

TOWN OF BLACK MOUNTAIN PLANNING BOARD

The Black Mountain Planning Board held its regular meeting on Monday, April 25, 2022, at 6:00 p.m. in the Board Room of Town Hall at 160 Midland Avenue.

I. CALL TO ORDER

The meeting was called to order with the following members present:

Chris Collins, Chair
Pam Norton, Vice Chair
Kathy Phillips
Lauronda Teeple
Shawn Slome
Rick Earley
Chas Fitzgerald

Staff:

Jennifer Tipton, Senior Admin
Jessica Trotman, Planning Director
Ron Sneed, Town Attorney

The meeting was called to order at 6:00 p.m. and duly constituted and opened for business with a quorum of seven (7) members.

II. ADOPTION OF AGENDA

Chris Collins made a motion to move the right-of-closure ahead of old business. The motion to amend the agenda was approved by a vote of 7-0. Shawn Slome asked about adding public comment and Chris Collins said that there would be a structure for public comment, but it would have to be related to an agenda item. Shawn Slome made a motion to add public comment after old business. The motion was seconded by Lauronda Teeple and approved by a vote of 7-0. Chris Collins made a motion to adopt the agenda as amended. The motion was approved by a vote of 7-0.

III. ADOPTION OF MINUTES

Chas Fitzgerald noted two typos to be corrected in the March 28, 2022, minutes. Shawn Slome said that Town Attorney Ron Sneed's conflict should be noted under the right-of-way closure business. Town Attorney Ron Sneed asked that the record reflect that Mr. Slome contacted Chris McLaughlin at the School of Government asking if Mr. Sneed violated his oath by participating in the right-of-way closure discussion regarding procedural questions and Mr. McLaughlin stated that Mr. Sneed had not violated his oath. Chas Fitzgerald made a motion to adopt the March 28, 2022, minutes as amended. The motion was second by Rick Earley and approved by a vote of 7-0.

A copy of the email exchange between Shawn Slome and Chris McLaughlin is hereby attached to these minutes.

Chris Collins made a motion to adopt the minutes of February 28, 2022, as written. The motion was seconded by Rick Earley and approved by a vote of 7-0.

IV. NEW BUSINESS

1. Right-of-Way Closure Petition – Remainder of Buckeye Street

The Town Council voted unanimously to initiate the petition to close the remainder of Buckeye Street based on the recommendation from the Planning Board at their April 11th meeting. The right-of-way, if closed, would be split among the Town as the Town owns both properties that abut this section of right-of-way. This section of right-of-way is approximately two hundred feet in length and forty-two feet in width. There is an MSD sewer line that runs through the middle of the right-of-way and there are no plans for MSD to update that line or do any work in that area in the near future. Joshua Henderson, Recreation Director, expressed his support for the right-of-way closure. Shawn Slome asked about conflicts for future plans and that the park was converted from another use to a park. Jessica Trotman explained that by closing the right-of-way, no use is precluded in using the parcel as a park with park amenities. The right-of-way closure will have no conflicts with using the parcels as a park. Ms. Trotman said she did not know when the area changed from the Fire Department training ground to a park. Shawn Slome provided a definition for a right-of-way that he read aloud. Ms. Trotman explained that the term “no man’s land” refers to the ownership of the right-of-way. A right-of-way closure is a simple way to have the title brought up to date. The owners of the dirt underneath could conceivably come back and put other easements in the right-of-way if it is not closed. Mr. Slome clarified that a right-of-way is an asset to the Town and Ms. Trotman argued that they are not an asset because the Town is not the only one who can use unopened, platted rights-of-way. Rights-of-way are accepted when they are closed or a road is built, otherwise they are just an offering. Chas Fitzgerald made a motion to recommend the right-of-way closure of the remainder of Buckeye Street. The motion was seconded by Kathy Phillips. The motion was approved by a vote of 6-1 with Shawn Slome voting against. Shawn Slome asked about making a motion to table the item and asked about rescinding the vote. Ron Sneed said that only a person who voted in favor of the motion could rescind the vote. Chris Collins made a motion to rescind the vote for recommendation of the right-of-way closure. The motion was seconded by Chas Fitzgerald and failed with a vote of 4-3 with Rick Earley, Kathy Phillips, Pam Norton, and Lauronda Teeple voting against the motion.

2. Discussion of Ethics

Chris Collins said he went back and read the Boards and Commissions handbook and wanted to remind everyone of a few things. One of the main points that is reiterated is personal stances versus those of the Planning Board. Individual views do not need to be represented as a member of the Planning Board. Shawn Slome recommended that an attestation be added to the beginning of the meeting about conflicts of interest. Mr. Slome said that this comes from wanting to create trust, public perception, and transparency. Ms. Trotman explained that there are definitions of conflicts of interest and perception is not one of them and that public trust is created by following the rules and that making up rules for one board and not others is not fair and all board members have already signed an ethics policy. Appearance of impropriety is for attorneys and will only pertain to the Planning Board if they are dealing with any projects involving ARPA (American Rescue Plan Act) money. Anyone is free to disclose anything in a meeting, but it is not required. The attestation cannot be used for appearance of impropriety. Mr. Sneed said he would

