

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
February 16, 2021**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order electronically at 6:18 p.m. Mayor Rennie Brantz presided. Council members present included Sam Furgiuele, Connie Ulmer, Dustin Hicks and Nancy LaPlaca. Staff present included Town Manager John Ward, Town Clerk Nicole Harmon, Public Works Director Rick Miller, Deputy Public Works Director Todd Moody, Downtown Boone Development Coordinator Lane Moody, Planning Director Jane Shook, Finance Director Amy Davis, Fire Chief Jimmy Isaacs, Police Chief Andy Le Beau, Human Resources Director Dale Presnell, and Cultural Resources Director Mark Freed. Town Attorney Allison Meade was also in attendance.

ANNOUNCEMENTS

Mr. Ward announced that Ms. Clawson was having technical difficulties, and suggested that Mayor Brantz move forward with the agenda while she attempted to connect to the meeting.

Mayor Brantz then announced the following board vacancies:

BOARD OF ADJUSTMENT

One alternate position

COMMUNITY APPEARANCE COMMISSION

Four regular positions

HISTORIC PRESERVATION COMMISSION

One regular position

One student position

PLANNING COMMISSION

One position

TOURISM DEVELOPMENT AUTHORITY

One resident in Boone Area Chamber of Commerce

TRANSPORTATION COMMITTEE

One position (Cooperative Extension)

One resident position (Alternative Transportation)

One student position

WATER ADVISORY COMMITTEE

Four regular positions

One student position

Mayor Brantz asked Mr. Ward to present a resolution of appreciation to Program Coordinator Marsha Owens, who would be retiring at the end of the month. Council members praised Ms. Owens' for her 29 year long commitment to the Town.

Mr. Ward then read the resolution of appreciation for former Mayor Pro-Tem Loretta Clawson. Ms. Clawson thanked residents and students for voting her into office, her family, and staff who had helped her through the years. Council members praised Ms. Clawson for her tireless service and dedication to the Town of Boone and its residents.

RESOLUTION OF APPRECIATION - L. CLAWSON

RESOLUTION OF APPRECIATION - M. OWENS

ANNOUNCEMENT OF BOARD VACANCIES

TENTATIVE AGENDA ADOPTION

Mr. Ward announced that due to a scheduling conflict, Ms. Caruso would not be able to attend her scheduled slot under Requested Appearances #3. Upon a motion by Dr. Ulmer, seconded by Ms. LaPlaca, Council voted unanimously to approve the agenda as amended.

