

MINUTES OF THE MEETING OF THE MAYOR AND THE TOWN COMMISSIONERS OF  
BILTMORE FOREST HELD NOVEMBER 9, 2021.

Be it remembered by those that follow these proceedings that the Governing Board of the Town of Biltmore Forest met and conducted the following business:

Roll call taken by the Clerk:

Mayor George F. Goosmann, III, present  
Commissioner Doris P. Loomis, present  
Commissioner E. Glenn Kelly, present  
Commissioner Fran Cogburn, present

Mr. Jonathan Kanipe, the Town Manager, and Mr. William Clarke, the Town Attorney, were also present.

Mayor Goosmann called the meeting to order at 4:30 pm.

Commissioner Kelly made a motion to approve the minutes from October 12, 2021. The motion was seconded by Commissioner Cogburn and unanimously approved.

Chief Trevor Lance gave the report for the Skyland Fire Department. There were 32 calls for the month. Chief Lance also said to have furnaces and air filters checked, as well as chimneys inspected and cleaned. Commissioner Kelly asked about the process for how they are selling the ambulances. Chief Lance said they are not getting rid of the EMS system, they are transitioning to the future of EMS being part of the fire service. They will be called Community Risk Coordinators and will be responding to emergency calls as they normally would. They will also be going out to the public and doing one on one care with the public for those that need medical assistance. They will also be doing prevention and going to rest homes. Mayor Goosmann thanked the Fire Department for all their hard work.

Chief Chris Beddingfield gave the report for the Police Department. Chief Beddingfield noted the police report will look different now due to the transition to the new CAD system. For instance, a typical call volume previously showed 700-800 calls per month,. The new CAD system will condense several of these and it will now look like 500-600 calls per month because it is categorized differently.

Chief Beddingfield said there was a call in the Ramble inside the subdivision, which is the County's jurisdiction. Chief said he was very proud of officers helping out the County with this call. Someone entered the home at night without permission while the homeowners were sleeping. The suspect was caught.

Chief Beddingfield congratulated Officer Kenny Merritt on receiving his Advanced Certificate. Chief Beddingfield said Officer Merritt is very diligent with his educational training. Officer Merritt is also in the process of completing his Bachelor's degree. The advanced certificate also helps the Town's insurance rates as well. Officer Merritt is a very diligent and hardworking officer who has achieved the steps needed to further his education.

Mr. Harry Buckner gave the report for the Public Works Department. The department has transitioned fully into leaf collection and are staying on top of it very well. There was a storm drain repaired at 14 Eastwood Road. A sink hole developed in the original 1920s inlet and collapsed the pipe. It was dug out and repaired by public works staff and they all did a great job.

The tree service also came in and took some trees down on rights of way and parks. Most of these trees were dead. Staff has also been working on street light maintenance.

Mr. Buckner said Christmas decorations will be put up the week after Thanksgiving to prepare for the tree lighting event.

Commissioner Loomis asked Mr. Buckner what the ribbons are around trees near the intersection of Hemlock Road and Cedar Hill Drive. Mr. Buckner said they are survey markers to

help the stream restoration and stabilization designers. These do not represent trees that will be removed, but rather, are all marked for various reasons.

Commissioner Cogburn asked if trees taken down are mulched by public works. Mr. Buckner said they are not mulched here in the Town. The Town pays to dispose of all the brush at Riverside Stump Dump. Mayor Goosmann thanked Mr. Buckner for all their hard work.

Mr. Jonathan Kanipe gave the monthly report for the Town. The Town remains aligned with Buncombe County's current face covering requirement for indoor, public places. The current order expires Friday, November 26, 2021. All Town facilities remain open to the public and face coverings are required for all who enter the buildings and attend meetings. We continue to host meetings in-person and remotely, via Zoom, for those who are unable to attend in person.

Mr. Kanipe discussed the Comprehensive Plan and Transportation Study. The surveys should be available by end of the week. It is already live but the link will be put out on the website soon. A mailing will also be sent out next week. Mr. Paul Zimmerman has created the survey and should be available by the end of this week. The Planning Commission did a great job of going through the survey.

The trash can project will be included on the front page of the newsletter and offering an opportunity for residents to choose from two sizes. Sample containers will also be available at Town Hall if residents want to come look at the containers. This information will also be posted on the website and in a CodeRed message.

Mr. Kanipe discussed the update of the targeted underground project. Phase 2 of Duke Energy's targeted underground project is well underway with right-of-way acquisition ongoing. The last report showed 80 percent right-of-way acquired for this portion, and then Duke anticipates moving to right of way acquisition for Phase 3. Phase 2 includes a portion of work to be conducted at Carolina Day School.

Mr. Kanipe said Friday, December 3<sup>rd</sup> is the tree lighting event. It will mostly be held outside.

Mayor Goosmann asked how many phases there are for the Duke project. Mr. Kanipe indicated that he believed there are six phases.

Mr. Kanipe discussed the consideration of Resolution 2021-14 - A Resolution to award stream restoration contract contingent upon Local Government Commission and DWI approval. Mr. Kanipe reviewed the stream restoration project and the belief that the Town's debt request should be on the Local Government Commission's December agenda. Baker Grading and Landscaping will be awarded the project. They were the responsible, low bidder. They would like to start the project after the New Year.

Commissioner Loomis made a motion to approve the Resolution. Commissioner Cogburn seconded the motion. The motion was approved unanimously.

