
**TRANSYLVANIA COUNTY PLANNING BOARD MINUTES
Regular Meeting, August 15, 2019**

Call to Order, Sandy Watson - The Transylvania County Planning Board met in regular session on Thursday, August 15, 2019, at 7:00 pm in the Community Services Building conference room. Members present were Chair, Sandy Watson, Vice Chair, Kimsey Jackson, Bob Twomey, Rick Lasater, John Wayne Hardison and Lauren Wise. Staff members present were Transylvania County Planning and Community Development's Director, Jason Stewart and Program Assistant, Beth Webb. Also present were County Attorney, Misti Bass and Chief Deputy Sheriff, Eddie Gunter. No media were present.

- I. **Welcome:** Sandy Watson welcomed everyone. The meeting began @ 7:00 p.m. Bob Twomey said the invocation and John Wayne Hardison led the Pledge of Allegiance.
- II. **Public Comment:** None.
- III. **Approval of Agenda:** Kimsey Jackson made the motion to approve the agenda, the motion was seconded by Lauren Wise and carried unanimously.
- IV. **Approval of Minutes** Sandy Watson moved to approve the Regular Meeting minutes for July 18, 2019. The motion was seconded by Kimsey Jackson and carried unanimously.
- V. **Subdivision Approvals and Updates:** Jason Stewart notified the Planning Board that since July 18, 2019, there have been twelve (12) plats reviewed, three (3) changing of boundary lines between adjoining property owners, five (5) recombination of previously approved lots, two (2) family subdivisions, one (1) greater than 10 acres and one (1) review only.
- VI. **Old Business:**
 - A. **Noise Ordinance:** Review with County Attorney, Misti Bass –

Misti Bass, County Attorney, reviewed the current Noise Ordinance with Planning Board Members. There was much discussion and review of the current Noise Ordinance, the below changes were recommended by the County Attorney.

- **Article III, Purpose** reads, "The purpose of this Ordinance is to establish an effective means of regulating and controlling loud offensive sound and noise within Transylvania County to 1) promote the health, safety and general welfare for residents and visitors; and 2) protect the interest of local businesses while providing reasonable regulations." Misti Bass, County Attorney advised that she would not use the word offensive, just because you have to be content neutral. The courts have routinely held up disturbing which is used later, so she would change that to disturbing. Offensive sounds like you could be leaning more towards language rather than content. In North Carolina, you can only do ordinances for what the statute allows. Article III, Purpose 1) "promote the health, safety and general welfare for residents and visitors" is tracking the language of your statute and the statute says of its citizens, so she had changed it to citizens. A noise ordinance under the law is a restriction on first amendment rights on free speech,

that's the way it is classified and that why it's looked at like that, so actually 2) "protect the interest of local businesses while providing reasonable regulations". First of all, she is not really sure that this protects the interest of your local business and many times it might go against them. The second thing is that it is not a valid reason to restrict first amendment rights to free speech. She would just line that out. She would cut visitors off, just because the statute says citizens, this is not saying that they can't complain. That just tracks exactly what the statute says, which she thinks makes it less likely to sustain it. **Article III, Purpose should read, "The purpose of this Ordinance is to establish an effective means of regulating and controlling loud and disturbing sound and noise within Transylvania County to promote the health, safety and general welfare for citizens."**

- **Article IV –Jurisdiction and Administration** - Misti Bass, County Attorney, advised that NC G.S. Article 153A48 says that you keep all your ordinances with the Clerk to the Commissioners. So, that is where she would store it and not the Register of Deeds. NC G.S. 153A48 says the clerk and anywhere the word clerk is used, it means Clerk to the Board of Commissioners. If the County Attorney hears that we need to include any other office, she will let us know. Board member, Jackson stated that there is another change that needs to be made, it's not the Sheriff's Department, but the Sheriff's Office. **Article IV, Jurisdiction and Administration should read, "This Ordinance shall apply to all areas of Transylvania County located outside the boundaries of any incorporated city or town. Transylvania County Noise Ordinance is on file at the Transylvania County Clerk to the County Commissioners. The Transylvania County Sheriff, or their appointee, shall be known as the Enforcement Officer."**

- **Article V – Definitions**

Ambient noise level reads, an A-weighted sound level based on at least three readings made and recorded over a period of no less than ten minutes, made at the location where a complainant claims to be disturbed by an alleged violation but at a time when no noise is then being alleged to violate this Ordinance, and made at a point no closer than outside the property line of the property from where the noise is generated. Misti Bass advised that this is a little different from the definition, because your ambient noise needs to be taken from the same location as you are taking the violation. "And made at a point no closer than outside the property line of the property from where the noise is generated", they are pulling that from case law too, because you can't measure off of that person's property.

