

**TOWN OF BLACK MOUNTAIN  
PLANNING BOARD**

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The Black Mountain Planning Board held its regular meeting on Monday, March 28, 2022, at 6:00 p.m. at Town Hall and electronically via Zoom.

**I. CALL TO ORDER**

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

Pam Norton, Vice Chair  
Kathy Phillips  
Lauronda Teeple  
Shawn Slome  
Chas Fitzgerald

Absent:

Chris Collins, Chair  
Rick Earley

Staff:

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

The meeting was called to order at 6:05 p.m. and duly constituted and opened for business with a quorum of five (5) members.

**II. ADOPTION OF AGENDA**

The agenda was approved as presented by consensus.

**III. ADOPTION OF MINUTES**

Chas Fitzgerald noted that a word needed to be changed in bullet point five on the first page. Mr. Fitzgerald also noted that bullet point one on the first page appeared to be incomplete. Jennifer Tipton said she had received notes from Kathy Phillips and Rick Earley about adding the tree discussion under the UDO update. Ms. Tipton will make the requested changes and bring the minutes back for review at the April meeting.

**IV. OLD BUSINESS**

**1. Road Closure Request – Buckeye Street**

Town Attorney Ron Sneed said that he had a conflict and could only advise the board on procedural questions. Jake Hair presented the staff report and explained that the applicant is Thomas Woodbury, and he is petitioning to close a portion of the unopened, platted section of Buckeye Street that runs east to west alongside his property at 201 Swannanoa Avenue. The unopened portion is approximately 130 feet in length and 42 feet in width. The unopened, platted section does not have any structures, but it does have a four-inch sewer line running the length of the right-of-way. The unopened, platted section is not identified in any current Town plan, nor is it needed for any storm drainage. The original intent of these platted rights-of-way are for access, vehicular or pedestrian, and only if the Town were to create a road in the right-of-way could there be new utilities located within the right-of-way. Jessica Trotman spoke about the walking loop at Cragmont Park and that the goal is to extend the path down along the backside of the

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property at 201 Swannanoa Avenue and then eventually cross over the river to get to US 70 Highway. At this time, it is not known if the path will terminate or continue as the bridge will have to span the entire floodway which is approximately sixty-eight feet in width. Shawn Slome said that this area is a key connector in the Greenway Masterplan and the Parks and Recreation Masterplan is outdated and they are in the process of updating the plan and he doesn't want the Town to tie their hands if that property might be needed for the development of the park and asked how the Town could take the right-of-way behind the requested section. Town Attorney Ron Sneed explained that the Town could not take the entire width without condemnation, but the Town can make their own Resolution of Intent to close the latter section and have a public hearing. The Resolution of Intent would come to the Planning Board for review and recommendation. If the requested section of right-of-way were to be closed, the Town would receive half of the closed right-of-way. The fact that there is a sewer line that runs through the right-of-way does not mean that it is Town property. Closure of the right-of-way would not affect Arnette Drive as the access to the park.

**Thomas Woodbury, 143 Buckner Road**, said that he uses that area as his garden and has planted trees and bushes and would like to preserve that area for his use. Mr. Woodbury said he cannot build on the property because of the sewer line easement.

Pam Norton said staff has given the information that has been asked of them and that the unopened, platted section is not identified in any plan. Ms. Trotman explained that the Town has a current and up-to-date Greenway Master Plan and Bike and Pedestrian Plan that come from the Elevate Black Mountain Plan. Shawn Slome said that the Parks and Recreation Long Range Plan is out-of-date and there is not a masterplan for Cragmont Park and feels that it would not be appropriate to give away land. It was explained that the Town couldn't use that property as their sole property because they don't have the clear title to it. Mr. Slome also added that Arnette Drive might not work in a new masterplan and that it is not an integral part of the grid system. Chas Fitzgerald made a motion to recommend the requested right-of-way closure that runs east to west approximately 130 feet in length and approximately 42 in width with the Town obtaining half of the closed portion. The motion was seconded by Lauronda Teeple and approved by a vote of 4-1 with Shawn Slome voting against.

