

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
December 20, 2018**

CALL TO ORDER

A regular meeting of the Boone Town Council was held on Thursday, December 20, 2018 beginning at 6:00 p.m. at the Council Chambers located at 1500 Blowing Rock Road. Mayor Rennie Brantz presided. Council Members present included Mayor Pro-Tem Loretta Clawson, Lynne Mason, Sam Furgiuele, Connie Ulmer and Marshall Ashcraft. Staff present were Town Manager John Ward, Town Clerk Nicole Worley, Police Chief Dana Crawford, Planning Director Jane Shook and Planner Marty Little. Town Attorney Allison Meade was also in attendance.

TENTATIVE AGENDA ADOPTION

Town Manager John Ward noted the addition of an action item for the consideration of a Resolution of Support for a grant application for the Boone Creek Lot. He suggested Council begin by considering the minutes of November 13 & 15 and the remainder of the Town Attorney update, then continue with the regular agenda.

Upon a motion by Mr. Furgiuele, seconded by Mayor Pro-Tem Clawson, Council voted to table the minutes of November 13 & 15 until the January regular meeting, and to continue the discussion of the Town Attorney's update.

VOTE: Aye: All
 Nay: None

COUNCIL MATTERS

Town Attorney Update

Town Attorney Allison Meade resumed her update to Council beginning with discussion of the amortization of non-conforming uses within single-family residential districts. Ms. Mason suggested staff begin the process by compiling a list of non-conforming properties. Mr. Furgiuele felt that would be a huge burden on staff and suggested that a three-year amortization requirement should be publicized and to allow citizens to contact the Planning Department to report non-conformities. Discussion turned to homes within the R-1 district which have an accessory apartment, with Mr. Furgiuele stating that although these apartments may not have presented a problem in the past, he did not believe they should be allowed to violate the UDO. Ms. Mason expressed concern that these apartments served as additional income to residents and felt that Council should be sensitive to this. Mr. Ward inquired about the placement of this text amendment on the Planning Department work plan, with Mr. Furgiuele stating he believed this matter to be more important to address than the Comprehensive Plan update, but that it should not be placed at the top of the list. He added that he believed single-family neighborhoods were under pressure and that bold action was needed in order to maintain neighborhoods. Discussion continued regarding issues which may arise between landlords and tenants of a property which was considered to be non-conforming, as well as the allowance of assembly places within the R-1 district. Ms. Mason was concerned about organizations such as the VFW that function in harmony with neighborhoods and reiterated the need for more detail about non-conformities so that Council could better know how to address them. Mayor Pro-Tem Clawson stated she believed in protecting neighborhoods, but felt there were a lot of uncertainties with amortization. Mr. Ashcraft suggested the process be focused on the actual non-conforming use, with Mr. Ward suggesting that the process be phased in, beginning with a focus on accessory apartment rentals. Ms. Meade agreed that the process could be limited and could address certain concerns. Ms. Meade recommended that she begin working on options to bring back to Council for discussion at a later date. It was the consensus of Council to direct Ms. Meade to move forward as she suggested. Ms. Meade added that the statute of limitations had recently changed so that if a Town employee knew about a non-conformity, that knowledge would trigger the start of the statute of limitations for zoning enforcement, as would being able to see the non-conforming use from the main road. Ms. Meade suggested that if members knew of a non-conforming use already in existence to let Planning staff know. Ms. Meade suggested that in light of the new statutes of limitations, Council might want to consider a more active enforcement program.