APPOINTMENT OF COUNCIL MEMBER TO FILL VACANCY

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Mr. Ward asked that Council move forward with the appointment of a new member to fill the recently vacated seat, or noted that it could delay action if Council saw fit. Ms. Meade noted that the procedure for filling the vacancy was up to Council, but the nomination-and-ballot voting procedure in Section 30. 51 of the Town Code was the best procedure to follow. First nominations were to be made by Council members, which did not require a second. Once nominations were complete, the Mayor would call each nominee in alphabetical order and then each Council member would be allowed one vote in favor of the one candidate of their choice. Ms. Meade stated that if a candidate received a majority of the votes, then they would be appointed. However, she indicated if no candidate received a majority of the vote, then the vote getter with the lowest number of votes would be set aside for a second round, during which the highest vote getter would be called for a second round of voting. Ms. Meade explained that, again, each Council member would have one vote until the nominees could garner a majority vote. She noted that in this case there could not be a tie vote, and that a successful nominee would have to gather three votes. Ms. LaPlaca asked about the proper procedure for delaying the vote on this matter. Ms. Meade answered that because of the uniqueness of the situation, Council would not want to delay the entire vote, but instead delay the effective date to allow the applicant time to relocate to their residence inside town limits and to be a resident of Boone for 30 days. Ms. Meade then addressed the residency issue, and stated that applicant Quint David was currently a non-resident of the town. She believed that an appointed member to the Town Council should be a resident of the town and moreover, should have been a resident of the town for at least 30 days before taking office. Ms. Meade noted that these were the same requirements that applied for elected office, and noted that the North Carolina General Statutes were not drawn totally clearly, but she felt confident that a court looking at this situation would say that an appointment would need to meet the same requirements, as somebody elected to Town Council. Ms. Meade cautioned that if Council chose not to follow this rule, it could result in absurd outcomes. For example a Town Council member already elected but who moved just outside of town limits would immediately lose their office and was no longer qualified to serve in this capacity while an appointed member might be able to serve without living in the Town if a residency qualification was not imposed. Ms. Meade believed that the same rule would apply to age limits. Ms. Meade was concerned that if Town Council did choose to appoint somebody who did not meet the qualifications for elected office, it would be throwing into question every action that Council subsequently took with that person on the board. She believed this could cause a lingering uncertainty that could be challenged anytime and potentially well into the future, if such a person was serving. Ms. Meade stated that for all those reasons, she strongly advised the Council that they should not let anyone take office, by appointment, who did not fulfill the requirements for elected office. She added that if Council wished to consider Mr. David's application, it could move forward with the nomination and vote process to see if he was the one who garnered the majority of votes. She advised that if Mr. David received the highest number of votes, Council should delay his appointment until he could both move to Town and certify that he had lived in Town for 30 days. Ms. LaPlaca asked whether it would be better to postpone the vote altogether until the next meeting. Ms. Meade advised that such action would make sense only if a majority of Council supported Mr. David's appointment, since if they did not, then it would delay the vote for no reason. She added that if Council chose to defer the vote on the assumption that Mr. David would be appointed and he was not, then Mr. David would have moved to town for no reason. Mr. Furgiuele asked whether this position was advertised to include out of town residents, and if not, then he believed that it would mean anyone could be appointed and then move to town limits to take office. Mr. Furgiuele stated that he had great respect for Mr. David and read his comments in his application with interest, but did not believe it would be right to appoint a non-resident when there were two applicants who currently resided in town. Mr. Furgiuele was against the idea of delaying the vote altogether since the annual budget retreat was scheduled next week. He added that he would also oppose Mr. David's nomination unless the position was readvertised to include out of town residents. Mr. Ward noted that the

position was advertised without residency or age requirements outlined since it was assumed the qualifications would be the same as for elected office. Mr. Hicks asked where the position was advertised, to which Mr. Ward answered that the position was advertised in the local media, social media, Town of Boone website, and local radio, though requirements were not that extensive. Mr. Furgiuele then nominated Virginia Roseman for the vacant position, and added that had great respect for both Mr. David and Mr. George, but the reason that he was putting forward the name of Ms. Roseman was because when Mr. David and Ms. Roseman ran for election, Ms. Roseman narrowly missed the last spot in the last election, obtaining over 800 votes while Mr. David received slightly over 400, showing that Ms. Roseman had broad support in the Town. Ms. Meade suggested that Mayor Brantz permit nominations and then allow some discussion before going through the votes. Ms. LaPlaca nominated Mr. David to fill the vacant seat on Town Council. Mr. Hicks then nominated Mr. George. Council members then heard from each applicant, with Ms. Roseman beginning. She stated that Ms. Clawson and Velma Burnley were the reason she got into politics. Ms. Roseman stated that she had lived in the area since 1997 and in Boone since 2007. Ms. Roseman indicated she had formerly served on the Tourism Development Authority and Board of Adjustment. She indicated that she lived in one of the oldest homes in Boone and had an appreciation for historic preservation. She added that she thought it was important to help uphold the ideals that the Town Council had, and that she always aimed to do everything with heart. Ms. Roseman stated that if appointed, she would be an advocate for Boone, and noted that she believed compromise was the way to win. Mr. David spoke next, noting that this was the first time in seven years that he had not served on a Town committee. He indicated that he was currently the Chair of the AppalCART board, and also served on the Habitat for Humanity board, but that if appointed, Town Council would become first priority. Mr. David felt that owning a residence in both the town and out in the county may seem like a disadvantage, but he believed it was important that people realize that the whole area was community, not just the town versus the county.

Mr. George began by commenting how lucky he was to know each of the Council members fairly well, and how involved he has been in the community. He indicated that he had worked hard to make sure that people were voting in elections, secured voting sites, and worked alongside the voting rights task force with pride. He discussed his work in helping to spread the word about the rights of tenants and believed members would be hard pressed to find another young person that was as interested in local government, outside of the one that was already on Council, and one that was seeking pragmatic and real change. He acknowledged that he did not have the experience that the other applicants did, but felt that he could offer a different perspective.

