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## TRANSYLVANIA COUNTY PLANNING BOARD MINUTES

### Planning Board Meeting, March 21, 2019

#### Call to Order, Mack McNeely

The Transylvania County Planning Board met on Thursday, March 21, 2019, at 7:00pm in the Community Services Building Conference Room. Members present were Chair Mack McNeely, Vice-Chair Sandy Watson, Kimsey Jackson, Bob Twomey, and Steve Woodsmall. Lauren Wise was absent (excused). Also present were Transylvania County Attorney, Misti Bass and part-time Attorney, Mary Ann Hollocker. Staff members present were Transylvania County Planning and Community Development's County Planner, Joy Fields, and Program Assistant, Beth Webb. Also present were seven (7) members of the public. No media were present.

- I. **Welcome:** Mack McNeely welcomed board members and the public to the meeting.
- II. **Public Comment:** None.
- III. **Approval of Agenda:** Mack McNeely asked if everyone received the modified agenda. All concurred receipt of the modified agenda. Kimsey Jackson made the motion to approve the agenda. The motion was seconded by Bob Twomey and carried unanimously.
- IV. **Approval of Minutes:** Sandy Watson moved to approve the meeting minutes for February 21, 2019 as presented. The motion was seconded by Bob Twomey, and carried unanimously.
- V. **Subdivision Approvals and Updates**
  - Joy Fields notified the Planning Board that there were twelve (12) plats reviewed including: seven (7) changing of boundary lines, three (3) family subdivisions, one (1) 2 lot reviewed for review offer, and one (1) single-lot inherited by a will, between the dates of February 19, 2019 – March 18, 2019.
  - Mack McNeely asked if there were any major subdivisions in the works. Joy Fields advised none that have not been heard about in the past. There was the Whisper Hills variance and master plan last summer. Waiting for developer to move to the next step. Steve Woodsmall requested that staff updated all forms to remove Mark Burrows and Kalen Lawson. Staff shared that the process had begun and that it would be complete soon.

VI. Old Business:

A. Noise Ordinance (Presentation)

Misti Bass, Transylvania County Acting Attorney and Mary Ann Hollocker, part-time Attorney in the legal department attending as well. Misti was asked by Jaime Laughter and Joy Fields to attend and provide guidance regarding the inclusion of a decibel level in the Noise Ordinance and whether there are logistical, or legal concerns.

Misti had three (3) questions to answer from Joy Fields.

- (1) Is a decibel level enforceable in court? Yes, in 1972, the Federal Government set up a special department in the EPA to look at the effects of noise and issued the Federal Model Ordinance in 1975, which includes a chart with decibel levels. An EPA study could provide a resource for setting decibel level limits that would be related to hearing damage and annoyance. Case law states, Noise Ordinances can either have, or not have, decibel levels. It is a Judge's personal opinion that affects the ability to prosecute without decibel levels. If a Noise Ordinance went into effect with decibel levels, the County would have to purchase equipment, send people to training, and calibrate the equipment. Enforcement would be similar to a ray gun or breathalyzer. Sound may stop when the officer appears and measurements would have to be taken to reduce, or eliminate ambient noise. The officer would need to be able to show in court that it is the sound they heard, the measurements were taken properly and the limits set in the ordinance are easily understood.
- (2) What do you need to consider if there is a Noise Ordinance? Tie decibel level to statutory authority, North Carolina General Statute 133 – frightened and annoyed and General Statute 121 – creating conditions that threaten health and safety. Main court challenges fall into two categories, nuisance and the regulation of free speech. Because of that, Noise Ordinances are very difficult to win in court and can be challenged under the 1<sup>st</sup> amendment. Language specifically used in case law are “unnecessary” and “too loud”. Is it audible from a certain distance? Certain categories cannot be exempted while others are regulated due to the freedom of speech. Exemptions in certain locations (such as industrial areas) are more defensible than exemptions of certain types of businesses. Measurements must be taken off of property causing noise and at a specified distance or location set forth in the ordinance.
- (3) Is it sufficiently detailed to allow an ordinary citizen to understand limits? Narrowly drafted to support Government interest and content neutral. 1) Where will the decibel measurements be taken? 2) Percent of time over decibel level – amount of time measurements will be taken to determine violation.