- 1.4 Reads, "Disturbing – noise which is perceived by a person of ordinary firmness, and sensibilities, and temperament as interrupting the normal peace and calm of the area, neighborhood, or vicinity." Misti Bass noticed that some words had been added in, like temperament, disturbing is one of the words that the courts have said is okay. And, they defined it as annoys, disturbs, injures or endangers the comfort, health, peace or safety of a reasonable person of ordinary sensibilities. And, since they have said that definition is okay, that is what she would use. **1.4 should read, "Disturbing – noise which annoys, disturbs, injures or endangers the comfort, health, peace or safety of a reasonable person of ordinary sensibilities."**

- 1.6 Reads, “Unreasonably loud – noise which is substantially incompatible with the time and location where created to the extent that it creates an actual or imminent interference with peace and good order.” – Misti Bass advised that unreasonably loud has also been okay, but you added on an actual interference with peace and good order and the courts have said it has to go back to a person. Misti Bass advised that she would change the language to match the language in the case law for unreasonably loud. Misti will send the actual wording to us.
- **Article VI – Noise Regulations Section 2 - Noise Regulations** – reads, “It shall be unlawful for any person or persons to make, permit, continue, or cause to be made or to create any unreasonably loud and/or disturbing noise in the County. Noise of such character, intensity and duration as to be detrimental to the health, safety or welfare of any reasonable person of ordinary firmness, and sensibilities, and temperament in the vicinity is prohibited.” Misti Bass stated that we have brought in the word temperament and firmness and she advised that she would just say a person of ordinary sensibilities. **Section 2 Noise Regulations should read, “It shall be unlawful for any person or persons to make, permit, continue, or cause to be made or to create any unreasonably loud and/or disturbing noise in the County. Noise of such character, intensity and duration as to be detrimental to the health, safety or welfare of any reasonable person of ordinary sensibilities in the vicinity is prohibited.”**
- 2.1 Reads “In determining whether a noise is unreasonably loud and/or disturbing, the following factors incident to such noise are to be considered based on the totality of circumstances surrounding a particular determination:”
 - Delete : E.** Whether the noise is enhanced in volume or range by any type of electronic or mechanical means; (Misti Bass advised that you have a constitutional right to amplify).
 - Delete: F.** Whether the noise is related to the normal operation of a business or other labor activity; (Misti Bass advised that she thinks this one is problematic as well. There was a case where it was restricted, it was sound trucks that went through the streets and got on a loud speaker, so they basically said that you can’t do that unless it’s a business. Businesses can do that if they are selling ice cream. And the court said no, that’s not content neutral.)
 - Delete: G.** Whether the noise is related to an event that obtained a valid permit; and
 - Delete: H.** Whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof. (Misti Bass advised that if it’s a type of noise that you can’t control, then she doesn’t know how you would hold them liable for it.)
- 2.2 Should read, **“To determine if the noise is in violation of this Ordinance, the Enforcement Officer will use a decibel meter to measure the offending noise level in the following manner”** The word “there” was deleted.
- 2.2.2 Should read, **“Sound measurements shall be taken at the complainant’s curtilage closest to the offending noise which shall be at the same location where the ambient noise level is recorded, if it’s recorded.**
- 2.2.3 Is okay the way it is written and reads, **“Sound measurements shall be taken using an A-weighted sound level based on at least three readings made and recorded over a period of no less than ten minutes.”**
- 2.2.5 Is okay the way it is written and reads, **“A violation shall have occurred if the offending noise level exceeds the ambient noise level by more than: 15 decibels, so that the total noise level is over 65 decibels between the hours of 9:00 p.m. and 6:00 a.m.; or 20 decibels so that the noise level is over 75 decibels between the hours of**

6:00 a.m. and 9:00 p.m.” Misti advised that the court is very big on restricting, so time and place are the kinds of things that you can do, as long as you are content neutral. You are supposed to draft as narrowly as possible.

- Section 3: Exempted Noises:
- **Delete 3.2**, which reads, “Commercial Service or industrial operations from 6:00 a.m. to 9:00 p.m. on weekdays and 8:00 a.m. to 9:00 p.m. on weekends for which applicable permits have been issued, or operations not requiring permits due to ownership of the project by an agency of government; provided all equipment is operating in accordance with the manufacturer’s specifications and with all standard equipment manufacturer’s mufflers and noise-reducing equipment in use and in properly operating condition.” (Everyone was in agreement to delete.)
- **Delete 3.8**, which reads, “Musical accompaniment at military ceremonies that is taped outdoor music, or music played with instrument not electrically amplified.” (Misti Bass stated that she knows that we talked about military music the last time and that she thinks that this is definitely not content neutral. Also, a noise ordinance is a restriction on your person to have the right to free speech. That’s how the court looks at it and you are restricting. Music is classified as speech. There is a lot of case law about regulating music and specific types of music.) After much discussion, it was agreed by Planning Board members Watson, Twomey, Wise, Lasater and Hardison that this section should be deleted. Board member Jackson opposed. Misti Bass advised Planning Board members that she knows they do not want to do the whole noise ordinance again, but to remember that it is not set in stone, so if something does become an issue, you can go back and address a singular point of it.
- 3.10 reads, “Use of firearms for lawful recreational purposes and noise associated with taking any wildlife resources.” Misti Bass advised that 3.10 was not included in the copy of the Noise Ordinance she reviewed, so she really hasn’t done a lot of looking at this item.