Mr. Hicks stated that he had worked with all of the applicants in different capacities over the past year and that he adored them all. He added that he sincerely hated having to make this decision because he thought they were all wonderful and represented parts of the town that needed to be on this board. Mr. Hicks encouraged the applicants to run for election regardless of who was appointed, though he did not think elections did a good job at representing people well enough. He suggested that Council sponsor a community polling to seek a way of discerning public opinion on the three candidates.

Ms. Meade responded that Council had already begun the nomination process, but noted that Council was always in control. She indicated that if a majority of Council voted to postpone the vote and to move forward a public poll, she believed it had the power to do so. In response to a question raised by Mayor Brantz, Ms. Meade answered that in terms of the regularity of the of Council's conduct, nominations had been made, the process had been agreed to, she thought, based upon the prior discussion, and added that because there were nominations on the floor, she did not think it would be in order for another motion to be made right now. She suggested that Council first move forward and vote on the current nominations, though if no one received enough votes in the nomination process, Council could revisit its procedures. Dr. Ulmer stated that she agreed with Mr. Hicks in that the process was not the best, but felt that since the procedure had already been initiated, it needed to be finished. She indicated that a different procedure should be investigated in the future, and offered her support for Ms. Roseman as the appointee to the vacant seat. Ms. Meade went over the voting procedure again before Mayor Brantz called for votes.

VOTE:

Quint David: Hicks, LaPlaca

Dalton George: None

Virginia Roseman: Ulmer, Furgiuele

Ms. Meade indicated that normally, Council would drop out the lowest vote getter, but did not believe that would make a difference in this case. She stated that the alternative was to first call the vote again, one more time leaving Mr. George out this time, then if the votes were split, a different procedure would have to be used so that Mayor Brantz could break the tie. Mayor Brantz called for votes again, this time leaving Mr. George out.

VOTE:

Quint David: Hicks, LaPlaca
Virginia Roseman: Ulmer, Furgiuele

Ms. Meade then suggested Council change its voting methods so that, rather than proceeding nomination style, that Council vote in an up and down style, with a member making a motion to appoint one of the persons and then the Mayor calling for a yay or nay vote. In this case, the Mayor would be able to break a tie in the event of one. In the alternative, Ms. Meade stated that the position could be readvertised to see if that changed anything. Mr. Ward was concerned about the upcoming budget process and the difficulties that delaying this vote could bring to that process. Ms. LaPlaca made a motion to appoint Mr. David to the vacant seat. Without a second, the motion failed.

Mr. Furgiuele asked whether Council should entertain a motion to change the method of proceeding since that had not yet been done. Ms. Meade responded that she believed there to be a consensus of Council manifested in the earlier discussion, but that if there was not a consensus, then a motion would need to be made. Ms. Ulmer then made a motion to proceed in the way suggested by Ms. Meade with Mayor Brantz breaking the tie in the event of one. Mr. Furgiuele seconded the motion, which carried unanimously. Ms. LaPlaca then nominated Mr. David to serve in the vacant position on Council. Mr. Hicks seconded the motion because none of the other members believed in a public polling.

VOTE: Yay: Hicks, LaPlaca
Nay: Furgiuele, Ulmer

Mayor Brantz was then asked to break the tie, and opposed the motion.

Mr. Furgiuele then made a motion to appoint Ms. Roseman to the vacant seat on Council. Dr. Ulmer seconded the motion.

VOTE: Yay: Furgiuele, Ulmer
Nay: Hicks, LaPlaca

Mayor Brantz was again asked to break the tie, and voted in favor of the motion appointing Ms. Roseman to serve in the vacant seat on Council.

Mayor Brantz administered the affirmation of office to Ms. Roseman, who signed the document on camera before it was hand delivered to Mayor Brantz for his signature.

APPOINTMENT OF MAYOR PRO-TEM

Ms. LaPlaca nominated Mr. Hicks to serve as Mayor Pro-Tem. Mr. Furgiuele nominated Ms. Ulmer. Hearing no other nominations, Mayor Brantz called for a vote.

VOTE:

Hicks: LaPlaca
Ulmer: Furgiuele, Roseman, Hicks
Abstain: Ulmer

Mayor Brantz administered the oath to Dr. Ulmer, who signed the document on camera before it was hand-delivered to Mayor Brantz for his signature.