Joy Fields recommended that the next step for the planning board is to think over what was heard tonight and consider the content of the ordinance at the next planning board meeting. Members will have time to review the Model Noise Ordinance from the EPA and the board will have time to look at the decibel level charts. Also, review the definition of industry that the planning board requested at the last meeting. Consensus by the board members was to come back to the Noise Ordinance at the next meeting. Mack McNeely thanked the Chief Deputy

Sheriff for coming back out to the Planning Board meeting, very appreciated. Steve Woodsmall asked, if you were going to write a Noise Ordinance, what would you say to make it worthwhile? Misti Bass advised to refer to case law standards developed scientifically on the books – certain noise at this decibel level is dangerous to health and safety and enforceable. Do what we can and get the officers trained to enforce it. Joy asked if there were any other additions. Misti Bass asked if we would let her know what is needed from her. Bob Twomey and Kimsey Jackson thanked all for coming.

**B. Watershed Ordinance (Update)**

Joy Fields advised that there is a public hearing on March 25, 2019, at the beginning of the County Commissioners meeting. The Watershed Protection Ordinance was sent to the County Commissioners in January. Joy Fields recommended that the Planning Board members put this date on their calendars and attend the public hearing portion of the meeting if possible. Public Hearings are the first item on the agenda. Bob Twomey asked if we anticipate any concerns. Joy Fields stated that she has not heard any public input.

**C. Transylvania County Bicycle Plan (Review updated draft)**

Joy Fields advised that back in January the planning board received a copy of the Transylvania County Bike Plan. The plan reviewed by the board in January did not include the public comments nor the comments from NCDOT. Since the planning board meeting in January, NCDOT reviewed and provided comments to the draft plan.

Joy Fields reviewed the Transylvania County Bike Plan with the Planning Board and it was decided that the board would consider the plan and consider a recommendation for the County Commissioners at the next meeting.

**D. Small area plan update (Update)**

Seven applications were received by the March 15<sup>th</sup> deadline for the Cedar Mountain Zoning Board. The application period may be extended and re-advertised. There was a request from Dunn's Rock for staff to come out to provide a presentation about the small area planning process. There is a normally scheduled community event at Dunn's Rock Community Center on April 18<sup>th</sup>, which is a conflict with the next scheduled Planning Board meeting. Joy asked if there is a potential to modify the date for April's meeting to the week of April 11<sup>th</sup>. Steve Woodsmall questioned if it would be feasible for Dunn's Rock to come to the Planning Board meeting. Joy stated that typically the attendance increases if the meeting is held in the community.

Bob Twomey questioned when the commissioners are appointing people to the Cedar Mountain Small Area Planning Committee. Staff is not sure when the appointments will be made. Kimsey Jackson questioned who would be attending the community meeting? The Planning Board or the Planning Department staff? Joy Fields advised that the Planning Department staff would attend the Dunn's Rock meeting on April 18<sup>th</sup> and that it is a potluck meeting open to the public.



Steve Woodsmall moved to change the Planning Board meeting date to April 11, 2019 and Kimsey Jackson seconded and the motion carried unanimously.

## VII. New Business

### A. Planning and Community Development Update

- Beth Webb is the new Interim Program Assistant and will be helping out for at least the next six weeks.
- Interviews for the Planning and Community Development Director will begin next week. Joy is being interviewed on Monday, March 25<sup>th</sup>.
- There is a Quasi-Judicial board training May 15, 2019, in Asheville if anyone is interested. The fee is \$60.00 and the County will cover the cost for Transylvania County Planning Board members who wish to attend.