Chas Fitzgerald made a motion to recommend to Town Council to initiate a petition to close the remainder of the unopened, platted right-of-way so that the Town can have clear title and have full and dedicated use of the right-of-way. The motion was seconded by Lauronda Teeple and approved by a vote of 4-0 with Shawn Slome abstaining from voting.

## V. NEW BUSINESS

### 1. Potential Tree Ordinance Discussion

Jessica Trotman first explained that a tree ordinance would not be applicable to one- and two-family dwellings and because Black Mountain does not have a lot of diverse housing types, the goals for a tree ordinance will need to be creative. There are also opposing bills in Raleigh with House Bill 496 that says that towns and cities could adopt tree regulations but only with approval from the General Assembly and then Senate Bill 436 would allow cities and towns to have tree regulations. North Carolina is a Dillon Rule state so if Raleigh does not say that towns or cities have the authority then they cannot do it. Raleigh creates towns and cities, and Raleigh can liquidate towns and cities. Ms. Trotman said that instead of having a stand-alone tree ordinance, regulations could come under the guise of site development with additional buffering and landscaping requirements. These requirements could be for commercial and residential and even

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include minor subdivisions. Chas Fitzgerald said he would like to see a tree survey done along with the property survey so that locations of trees could be shown before any clearing is to take place. Ms. Trotman said the board needs to think about the how, what, size, canopy, and that there a variety of ways to go about creating a tree ordinance. Shawn Slome said he would prefer to be given the best practices so that the board is not struggling with legalities or constraints. Staff will send examples of tree ordinances from other municipalities that are similarly constrained. Kathy Phillips said she noticed that the Town has sign designating it as a Tree City and that to be a Tree City a town has to have an ordinance. The Town does have an existing ordinance, but it is only for trees in the public right-of-way. Staff will send out a digital version of the questionnaire and members can return them to Ms. Trotman who will compile the comments into a readable document. Also, if any board member has information that they would like to share, staff asked that it be sent no later than one week before the meeting so that it can be placed in agenda packets.

**VI. PUBLIC COMMENT**

None.

**VII. COMMUNICATION FROM PLANNING BOARD**

Lauronda Teeple asked about the process for selling Town property and how can there be a designation for Town properties so that they cannot be sold, as with the Cragmont Park property. The process for selling Town property is spelled out in the statutes but if any property is bought with federal funds, then there are conditions that are associated with that property and they typically will have to have a specific use, such as a park. If property that has not been purchased with federal funds is no longer needed, then the property has to be declared as surplus and then bids are entertained and there are upset bids so that the Town can get the best possible price. Land can be donated or gifted to the Town. The Hemphill property is an example of this. The Hemphill property was left in a conservancy and then gifted to the Town for the use of a park. If the property ceases to be a park, then it reverts back to the conservancy. Land banking is also allowed but if the land is accepted then the Town does have to assume some liability for that property even if it might be ten years before the property is developed. There is not a prohibition on land banking or gifting property.

Shawn Slome spoke about the south side of Veteran's Park and that there are no restrictions on it because it was not purchased with federal money, and it was rezoned from TR-4 to OI-6 and asked how it could be rezoned to a park. Jessica Trotman explained that there is not a stand-alone park designation and parks are an allowable use in the existing districts. If the purpose of rezoning to a park is to forestall potential development, that is not a good tool because the property could be rezoned again. Deed restrictions only work if there is a party to enforce them. The Town can place deed restrictions on the property, but the Town can also remove those deed restrictions. For example, if there is a forty-acre parcel for sell and the seller sets deed restrictions on the property that it is to be used as park and the Town purchases the property and then ceases to use it as a park, then the heirs can enforce the deed restrictions. Another way to ensure that a property is used for only a specific purpose is to do like the Hemphill property and it was given to the Southern Highlands Conservancy who then gifted to the Town for the use as a park. If the Town ceases to use the property as a park, then the property returns to the conservancy.

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**VIII. COMMUNICATION FROM STAFF**

Jessica Trotman said that we will be returning to all in-person meetings beginning in April. The Town does have the flexibility to return to remote meetings or allow the board to meet in-person and live-stream the meeting if conditions worsen.

**VX. ADJOURNMENT**

The meeting was adjourned at 8:05 p.m.

Prepared by:

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Chris Collins, Chair

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Jennifer Tipton, Senior Admin