Mayor Brantz declared a break at 7:44 p.m. Council reconvened at 7:55p.m.

REQUESTED APPEARANCES

MATT SNYDER - WATAUGA COUNTY BOARD OF ELECTIONS

Mr. Snyder presented Council with a request from the Watauga County Board of Elections to sponsor a second one-stop voting site for the upcoming municipal elections similar to 2019. He indicated that the cost for the additional site during the last election was approximately \$2,600, but believed that there would be some additional costs this year due to Covid-19 protocols. Mr. Snyder also noted that staff estimated the cost of a voting site at ASU would be approximately \$4,000. Mr. Furguele made a motion, which was seconded by Ms. Roseman to approve the request as presented and noted that people had worked for decades to try to make sure that there was a one stop voting location on campus to make voting more accessible. The motion carried unanimously.

DAVID JACKSON - DOWNTOWN ADVOCACY COMMITTEE UPDATE

On behalf of the Chamber and its Board of Directors, Mr. Jackson offered his sincere congratulations and thanks to Ms. Clawson and all that she had provided the town through her time in public service. He also welcomed Virginia Roseman to Council and thanked Mr. David and Mr. George for putting their names forward. Mr. Jackson then updated Council on the Downtown Advocacy Committee which was started last October. He stated that the committee had held seven meetings, and that a resident member was recently added to the committee. He noted that the committee had met with staff from the Fire and Planning Departments and felt good about where it was in the process of being able to complete a report for Council later this spring or early summer. He noted that individual committee members had spoken with seven businesses thus far and reported back to the group, and continued to reach out to businesses to get their feedback. Mr. Jackson indicated that the next department the committee intended to interact with was Public Works, before likely moving back into a follow up discussion with Planning and Inspections. He stated that the discussions had already led to several very helpful suggestions that would be brought forward to Council in a more formal presentation later this spring. Mr. Jackson added that communication was a common thread that continued to come up in discussions and believed that there were easily implementable strategies that could be put forward to help that process. Mr. Furguele asked whether the committee would be giving a written report with the information gathered, to which Mr. Jackson responded that it would be.

Ms. Roseman asked whether there was anything the committee would like for Council to address or acknowledge at this time. Mr. Jackson responded that a topic that had come up in many discussions was how the Town intended to utilize the new Public Information Officer position, and noted that he did not believe this position should be a glorified phone answering position. He felt this position could aid not only Town staff, but also the community at large by having a dedicated person that could advance important information about the community's operations as well as offering other content. Mr. Jackson indicated that the committee had researched other communities that were incredibly proactive in their communications with the public and noted that there were things that could be done within alliances like the Chamber, and the DBDA to assist Town staff with communications.

DALTON GEORGE - PROPOSED RESOLUTION AGAINST ANTI-HOMELESS ARCHITECTURE

Mr. George presented Council with a proposed resolution against anti-homeless architecture. Mr. Furguele stated that he was in support of the resolution, but felt that it would be prudent for members to consider referring this topic to the Planning Commission to follow up with specific recommendations for implementation. He also suggested that staff work with representatives from the Hospitality House who had knowledge of some of the devices that were used in different communities. Mr. Furguele believed that the

Planning Commission was charged under state law to evaluate plans and make recommendations back to the Council regarding ideas such as this, and suggested that the ideas could be incorporated into the Town Code and UDO. He then made a motion to approve the resolution and to task the Planning Commission with coming up with recommendations for incorporating these specific measures in the UDO and Town Code. Mayor Pro-Tem Ulmer was unsure whether this was needed, since there were not as many homeless people downtown as there were when she first moved here and lived downtown. Mr. Ward noted that Planning staff were so back logged that this item would not be addressed for another year or more. Mr. Furgiuele clarified that he only intended for staff to be involved to the extent that they staff the Planning Commission's meeting's, and did not intend to create extra work for them. Mr. Hicks seconded the motion and offered a friendly amendment to include the definition of "anti-homeless architecture" in the text. Mr. Furgiuele agreed to the amendment. Mr. Hicks displayed pictures of such things as park benches with dividers to prevent homeless people on the benches. Ms. Ulmer argued that this was not a problem in Boone. Mr. Furgiuele related that the issue had indeed recently come up during a discussion by the DBDA about the improvement of the staircase between King and Queen Streets, and that when Hospitality House was located downtown, there was much sentiment against the residents articulated by certain members of the downtown business community, included repeated attempts to unconstitutionally ban panhandling.