Misti Bass advised the Planning Board that they didn’t mention shooting ranges, but there is a statute that exempts them from noise ordinances, if they are in existence prior to the noise ordinance. She doesn’t know if you want to put them under the exempted or not. They are exempted by NC G.S.14-409.46, *“any person who owns or operates or supports a shooting range is not subject to an action or a nuisance on the basis of noise or noise pollution.”* And, the one above that says, *“they are not subject to civil liability or criminal prosecution for nuisance or noise pollution in the operation of the range, if the range is in compliance with the noise laws and ordinances that were applied when the range began operation.”* So it’s kind of like a grandfather clause, it’s not like a new one, but anybody that is in existence now, you would have to apply the old standard that was in when they came in. If she was going to put it in there, she would just put “shooting ranges in accordance with” and cite the statute number, which is NC G.S.14-409.46.

- Section 4: Noises Prohibited:
- 4.2 reads, “Noise that is perceived by a person of ordinary and reasonable sensibilities as interrupting the normal peace and calm of an area or neighborhood.” Misti Bass advised that we tied this item to the piece of the neighborhood. And, again they said that it had to relate to the person. Misti will send us the language.

- 4.4 reads, “Dogs or any other constrained animals that, by frequent, recurrent or constant howling, yelping, barking, baying or otherwise cause unreasonably loud or disturbing noises, provided the animals are not associated with farming operations as defined by NC G.S. 106-581.1” Misti Bass stated that there was a question of baying versus braying and it was related to donkeys. You have to be careful about regulating farm animals.
- **Delete 4.5** “Knowingly permitting the occurrence or emanation of any of the foregoing specifically enumerated violations of this Ordinance on property owned, possessed, or used in whole or in part by any person or entity shall be a violation of this Ordinance, unless a permit is applied for and granted by the Enforcement Officer prior to the occurrence.”
- **Delete Article VIII – Permit Procedure.**
- 9.2.1. – Compliance Order:
- Kimsey Jackson questioned 9.2.1.1 – “Upon making a determination that a person is in violation of this Ordinance, Transylvania County may issue a compliance order to the person in violation of this Ordinance...” Who is Transylvania County? Should it have an office? Misti Bass advised that is a compliance order, so it will be through your County Attorney. Because this is a civil remedy, whoever your County Attorney is at the time, will issue it on behalf of the county. The Sheriff’s Office will be doing all of the criminal citations. Your County Attorney will file your civil actions. Assuming the county is instigating the actions and not a private individual.

Sandy Watson advised that she will not be here next month. We were going to discuss when we were going to have a workshop with the public invited. Jason Stewart advised that we may need a little more time. Jason also advised that we can get them a draft of the Noise Ordinance so they will at least have comments.

Chief Deputy Gunter stated that he and Misti Bass would be happy to attend the next Planning Board Meeting.

VII. **New Business**

A. Planning and Community Development Department Update - Planning Director, Jason Stewart advised that we have scheduled the initial meeting for the Cedar Mountain Small Area Planning Committee meeting on September 24, 2019 at 6 p.m. in Community Services Building. The commissioners have appointed five members to the committee. The Planning Board was encouraged to attend.

B. Other – There was no other business discussed.

VIII. **Public and Board Member Comments**

Bob Twomey stated that tonight is just another good example of how reasonable, common sense people with the help of your all’s guidance are still trying to come up with the most perfect ordinance that we can. And, even though we may have disagreed or questioned each other on interpretations, the bottom line is he thinks we came up with something good. And, of all the committees or boards that he has ever served on, this is one of the most professional groups that shares opinions and ideas and comes to a consensus. Sandy Watson added that this is exceptional and even though we have new members, there is no animosity. She used to come

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to these meetings three years ago, because she was an advocate for the 2025 Comprehensive Plan and it was very contentious at times.

Planning Board members thanked County Attorney, Misti Bass and Chief Deputy Gunter for attending the meeting.

- IX. **Adjourn:** The next meeting is scheduled for September 19, 2019 at 7:00 pm and there being no further discussion, Kimsey Jackson moved to adjourn. The motion was seconded by John Wayne Hardison and carried unanimously. The meeting ended at 9:45 p.m.

MINUTES APPROVED


Sandy Watson, Chair


Beth Webb, Recording Secretary