

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
April 13, 2021**

CALL TO ORDER

A regular meeting of the Town Council was called to order electronically at 6:05 p.m. on Tuesday, April 13, 2021. Mayor Rennie Brantz presided. Council members present included Mayor Pro-Tem Connie Ulmer (joined the meeting at 6:26 p.m.), Sam Furgiuele, Dustin Hicks, Nancy LaPlaca, and Virginia Roseman. Staff members present included Town Manager John Ward, Town Clerk Nicole Harmon, Fire Chief Jimmy Isaacs, Police Chief Andy Le Beau, Finance Director Amy Davis, Deputy Public Works Director Todd Moody, Downtown Boone Development Coordinator Lane Moody, Planning Director Jane Shook, Sustainability and Special Projects Manager George Santucci, Human Resources Director Dale Presnell, Administrative Specialist Laney Pilkington, and Cultural Resources Director Mark Freed. Town Attorney Allison Meade was also in attendance.

TENTATIVE AGENDA ADOPTION

Upon a motion by Ms. Roseman, seconded by Ms. LaPlaca, Council voted to approve the agenda as presented.

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

PUBLIC COMMENT

No one was signed up for public comment.

REQUESTED APPEARANCES

WENDY PATOPRSTY - MIDDLE FORK GREENWAY PROJECT UPDATE

Ms. Patoprsty gave a presentation on the progress of the Middle Fork Greenway Project in conjunction with the Blue Ridge Conservancy. A complete copy of the presentation may be viewed online at http://boonenc.iqm2.com/Citizens/Detail_Meeting.aspx?ID=2331.

JIM DEAL - CONSIDERATION OF RESOLUTION DECLARING INTENT TO CLOSE MARY STREET & SCHEDULE HEARING

Jim Deal, on behalf of Appalachian Regional Medical Center, presented Council with a request to close Mary Street in conjunction with the expansion of the hospital facility. He indicated that if Council permitted this road closure, a new road would be opened and named "Watauga Medical Center Drive" and would also provide access to the homes below the hospital. Mr. Deal stated that in accordance with conditional district zoning, the hospital would be constructing a Greenway access leading from Deerfield Road and along the front of the hospital up to the 15 acre tract owned by the hospital. Mr. Deal asked members to consider waiving the \$500 fee in addition to the approval of the resolution in support of the road closure. He added that it was important to close Mary Street as soon as possible since the road would be a part of the active construction site. Mr. Furgiuele asked Mr. Ward where discussions stood with respect to the Greenway that was discussed previously. Mr. Ward answered that staff anticipated plans for the Greenway were still under development, but noted that the access would continue to the bridge at Fairway Drive. Ms. Meade added that there was a specific requirement regarding the Greenway, but that there had not been an approved development plan for the other property. She added that the Town could and would be insisting upon an extension of the Greenway on that piece of property. Ms. Shook agreed, and added that the hospital currently had permits that included approved plans for a Greenway along the route that was previously discussed with Council. She stated that the plans indicated the Greenway would run from the new road over to the College of Health Sciences where there would be a new signal installed to allow cross-over access to the Greenway. Upon a motion by Ms. Roseman, seconded by Mr. Hicks, Council voted unanimously to approve the resolution as presented. Mr. Deal asked for clarification as to the waiving of the \$500 fee. Mr. Hicks made a motion to waive the \$500 fee. Mr. Furgiuele asked whether waiving the fee would be ethical in that it would be treating the hospital differently than others in

the non-profit community, which had seen a funding freeze or tightening of Town support for years after the sales tax distribution was changed. He felt it was unfair to single out the hospital for financial support without considering the needs of the other organizations. Ms. Meade answered that, while the fee still needed to be assessed, she believed that Council could agree to forgive it or waive it once it was assessed because Council was expressly authorized to make financial contributions or make any type of contributions to support hospitals. Ms. LaPlaca seconded the motion. Mr. Furgiuele asked what the justification was for waiving the fee, since the budget would be tight this year. Mr. Deal responded that the hospital was a nonprofit organization, and echoed Ms. Meade's comments regarding cities and counties having the express authority to financially support hospitals. He added that whatever cost the hospital incurred was passed on to the citizens that used the facilities at the hospital.

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



A RESOLUTION DECLARING THE INTENT OF THE BOONE TOWN COUNCIL TO CONSIDER THE CLOSING OF MARY STREET

WHEREAS, the Boone Town Council is authorized to permanently close public streets and alleys pursuant to North Carolina General Statutes 160A-299 and Town Code § 96.048;

WHEREAS, Watauga Medical Center has petitioned for the closure of Mary Street, which is approximately 17 feet wide and approximately 490 feet long and located off of Deerfield Road, in connection with a construction project that will include the opening of a new road serving the same properties now served by Mary Street; and

WHEREAS, the Town Council shall conduct a Public Hearing for the purpose of giving consideration to permanently closing the aforementioned street.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA:

SECTION 1. That a Public Hearing will be held electronically via WebEx at 6:00 PM, or as soon thereafter as possible, on May 20, 2021 to consider an Order to permanently close said street.