VOTE: Aye: Furgiuele, Hicks, LaPlaca, Roseman
 Nay: Ulmer

Upon a motion by Mr. Furgiuele, seconded by Ms. Roseman, Council voted unanimously to amend the agenda to add an item at the beginning of Council Matters to allow members to appoint a member to the Board of Adjustment to replace Ms. Roseman's position.

ADOPTION OF ITEMS ON CONSENT AGENDA

Upon a motion by Mr. Furgiuele, seconded by Mayor Pro-Tem Ulmer, Council voted unanimously to approve the following items on the Consent Agenda:

1. Resolution of Appreciation - L. Clawson
2. Resolution of Appreciation - M. Owens
3. Approval of Minutes:
 - Town Council Regular Meeting - January 19, 2021
 - Town Council Regular Meeting - January 21, 2021

COUNCIL MATTERS

APPOINTMENT OF LIAISONS TO HPC, CRAB, AND TDA

Mr. Furgiuele nominated Dalton George to fill Ms. Roseman's term on the Board of Adjustment. Hearing no other nominations, Mayor Brantz called for a vote.

VOTE: Aye: All
 Nay: None

Mr. George's term will expire on June 30, 2023.

Mr. Furgiuele made a motion to nominate Ms. Roseman to serve as liaison to the Historic Preservation Commission, Cultural Resources Advisory Board, and the Tourism Development Authority. Dr. Ulmer seconded the motion. Hearing no further nominations, Mayor Brantz called for a vote.

VOTE: Aye: All
Nay: None

WHAT DISTRIBUTED RESOURCES ARE WORTH: REFLECTIONS ON TEN YEARS OF VALUATION OF UTILITY OPTIONS

Ms. LaPlaca invited Karl Rabago to speak regarding this agenda item. Karl Rabago presented a report regarding the ten year valuation of utility operations. Mr. Furgieuele was concerned with the ability of community members to participate in creating their own individual solar generation systems and receiving a direct advantage of net metering. He pointed out that about 60% of Boone residents lived in rentals and he felt it unlikely that landlords would install solar systems. He also expressed his view that most retired residents of Boone would not be able to afford solar cells and that many homes were situated in shady areas and that the Town also needed to work hard to preserve its tree canopy, which he thought was also important in fighting climate change. He asked Mr. Rabago how many households would have to install such systems before there would be a benefit. Mr. Rabago answered that even a single customer with net metering would confer a benefit on the community at large. He then added that the first net metering customers should be the Town of Boone in order to serve as a cornerstone for a solar market to develop. He also suggested that Council begin having serious conversations about solarizing with landowners.

APPOINTMENT TO WATER COMMITTEE

Mr. Furgieuele nominated Pam Williamson for reappointment to the Water Committee. Hearing no further nominations, Mayor Brantz called for a vote.

VOTE: Aye: All
Nay: None

Ms. Williamson's term will expire on February 18, 2024.

CLOSED SESSION

Upon a motion by Mayor Pro-Tem Ulmer, seconded by Mr. Furgieuele, Council voted unanimously to enter into closed session at 9:49 p.m. pursuant to:

1. N.C. Gen. Stat. 143-31.11 (2)(1), to 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 one or more potential legal claims or other legal matters.
3. 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 of the lawsuits in which the Town of Boone is currently a party (i.e., involving as counter-parties: (I) Watauga County Superior Court, (ii) Traveler's Insurance (W.D.N.C. 5:20-cv-189), and/or (iii) Barry Mallatere (W.D.N.C. 5:18-cv-00006)).

Upon a motion by Mayor Pro-Tem Ulmer, seconded by Ms. LaPlaca, Council voted unanimously to exit closed session at 10:32 p.m.

ADJOURNMENT

Upon a motion by Mayor Pro-Tem Ulmer, seconded by Mr. Hicks, Council voted unanimously to adjourn the meeting at 10:34 p.m.

Nicole Harmon, Town Clerk

Rennie Brantz, Mayor