Planning Board Regular Meeting
April 25, 2022

recommend that a conflict not be brought up until the matter is up for discussion. Planning Board is a recommending body so it does not mean much more than a lip service because members will vote their conscience either way. Members could not recuse themselves for appearance of impropriety. Members are expected to come to the meeting with their knowledge and information of the Town. The best practice is to come with an open mind for projects and be able to accept facts and information. Shawn Slome made a motion that the chair read an attestation statement after the opening of the meeting. The motion was seconded by Chris Collins and denied by a vote of 5-2 with Rick Earley, Kathy Phillips, Pam Norton, Lauronda Teeple, and Chas Fitzgerald voting against the motion.

V. OLD BUSINESS

1. Continued Discussion of Potential Tree Ordinance

The Board was provided two example ordinances from Boone and Wake Forest as well as some example site plans from the City of Asheville. Chas Fitzgerald said he felt that Wake Forest had the better ordinance as it provided more detailed information and criteria. Rick Earley asked about tree ordinances not being applicable to one- and two-family lots. Jessica Trotman said that North Carolina does not authorize municipalities to regulate tree removal on one- and two-family lots but it could be applicable to residential developments and commercial projects. Ms. Trotman provided a graph of permits that have been issued by type for the past year and the majority of the permits that were issued would not be applicable to tree ordinance regulations. Ms. Trotman also provided a graph of subdivisions within the last year, just the subdividing of lots and not developments, and again, those would not have required a tree ordinance application either. The opportunity to apply a tree ordinance will only be about once a year or every eighteen months, as the Town does not see a lot of new commercial projects or large residential developments. Lots that are subdivided and are not built on, but are offered for sale, would not be subject to a tree ordinance but a development project where infrastructure would be built and houses would be built and sold, then that development would be subject to a tree ordinance. Chris Collins said that in the City of Asheville the tree protection ordinance is applied at the time of the subdivision, and it must be recorded. On subdivisions that have no additional infrastructure, the tree protection ordinance would not be applied but would with major subdivisions and will remain in perpetuity. The UDO will feature increased buffering and require buffering between uses and not just districts and will also add more categories of subdivisions. A tree ordinance would not be applicable to existing subdivisions such as Sweet Birch and Tudor Croft. Once a subdivision goes past a family or exempt subdivision, then all development regulations would be applied, including a tree ordinance. Chas Fitzgerald said he really likes the continuity of protection that the City of Asheville provides, and it is done on developments. Ms. Trotman said she did speak to Kelli McCormick and asked to move up the trees, buffers, and landscaping section and she should be able to have that module available by May but it would not be adopted in the band-aid fashion but would allow the board to work on a chapter that they are interested in and allow creativity and time to really come up with good, strong regulations. Chris Collins mentioned the amount of time it takes for a band-aid ordinance and Ms. Trotman also said that a band-aid would just be repealed once the UDO is adopted. Rick Earley said he read in several ordinances that the trigger is when a development goes before the TRC (technical review commission). The consultant

Planning Board Regular Meeting
April 25, 2022

does have copies of the ordinances and Ms. Trotman will pass along the notes to the consultant. Lauronda Teeple said that maybe incentives could be offered where the Town cannot regulate, such as with one and two-family lots. The UDO is on schedule and will take approximately eighteen months. Shawn Slome asked about the oak trees on the Baptist Church property and if they could be protected and because that is a grandfathered existing lot then no. Mr. Slome asked if the trees were in the right-of-way, then could be they protected. Ms. Trotman said that Planning Board does not have any jurisdiction on the public right-of-way so no and that removal of a tree in the right-of-way would typically be up to the utility company and if the tree might be a burden. Mr. Sneed spoke about rights-of-way and the ability to remove trees and also noted that the Town has varying rights-of-way throughout town and not all rights-of-way are the same. Town Council could come up with regulations about tree removal in the right-of-way and designate that to an employee. Ms. Trotman can write a memo of the recommendation to the Town Manager to send to the Town Council. Shawn Slome asked about major and minor subdivisions and minor subdivisions are four lots or less and major subdivisions are more than four lots with dedicated roads. Lauronda Teeple made a motion to have Town Council initiate a permit and criteria to remove a tree in the public right-of-way. The motion was seconded by Pam Norton and approved by a vote of 7-0. Lauronda Teeple asked about permit expiration and it was explained that most development permits do have expiration times and if a development permit expires and the developer wants to come back they would have to resubmit and meet the development regulations in place at that time, however, this would not typically apply to developments with approved master plans because they have a vested right. Jessica talks about property rights – Sneed talks about 160D and legal fees if staff makes an egregious decision and then not an egregious decision.