SECTION 2. The Town Clerk is hereby directed to publish this Resolution of Intent once a week for four successive weeks in the Watauga Democrat prior to the Public Hearing.

SECTION 3. The Town Clerk is further directed to transmit by Certified Mail, Return Receipt Requested, to each owner of property abutting on said street or alleyway, a copy of this Resolution of Intent, and shall cause a notice of the Public Hearing to be prominently posted in at least two places along the street.

SECTION 4. This Resolution of Intent shall become effective upon its adoption and approval.

Adopted and approved this the ___ day of _____, 2021.

Rennie Brantz, Mayor

ATTEST:

_____(SEAL)
Nicole Harmon, Town Clerk

ADOPTION OF ITEMS ON CONSENT AGENDA

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

1. Police Department - Salaries - \$10,401.23 (CBP Treasury Federal Funds)
2. Police Department - Canine Unit - \$550 (Misc. Revenue)
3. Police Department - Maintenance Vehicles - \$1,121.40 (Misc. Revenue)
4. Police Department - Maintenance Vehicles - \$531 (Misc. Revenue)
5. DBDA - Transfer to General Fund \$200,000 Downtown Streetscapes Projects \$200,000 (MSD Appropriated Fund Balance; Transfer from MSD)
6. Tax Refunds
7. Tax Releases
8. Public Works - Street/Sidewalk Construction \$100,000 (Fee-in-Lieu of Sidewalk Improvements)
9. Public Utilities -Maintenance Vehicles \$2,201.67 (Misc. Revenue)

COUNCIL MATTERS

CONSIDERATION OF TOWN CODE AMENDMENT TO DELETE CHAPTER 112 TO AMEND CHAPTER 96

Ms. Meade presented proposed new language to Chapter 96 of the Town code. In response to a question raised by Mr. Furgiuele, Ms. Meade stated that she believed that the penalties included within the text were sufficient. Upon a motion by Ms. LaPlaca, seconded by Ms. Roseman, Council voted to approve the ordinance as presented.

.....

Ordinance # _____

**AN ORDINANCE TO AMEND THE TOWN OF BOONE
CODE OF ORDINANCES TO DELETE CHAPTER 112
AND REVISE CHAPTER 96, SECTION 96.010**

WHEREAS, the state law authorizing business privilege license taxes has been repealed and such taxes are no longer assessed as previously provided at Chapter 112 of the Boone Town Code;

WHEREAS, the Boone Town Council desires to clarify and expand the procedures for hearings, penalties and appeals related to violations of Town Code Chapter 96 (“Streets, Sidewalks and Other Public Ways; Encroachments”); and

WHEREAS, the Boone Town Council is authorized to adopt this ordinance pursuant to its powers under Chapter 160A of the North Carolina General Statutes, including but not limited to its authority over town streets and sidewalks pursuant to Article 15 of Chapter 160A;

NOW THEREFORE, BE IT ORDAINED BY THE BOONE TOWN COUNCIL THAT:

SECTION 1. Chapter 112 of the Boone Code of Ordinances is hereby repealed and deleted.

SECTION 2. Section 96.010 of Chapter 96 of the Boone Code of Ordinances is deleted and replaced by the text set forth in the attached **Exhibit A** to this Ordinance, which is incorporated by reference.

SECTION 3. All provisions of any Town ordinance in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 4. In the event any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of this ordinance, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance.

SECTION 5. This Ordinance shall be effective immediately upon its adoption by Town Council.

Adopted this ____ day of April, 2021

Rennie Brantz, Mayor

ATTEST: _____
Town Clerk

CONSIDERATION OF TOWN CODE AMENDMENTS TO MODIFY AND CORRECT THE TRAFFIC CODE

Ms. Meade presented corrections to the traffic code which included an incorrect cross reference following an amendment from several years ago, codifications errors, as well as language regarding parking violations. Ms. Meade indicated that when changes were made to the traffic code in 2019, some violations were deleted from the ordinance due to concerns she had with N.C.G.S. 168 which stated that the Town was not to adopt ordinance offenses that were identical to state offenses. She indicated that the problem with these deletions were that the Police Department was left without one of their important tools when they encountered these types of violations, which could lead to parking in front of fire hydrants, parking in some driveways, and parking in the streets and roadways. Since the language was previously deleted, Ms. Meade explained that when officers encountered these offenses, they would have to issue state law citations, which meant that they had to attend court. She noted that even though the violation was still duplicative of a state law violation, if Council agreed to make these violations civil matters, the offenses would not be subject to a criminal infraction penalty, but only to a civil penalty. Ms. Meade indicated that it was common in the state to decriminalize this type of offense. Mr. Furgiuele raised a question regarding parking spaces, as well as parking in spaces versus standing. Ms. Meade answered that she understood standing to mean that the car was sitting in a space, and may be running or have occupants still in it, while parking meant the vehicle was left unattended. Mr. Furgiuele suggested an exclusion be added in Number 11 of the text that unless there was permission from the person who owned or controlled the property. He added that there was ambiguity in the text regarding delivery trucks, and stated that he would feel better if there were constraints since streets should not be blocked by delivery trucks for a long period of time. Chief Le Beau recommended that officers be given discretion in this type of matter, and Mr. Ward suggested getting input from the DBDA. Chief Le Beau added that these incidences were complaint based, and did not believe delivery trucks caused much congestion. Ms. Meade suggested that she make changes to reflect the concerns discussed and bring the item back Thursday night.