Discussion turned to the potential code amendment to include a general right to appeal Town staff decisions issued under the Town Code where appeal rights were not already provided. Ms. Meade noted that some amount of due process and a neutral decision maker was needed. Mr. Furgiuele suggested that the Town Attorney should be the decision maker on in-house appeals. Ms. Meade felt that this could create issue in the event the case ended up going to court, since an outside attorney would have to be hired. Mr. Furgiuele stated that the Town could hire a stand-by contracted attorney for such cases. Ms. Meade also noted that the contracted attorney would be giving advice to staff. She continued to say that the decision makers she encountered during her research were the town manager, a department head or Council as a whole. Mr. Furgiuele felt that having the manager hear appeals would make sense, since the manager would likely have prior knowledge of the matter. Ms. Meade stated that she did not believe it was required that the hearing officer be a completely neutral party, and suggested that the manager could hear appeals after they have gone through the respective department head. Mr. Ward indicated that he would be willing to try the process as long as the volume did not become burdensome, and noted that this was the same process that was used for personnel matters. Mr. Furgiuele suggested that there should be a time limit for the hearing. After brief discussion, it was the consensus of Council to instruct the Town Attorney to draft revised language to allow for appeals issued under the Town Code where appeal rights were not already provided to be appealed directly to the Town Manager.

Brownfields were discussed, with Mr. Furgiuele suggesting that staff should have a conversation with the Town's lobbyists about talking to state agency representatives about the issue. Mr. Furgiuele felt that the negative consequences to the Town by allowing the joinder of contaminated parcels with non-contaminated parcels in order to receive tax incentives should be communicated to representatives. The Riverswalk property was discussed briefly, with Council agreeing to have staff discuss the topic with Town lobbyists.

Ms. Meade suggested that Council postpone its discussion of the protection of public trees and Town Code Chapter 97 due to time constraints, and added that she planned to present proposed ordinance amendments in January. She added that the amendments would take a two-part approach to include Town-owned trees and trees in Town rights-of-way, as well as a tree protection ordinance.

Ms. Meade concluded her update by announcing that the following was on her list of things to work on:

- Small wireless co-locations
- Signs
- Stormwater
- Amortizations

Mayor Brantz declared a break at 7:35 p.m. Council reconvened at 7:42 p.m.

CONSIDERATION OF ADOPTION OF RESOLUTION OF SUPPORT FOR GRANT APPLICATION - BOONE CREEK LOT

Upon a motion by Mr. Furgiuele seconded by Ms. Mason, Council voted to approve the Resolution of Support for Grant Application for Boone Creek Lot.

Study Resolution Template – Water Resources Development Grant

(Note: This resolution template may be used by local governments to request State assistance for a preliminary feasibility or engineering study of a Water Resources Development project. The model should be adapted to fit the circumstances of each specific project.)

WHEREAS, the Town of Boone desires to sponsor, Boone Creek Peacock Lot Feasibility Study, Daylighting/Restoration/Stormwater BMP feasibility study on Boone Creek under Peacock Parking Lot on the Campus of ASU in Boone, NC.

NOW, THEREFORE, BE IT RESOLVED THAT:

- 1) The Council/Board requests the State of North Carolina to provide financial assistance to Town of Boone for Boone Creek Peacock Lot Feasibility Study in the amount of \$ 30,000 or 40 percent of project construction cost, whichever is the lesser amount;
- 2) The Council/Board assumes full obligation for payment of the balance of the study costs (or non-federal portion);
- 3) The Council/Board will comply with all applicable laws governing the award of contracts and the expenditure of public funds by local governments.

Adopted by the Town of Boone this ____ day of _____ 20__.

Clerk to the Council/Board

Mayor / Chairperson of Council / Board

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sam Furguele, Council Member
SECONDER:	Lynne Mason, Council Member
AYES:	Mason, Clawson, Furguele, Ulmer, Ashcraft

PRESENTATION OF R3 & R4 PROPERTIES

Discussion on vacant R-3 and R-4 properties began with Ms. Mason inquiring whether there were common themes between properties that should be rezoned, and stated she would like to see transitional multi-family housing that was lower in density and height which would transition town homes into a neighborhood setting. Mr. Furguele stated that there may also be some cottage housing potential on some of the vacant properties. Council decided to view the presentation beginning with the first parcel in the R-3 and R-4 section. A complete copy of the presentation is available to view online at http://boonenc.iqm2.com/Citizens/Detail_Meeting.aspx?ID=1970

Boone United Methodist Church (PIN 2911-30-7385-000)

Mr. Furguele stated that the highest priority on this property should be to protect the neighboring R-1 properties and that he did not think any individual property should be split zoned. He added that he believed the property would be better suited for low density development or cottage housing. Mr. Furguele suggested that the property should be rezoned to R-1 since the property across the street was zoned R-1 and because of the

grade of the slope. Planning Director Jane Shook noted that development on slopes of a certain grade required geotechnical engineering. Ms. Meade stated she believed the property to be virtually inaccessible. Mr. Furguele stated that he felt Council shouldn't make assumptions about what engineers could or could not do and suggested rezoning.