VI. PUBLIC COMMENT

Ann Lutz, 211 N Park Lane, said she lives in Armageddon and is happy that tree protection is being considered but hates that it will take eighteen months before it would be adopted. Ms. Lutz asked about the right-of-way and Mr. Sneed said that the Planning Board will be asking the Town Council to consider regulations for trees in the right-of-way. A moratorium process takes longer than adopting an ordinance and the process is extremely strict and tedious and has to be harmful. Moratoriums are subject to challenging and would be subject to attorney's fees

Carrol Anthony Williams, 449 Padgettown Road, is an arborist and asked about the validity of a steep slope ordinance and urged the board to be very clear about what they are looking for in terms of a tree ordinance because there are so many factors such as topping trees, dying trees, not cutting trees, etc. and be very specific about what you do not want to happen.

Constance Rosato, 108 S Park Lane, said she would second the arborists comment that unless the tree ordinance is very clean then the town will not look the way we want in three years. Ms. ? also applauded the boards attempt at transparency and developing trust.

VII. COMMUNICATION FROM PLANNING BOARD

None.

Planning Board Regular Meeting
April 25, 2022

VIII. COMMUNICATION FROM STAFF

Ms. Trotman said that once the UDO modules start to come in, the board will start reviewing the text and making comments within the module. The first module should be ready for the May meeting and Ms. Trotman has asked the consultant to have the first module deal with trees, buffering, and landscaping.

IX. ADJOURNMENT

The meeting was adjourned at 7:46 p.m.

Prepared by:

Chris Collins, Chair

Jennifer Tipton, Senior Admin

Jennifer Tipton

From: Shawn Slome <shawn.slome@gmail.com>
Sent: Monday, May 23, 2022 4:36 PM
To: Jennifer Tipton
Subject: Re: May 23, 2022, Planning Board Agenda Packet
Attachments: image001.png; image002.png

Hi Jennifer,

In reviewing the minutes of the last meeting, I do not think Mr Sneed accurately described the response from the SOG. I think it would be appropriate to include the full exchange for the record.

Thanks,
Shawn

On Wed, Apr 13, 2022 at 9:01 AM McLaughlin, Christopher B <mclaughlin@sog.unc.edu> wrote:

Shawn, my take is that the attorney satisfied his ethical obligation concerning the potential conflict by disclosing it to the board. It was then up to the board to decide if they wanted him to advise on the matter in a limited fashion or if they wanted to bring in separate counsel for this matter. Technically, the attorney's disclosure was supposed to be in writing, but given that he made the disclosure in public in open meeting I think he satisfied the spirit if not the letter of the ethical rules.

Chris

Christopher B. McLaughlin (he/him/his)

Professor of Public Law and Government

School of Government

The University of North Carolina at Chapel Hill

Campus Box 3330, Knapp-Sanders Building

Chapel Hill, NC 27599-3330

919.843.9167

www.sog.unc.edu



From: Shawn Slome <shawn.slome@gmail.com>
Sent: Wednesday, April 13, 2022 7:48 AM
To: McLaughlin, Christopher B <mclaughlin@sog.unc.edu>
Subject: Conflict of Interest Question

Hi Chris,

I hope all is well at the SOG.

I have another conflict of interest question regarding our Town Attorney.

In our recent Planning Board meeting, there was a petition to close a ROW. Before the petition was heard, the Town Attorney stated:

"Madam Chair, before we start on this one, my firm has a conflict on this one. I will be here, I can answer procedural questions or clear legal questions. I can't comment or assist too much with the facts about the situation."

He went on to say:

"If it's a clear legal question I can answer that or a procedural question that doesn't rely on these facts and answer them. Once you get into the facts of this street closing, I can't comment or assist with the facts of this situation."

Following these comments, he remained on the dais and responded to all the questions that were put to him, as he normally would.

My questions:

Does his response and behavior comport to his Oath of Office as it pertains to Conflicts of Interest?

Should he have recused himself?

Should he have removed himself from the room?

Should he have arranged for an unconflicted Attorney to take his place?

I appreciate your assistance.

Kindest regards,

Shawn

III. ADOPTION OF MINUTES

Chas Fitzgerald noted two typos to be corrected in the March 28, 2022, minutes. Shawn Slome said that Town Attorney Ron Sneed's conflict should be noted under the right-of-way closure business. Town Attorney Ron Sneed asked that the record reflect that Mr. Slome contacted Chris McLaughlin at the School of Government asking if Mr. Sneed violated his oath by participating in the right-of-way closure discussion regarding procedural questions and Mr. McLaughlin stated that Mr. Sneed had not violated his oath. Chas Fitzgerald made a motion to adopt the March 28, 2022, minutes as amended. The motion was second by Rick Earley and approved by a vote of 7-0.

On Fri, May 13, 2022 at 10:45 AM Jennifer Tipton <jennifer.tipton@tobm.org> wrote:

Good morning and Happy Friday!

Please find attached the agenda packet for the May 23rd Planning Board meeting.

Kelli McCormick will be presenting the information for trees, buffering, and landscaping at the meeting so that information is not in the packet.

I will not be mailing out packets, but I will have a printed copy of the agenda and minutes and your seat on Monday the 23rd.

Thank you.

Jennifer Tipton

Senior Admin

Town of Black Mountain

160 Midland Avenue

Black Mountain, NC 28711

828-419-9371

www.townofblackmountain.org