## VIII. Public and Board Member Comments

- James Brooks (public attendee) spoke and stated that the bike plan is exciting to him. He prepared for the planning board meeting by listening to the last meeting to hear what was discussed and where the board is going on safety issues and bikes. Discussion about the economic impact and lack of priority for bicycles is the same conversation twice. He has been to towns where tourism is huge and they are a destination town. Bozeman, MT is a town that is similar to Brevard and has grown a lot from investing in bikes. A bike plan and bicycle infrastructure works to our strengths with a small town atmosphere.
- Kenn Webb did not grow up in this area – saw this as a place to retire. Interesting place to meet newcomers is at the County collection centers and landfill – almost everyone he meets has moved to this area because of the natural beauty. One of the reasons why people are moving to this area is for a healthier lifestyle. He said that he would like to be able to ride his bike safely. Also stated that jobs aren't coming back like they were at one time.
- John Wayne Hardison, Jr. thanked the Planning Board for their time and planning. He is also frustrated at the rudeness of bikers on the road, they will be at a stoplight and pull out in front of you. It's hard to judge the economy, but motorists aren't polite either. Are opportunities there to make things safer for bikers?
- Mack McNeely thanked everyone.
- Kimsey Jackson disagreed and stated that jobs could come back to the area and that the County could have jobs that paid well, as well as the outdoors and beauty too. Kimsey stated that a contractor came and made recommendations, public participation was limited at those committees. Transylvania County needs an approach to attract jobs that pay well like Ecusta and DuPont. Thinks that we can have both and thinks we need to try for that. Disappointed that there hasn't been more activity to bring industry back here.
- Sandy Watson recalled a County Commissioner meeting – economic growth isn't out of the question, but tough when we don't have the infrastructure.

**TRANSYLVANIA COUNTY PLANNING BOARD MINUTES**  
**Regular Meeting, March 21, 2019**

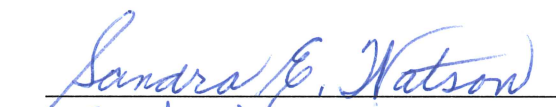
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- Steve Woodsmall stated that the jobs that Transylvania County would be able to attract, would be green jobs.
- Bob Twomey stated that tonight is a good example of what we are considering for the County and that the planning board is looking to try to come up with a representative Bicycle Plan, highlights what makes being on the board so enjoyable. The plans get studied and the board tries to decide what is best for the board and best for the County. He is amazed sitting on the headwaters of the third oldest river that more breweries are not moving into the area to capitalize on the water. There was an opportunity in the past to get three industries at the DuPont plant and they were all nixed. Tonight was good and Joy did a good job.
- Mack McNeely stated Economic Alliance is doing a good job – manufacturing employment is up 50 % since hiring Josh and not a building in the County is unoccupied. Things are improving – there has to be balance – things change.
- Kimsey Jackson stated that we have a lot of needs. Rennova – why is it not moving forward – flat property but the legacy and environmental concerns may be hampering development. Mack McNeely stated that it will take a unique business and that it will be a tough sell.
- Bob Twomey asked about the Brevard bypass – Joy Fields shared that the bypass was modified to be the Wilson Road improvements and was only one of four road projects to address the traffic congestion in the City of Brevard. At one of the last Transportation Advisory Committee meetings it was questioned whether all four road projects, including the West Loop, are still needed since the vehicle miles traveled that showed congestion was based on information from the 1990s? Is it needed with the current traffic we see in the summer?
- Bob Twomey questioned if the cell tower had been approved. Joy stated that it has not yet been permitted.

**IX. Adjourn**

The next meeting is scheduled for April 11, 2019 at 7:00pm and there being no further discussion, Sandy Watson moved to adjourn. The motion was seconded by Bob Twomey and carried unanimously.

**MINUTES APPROVED**

  
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Sandy Watson, chair

  
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Joy Fields, Recording Secretary & Planner