town or what policy objectives were achieved by including it. Mayor Pro-Tem Ulmer agreed with Mr. Furguele and believed it made the process even more complicated. Mr. Ward noted that he was concerned with the busiest Town department having to keep up with a registry. Ms. Meade expressed her concern about raising expectations and potential Town liability if inspections were conducted. Ms. LaPlaca asked what others thought about the requirement for insurance. Mr. Furguele answered that he initially questioned the requirement, but believed that anyone who had homeowner's insurance probably had liability coverage anyway. Inspections were discussed briefly, with Stacey Miller noting that fire code did not deal with single family dwellings, which most short-term rentals were. He added that fire inspectors would be limited as to what they could do compared to building inspectors. Chief Isaacs stated that from a fire inspection standpoint, fire inspectors would be limited unless there was a local ordinance adopted that would allow them jurisdiction. Mr. Furguele asked Ms. Meade and Ms. Shook whether the provisions of State law relating to smoke and carbon monoxide detectors in residential rentals, and Ms. Meade said she would have to research that issue, but thought they might be. There was additional discussion about the mechanical difficulties of requiring signs to be posted on properties which could be seen by the public, both in terms of sign clutter and the legal issues with demanding that property owners allow people who wanted to inspect permits and signs containing contact information for people in control of the subject properties be posted on the Town's website since his primary concern was that neighbors be able to reach someone, other than law enforcement, about issues arising during the weekends, when the Planning Department was closed.

Mayor Brantz declared a break at 8:24 p.m. Council reconvened at 8:32 p.m.

Transitional zones and special use permits were discussed, and Ms. Shook explained the process and reasons for both. Mr. Furguele then made a motion that the proposed amendment to the Town's zoning ordinance with the following modifications: The removal of the highlighted text from section 15.14.13 "A telephone number for such complaints or emergencies shall be posted on the subject property in a location easily viewable from the exterior of the structure; provided, that if the telephone number cannot be viewed from a private or public street, it shall be displayed where it can be viewed from the public or private street adjoining the primary façade of the dwelling unit" as long as the text could be posted on the Town's website about who to contact in the event that a complaint needed to be made to the owner; to remove the recommendation to post "no trespass" signs at the properties as suggested in section 2 of the motion made by the Planning Commission, but to require contact information to be posted on the Town's website; add language to require operator to carry liability insurance in the amount of \$500,000; to reject Planning Commission recommendation 6, 7, 8, 9; and with these modifications is consistent with is consistent with the Comprehensive Plan and any other adopted plan(s) of the Town because it complies with Comprehensive Plan Overall Objective D Economic development efforts shall encourage the revitalization and reuse of currently unused or underutilized structures, sites and infrastructure in appropriately located areas; 2.3.3 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; 2.3.3 F. The affordable housing needs of area residents, particularly elderly and low to moderate income residents, shall be recognized in Town policies and actions regarding residential development 2.3.4 B. Neighborhood and special area planning shall be encouraged to foster public involvement in the production of closely tailored, action oriented special area plans and programs. Mr. George seconded the motion. Ms. Meade pointed out that with the various changes to the written draft, it was complicated to understand what was being acted upon, and that she needed to research the issue of listing contact information on the Town's website. Mr. Furguele amended his motion to include that the text should be amended and brought back to the special Town Council meeting scheduled for December 8, 2021 for consideration. Mr. George accepted this amendment, and the motion carried unanimously.

Mayor Brantz declared a break at 9:57 p.m. Council reconvened at 10:07 p.m.

Case PL5188-100821 Definition of Family and Occupancy Regulations – UDO Text Amendment

Ms. Shook presented text regarding the definition of family and occupancy regulations. Mr. Furgiuele spoke in support of the overall amendment, and believed that the text brought the Town into consistency with the revised non-discrimination ordinance policy and practices. He added that he believed that the text recognized that what was once considered traditional family constructs were no longer the only group entitled to respect. Mr. George agreed with Mr. Furgiuele and felt that the amended text was a good step towards inclusivity in Town policy. Mr. George then made a motion to adopt the text as presented. Mr. Furgiuele seconded the motion, and offered a friendly amendment that the motion is consistent with the Comprehensive Plan and any other adopted plan(s) of the Town because it complies 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; 2.3.3 Housing and Neighborhoods F. The affordable housing needs of area residents, particularly elderly and low to moderate income residents, shall be recognized in Town policies and actions regarding residential development. Mr. George accepted the amendment and the motion carried unanimously. Mr. Furgiuele made a second motion to approve the proposed amendment to the Town's zoning ordinance and believes that approval is reasonable and in the public interest because it recognizes the Town's commitment to non-discrimination and the Town's recognition that traditional family structures have changed and that new structures are no less worthy of respect and inclusion in our neighborhoods, as well as taking a step toward making housing slightly more affordable. Mr. George seconded the motion which carried unanimously.