DISCUSSION OF UPDATING THE TOWN'S COMPREHENSIVE PLAN

Ms. Meade requested discussion of updating the Town's Comprehensive Plan in association with Chapter 160D changes adopted by the state legislature. She indicated that the law now included a provision which indicated that the Town's comprehensive plan, which had to be in place for there to be a land use development ordinance, needed to be reasonably updated. Ms. Meade noted that while that was not defined in the statute, the School of Government had indicated that 15 years was considered the outside limit of what might be considered reasonably updated. Ms. Shook indicated that the Town could proceed with fixing the portions of the plan which were now outdated, with references to other plans that no longer existed, for example, or there could be a large scale review and revision of the plan. Ms. LaPlaca stated that she favored the full review and revision of the plan and asked what the cost of that might be. Ms. Shook suggested that a consultant would need to be hired to do an in depth review of the plan due to the department's current workload. She indicated that the cost for the review of the 2030 Plan was just under \$100,000. Mr. Furgiuele suggested that staff do the more modest update, removing obsolete references, but also that Council members rank the principles in the comprehensive plan on a three point scale, most important, moderately important, and least important so that when the Board of Adjustment, or Town Council itself, was considering how to weigh competing principles which happened in every case before the Board of Adjustment, that they would have guidance from Council as to which things were more important. He noted that many developments had been approved which were destructive to the Town, but justified under the Comprehensive Plan because there were so many different principles, some at odds with others, that nearly anything could be supported. He suggested that this ranking be done individually by Council members so that a special meeting would not have to be called, and that once responses were received by staff, discussion could be held at a later meeting regarding areas where there was not agreement. In response to a suggestion that volunteers be used to review the plan, Ms. Shook answered that while she did not have concerns with using volunteers for the review, it would still have to be a staff guided process. Mayor Pro-Tem Ulmer felt that it was important that outside parties review the plan to obtain new ideas and to help decide which parts need to be removed from the plan. Mr. Hicks further suggested a poll in order to have some form of engagement beyond Council. Mr. Furgiuele then made a motion that Council proceed with the shorter approach

as described in the proposal, and that members attempt to rank on the proposed three-point scale the matters that were already addressed in the Comprehensive Plan after staff has made the necessary adjustments to eliminate the things that had no current relevance, and have added points that would address green infrastructure. Mr. Hicks asked whether Mr. Furgieuele would consider putting forth a polling process as well. Mr. Furgieuele responded that he was not against public input, but felt that it was difficult to create an inclusive polling process. He added that he did not want Council to be bound to accept the results of the poll, especially if members of the Council were soliciting particular elements of the community to heavily participate in polling, even though much of the population did not have means to participate in polling. After brief discussion, Mr. Furgieuele then restated his original motion which was to accept the proposal for the more expedited review of the Comprehensive Plan; direct staff to work with the Town Attorney to remove things in the plan which were obsolete; direct that Mr. Santucci have a role in evaluating the environmental pieces in the plan before it came back to Council; members would be asked to give input and rank each of the principals in the plan on a three point scale, one being the least important and three being the highest importance; a discussion would take place at a meeting to see if an agreement could be reached regarding the items that members disagreed about before the formal process to send to public hearing. Mayor Pro-Tem Ulmer seconded the motion which carried unanimously. Ms. Shook asked for direction regarding the timeline of this project, and suggested August. Mr. Furgieuele felt that August may be too soon and suggested that the process be completed before a new Council was seated. Ms. Shook suggested that if staff brought the text back in August that Council would have until September to review and make suggested edits before it was discussed in September and sent to public hearing in October and voted on by Council in November. Mr. Furgieuele felt that initial input from Council could be given privately in order to save time, since he believed there were more areas of agreement than disagreement.

CLOSED SESSION

Upon a motion by Mayor Pro-Tem Ulmer, seconded by Mr. Furgieuele, Council voted unanimously to enter into closed session at 8:06 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 counterparties: (I) Watauga County (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- cv00006)).
4. 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 (I) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease (PIN 2911-50-4269-000 and 2911-50-2341-000).

Upon a motion by Mayor Pro-Tem Ulmer, seconded by Mr. Furgieuele, Council voted unanimously to exit closed session at 8:30 p.m.

ADJOURNMENT

Upon a motion by Ms. LaPlaca, seconded by Mayor Pro-Tem Ulmer, Council voted unanimously to adjourn the meeting at 8:32 p.m.

Nicole Harmon, Town Clerk

Rennie Brantz, Mayor