VOTE (To rezone PIN 2911-30-7385-000) to R-1): Aye: All
Nay: None

Jonathan Marshall (PIN 2911-51-4165-000)

Mr. Furguele noted that this property was proposed for development and was turned down due to the large community outcry. He added that if an apartment building was built on this property, it would tower over nearby buildings. Ms. Mason stated that this property should serve as an example of why there should be a transitional zone and height restrictions. Mr. Furguele suggested that this property be rezoned to R-1. Mr. Ward asked how Council intended to move through the process of potentially rezoning a large number of parcels. Discussion again turned to the format of the presentation and the benefits of grouping the parcels geographically. When asked by Mayor Brantz about rezoning practices in other towns, Ms. Shook confirmed that many towns go through mandatory rezonings, and that she believed it to be a legitimate use of Council's powers. Ms. Mason suggested Council rezone certain properties that could accommodate cluster cottage housing or a townhouse community that would be more compatible with lower density housing nearby. Ms. Shook suggested that Council spend time making sure the Comprehensive Plan gives support to their actions when rezoning. Mr. Furguele stated he felt that the Comprehensive Plan listed incompatible goals and that he believed Council and staff should look at rezoning the Town in stages. He added that he would like to move forward with the parcels in the presentation after they have been regrouped geographically. It was the consensus of Council to direct staff to regroup the presentation geographically and to bring back to Council in February along with a notebook for Council's reference.

VOTE (To rezone PIN 2911-51-4165-000): Aye: Furguele, Mason, Clawson, Ulmer
Nay: Ashcraft

High Cliffs Properties (PIN 2911-52-4001-000 & 2911-51-8590-000)

Mr. Furguele noted that a portion of this parcel was located outside Town jurisdiction, with Ms. Shook noting that the property was located in the former ETJ. Mr. Furguele continued by adding that the nearby Buckeye Estates was a single-family home area. He added that he felt the portion within Town limits should be rezoned to R-1 and that if the Town's ETJ powers were ever restored that the whole parcel should be designated as R-1. Mayor Pro-Tem Clawson agreed with the rezoning and stated it would help to protect the residential area.

VOTE (To rezone PIN 2911-52-4001-000): Aye: Furguele, Mason, Clawson, Ulmer
Nay: Ashcraft

VOTE (To rezone PIN 2911-51-8590-000): Aye: Furguele, Mason, Clawson, Ulmer
Nay: Ashcraft

Jimmy Miller (PIN 2911-62-9175-000)

Mr. Furguele felt that since this property was located in the R-1 district that this property should be rezoned as R-1 and that if the ETJ was restored that the entire parcel should be designated R-1.

VOTE (To rezone PIN 2911-62-9175-000): Aye: All
Nay: None

CLOSED SESSION

Upon a motion by Mayor Pro-Tem Clawson, seconded by Mr. Furguele, Council voted to enter into closed session at 9:10 p.m. pursuant to the following:

1. Pursuant to 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. Pursuant to 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 one or more potential legal claims.
3. Pursuant to N.C. Gen. Stat. § 143-318.11 (a) (5) to establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property on W. King St. known as Watauga County Parcel ID# 2900-98-0786-000 owned by Bingham Farms II LLC.

VOTE: Aye: All
 Nay: None

Upon a motion by Ms. Mason, seconded by Mayor Pro-Tem Clawson, Council voted to exit closed session at 10:59 p.m.

VOTE: Aye: All
 Nay: None

ADJOURMENT

Upon a motion by Mayor Pro-Tem Clawson, seconded by Ms. Mason, Council voted to adjourn the meeting at 11:02 p.m.

VOTE: Aye: All
 Nay: None

Nicole Worley, Town Clerk

Rennie Brantz, Mayor