Case PL05169-100621 Town Utility Facilities – UDO Text Amendment

Mr. Furgiuele 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 complies with: Comprehensive Plan policy 2.2.2 B. Water and sewer services shall be concentrated within the limits of a geographically defined Urban Growth Area. The Primary Growth Area shall receive first priority for the provision or enhancement of water and sewer services; 2.2.5 B. Continued improvements to the public sewage collection and treatment facilities shall be supported, with priority given to servicing existing or planned densely developed areas where environmental and economic benefits can be realized; 2.3.4 A. . Public involvement shall be encouraged in decisions concerning land use and development by making the public aware of proposed developments at the earliest opportunity, as well as fostering communication among developers, the Town, the County, the University, and the general public. Ms. Roseman offered a friendly amendment to include the following:

Comprehensive Plan Policy 2.1.1 Economic Development E. The Town shall encourage a public service and regulatory environment conducive to business recruitment and expansion, while at the same time enhancing the area's physical and human resources. E.1 Continue to look for ways to make development regulations and permit procedures more predictable and timely. Evaluate opportunities for administrative review and permit issuance for development projects which, due to their small size or relatively minor impacts, may not require review by a formal public commission or board.

Mr. Furgiuele accepted the amendment and Ms. Roseman seconded the motion, which carried unanimously.

Mr. Furgiuele made a second motion that the Town Council approves the proposed amendment to the Town's zoning ordinance and believes approval is reasonable and in the public interest with the changes outlined in the packet because it provides for the systematic development of the Town for its necessary infrastructure while at the same time still providing opportunities for public input. Ms. Roseman seconded the motion, which carried unanimously.

Case PL05189-100821 Major Subdivision Process Modification – UDO Text Amendment

Ms. Shook presented text amendments regarding the major subdivision process. Ms. Roseman 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 they are consistent with: Comprehensive Plan Policy 2.1.1 Economic Development E. The Town shall encourage a public service and regulatory environment conducive to business recruitment and expansion, while at the same time enhancing the

area's physical and human resources; E.1 Continue to look for ways to make development regulations and permit procedures more predictable and timely. Evaluate opportunities for administrative review and permit issuance for development projects which, due to their small size or relatively minor impacts, may not require review by a formal public commission or board. Mr. Furgiuele seconded the motion, which carried unanimously. Ms. Roseman made a second motion that the Town Council approves the amendment to the Town's zoning ordinance and believes the approval is reasonable and in the public interest because it streamlines the process while working with the community. Mr. Furgiuele seconded, and offered a friendly amendment that the text removes a step which was pro-forma and unnecessary where there was no real discretion and added a burden to applicants. Ms. Roseman accepted the amendment and the motion passed unanimously.

CONSIDERATION & DISCUSSION OF MODIFICATION TO P&I FEE SCHEDULE

Ms. Shook presented a request for modification to the Planning and Inspection fee schedule regarding certificates of appropriateness, statements of conformity and short-term rental permits. Ms. Roseman suggested that multiple items could be included in a single application to save money and time. Mr. Furgiuele noted that the fee for simply changing out a sign in the historic district was steep, but that he felt it made a large impact on the appearance of the downtown historic district. He was also in agreement with Ms. Roseman's suggestion regarding encouraging applicants to collect things that have to be approved into one application to the extent they could. After brief discussion regarding the classification of minor and major adjustments to properties in the historic district, Mr. Furgiuele made a motion to authorize staff to make reasonable adjustments in the fees charged until there can be further consideration on signs as to the ability to classify some as minor and within the parameters of those certificates of conformity, while others continued to be classified as major. Ms. Roseman seconded the motion. Mr. Furgiuele amended his motion to include the adoption of the proposed fees with the provision that while staff continues to discuss with the historic preservation commission, the possibility of creating a separate classification of signs and other apparently minor work, that staff is empowered to make adjustments to promote fairness while this conversation continues. He pointed to the work of the Community Appearance Commission regarding doors, which photographs acceptable and unacceptable types as a potential model for streamlining sign approvals. Ms. Roseman accepted this amendment. The motion carried unanimously.

REQUEST FOR DIRECTION CONCERNING TOWN'S PARTICIPATION IN SETTLEMENT OF OPIOID CLASS ACTION LAWSUIT

Ms. Meade presented a request to authorize herself, Mr. Ward or the Mayor to execute documents which would allow the Town to opt in to a proposed settlement of certain opioid litigation. She indicated that it would take minimal time and no additional money for the Town to join the lawsuit. She explained that this would result in no money being paid to the Town directly, but instead would be paid to the County, but that as a practical matter, the Town would be unlikely to pursue its own individual action against the pharmaceutical companies, and the more municipalities which endorsed the settlement, the more likely it would be realized. Upon a motion by Mr. George, seconded by Mayor Pro-Tem Ulmer, Council voted unanimously to approve the request as presented.

CLOSED SESSION

Upon a motion by Mayor Pro-Tem Ulmer, seconded by Ms. Roseman, Council voted unanimously to enter into closed session at 11:04 p.m. pursuant to the following:

1. N.C. Gen. Stat. § 143-318.11(a)(1), to review, approve and seal closed session minutes from Council's prior closed session(s).
2. N.C. Gen. Stat. § 143-318.11(a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and obtain legal advice, consider and/or give instructions to the attorney concerning the lawsuits involving Watauga County.

Upon a motion by Ms. LaPlaca, seconded by Mayor Pro-Tem Ulmer, Council voted unanimously to exit closed session at 11:32 p.m.

ADJOURNMENT

Upon a motion by Ms. Roseman, seconded by Ms. LaPlaca, Council voted unanimously to adjourn the meeting at 11:35 p.m.

Nicole Harmon, Town Clerk

Rennie Brantz, Mayor