The Town Code of Ordinances were discussed and reviewing potential public safety amendments. Mr. Kanipe said Chief Chris Beddingfield has identified two areas related to public safety that may be enhanced with amendments to the Town Code of Ordinances. Specifically, these two additions would be located within Chapter 92 "Health and Safety" of the Town Code. The proposed ordinances provide clear regulations for what is allowable, or not allowable, within each circumstance. These regulations are routinely found in other town and county public safety codes of ordinances.

The loitering and temporary structure ordinance specifies that people may not congregate in a manner to block traffic (vehicular or pedestrian), obstruct the entrances to buildings, or establish a temporary tent or other structure for illegally camping on public or private property without prior approval. The structure of the ordinance provides for the manner in which the Police Department may ask the individual to stop performing this action and then take further action if necessary.

Chief Beddingfield said there have been a few situations where people have come in from the Parkway and set up a tent. There have been issues with vagrancy where people go onto Town property and set up camp. This is why public enforcement is needed.

The public urination and defecation prohibition ordinance is straightforward, but makes clear that urination or defecation occurring inappropriately is a misdemeanor violation. Previously, the Police Department has to rely upon trespass or littering portions of the General Statutes in order to prohibit or respond to similar actions. This will allow us the ability to take further action in this type of situation.

Mr. Kanipe asked if there was any objection to either of these. There was no objection.

Mr. Kanipe then began a discussion of Senate Bill 300 and the decriminalization of local ordinances. This was signed into law in September 2021 by Governor Cooper. This omnibus law enforcement bill includes provisions that affect the violation of city and county ordinances. In 2018, the Town and all other local governments in North Carolina were required to submit a list of all criminally enforceable Town Ordinances to staff at the North Carolina Legislature. Frayda Bluestein notes in her blog post, “for some time, under North Carolina law, violations of city and county ordinances have been treated as misdemeanors or infractions unless the ordinance explicitly said that they were not.” The new law removes the default criminal penalty for violating local ordinances and specifies violations may be a misdemeanor or infraction under G.S. 14-4 *only* if specified within the ordinance. This portion of SB 300 is effective December 1, 2021.

The Town’s existing ordinances that refer to criminal penalties typically do so the conclusion of each chapter. It is unclear whether this method will adequately qualify as being “specified within the ordinance” or whether that will need to be added within each ordinance specifically. We will continue working to determine this. In the meantime, the Legislature also amended N.C.G.S. § 14-4 to add a new subsection (c) that reads as follows:

*(c) A person may not be found responsible or guilty of a local ordinance violation punishable pursuant to subsection (a) of this section if, when tried for that violation, the person produces proof of compliance with the local ordinance through any of the following:*

*(1) No new alleged violations of the local ordinance within 30 days from the date of the initial alleged violation.*

*(2) The person provides proof of a good-faith effort to seek assistance to address any underlying factors related to unemployment, homelessness, mental health, or substance abuse that might relate to the person's ability to comply with the local ordinance.*

Mr. Kanipe said they are going to continue to work with other local governments on restructuring town ordinances. The Town is also working with the League of Municipalities and UNC School of Government to determine how our existing penalties are enforceable in this manner. If they are not, they made need to consider a wider amendment. Mr. Billy Clarke said there are some items such as the Tree Protection where one can not impose a criminal penalty for violation of this ordinance.

Next month, Mr. Kanipe will come back with a detailed list and more information related to this new legislation.

Chief Beddingfield said an enormous amount of bills were introduced in regards to law enforcement reform. Two house bills which the Governor signed into law which are HB 436, which is a psychological evaluation for law enforcement officers. Every officer except the deputy Sheriff had to get a psychological evaluation. This has now been changed to all law enforcement is now required to get a psychological evaluation. Regarding the Town law enforcement, Biltmore Forest has already been doing this for officers.

HB 536, created a duty to intervene and report. If one officer sees another officer using too much force, or loses their temper as an example, the second officer has the responsibility to stop them from doing that and also has a duty to report it. This policy was also already implemented for Town law enforcement.

Chief Beddingfield discussed Senate Bill 300, Criminal Justice Reform. These bills align with recommendations of the Governor's Task Force for Racial Equity in Criminal Justice. This is an attempt to make our police departments more diverse. Chief Beddingfield said there is an early intervention requirement, if officers have so many use of force requirements, complaints, car accidents, etc. to meet the criteria, this would alert us that this is a problem. The Town has an

advantage being a small police department in that we are able to monitor what staff is doing and how it is being implemented.

Chief Beddingfield discussed what is known as “Brady/Giglio” which deals with the credibility of a police officer. It has been a major issue where an officer is disciplined for a truthfulness issue or improper conduct, it has to be reported. In the past, it did not have to be reported. What we have to do now, is report it to the District Attorney and report it to Criminal Justice Standards. They are creating a data base with use of force as well. Chief Beddingfield asked if anyone had questions. Mr. Kanipe thanked Chief Beddingfield for being prepared for these changes especially with responder support services and updating the police department policies quickly when he was hired.

Mr. Harry Buckner discussed the three stormwater project updates. The projects are located along Park Road, Stuyvesant Road, Vanderbilt Road, and Lone Pine Road. Another one is adjacent to Cedar Hill Road to the intersection of Hemlock Road. There is a culvert replacement between 13 & 15 Park. In January, they should be finished with the project. This is the most straightforward project.

The second project is the stream stabilization at Hemlock and Cedar Hill. Stream bank erosion is occurring parallel to Cedar Hill Drive. This project is furthest along in design. The survey was completed two weeks ago and waiting for a cost estimate. Work will occur late winter/early spring.


The largest project is a more significant analysis of overall stormwater improvements beginning at Rosebank Park, coming through the park, along Park Road and the upper portion of Vanderbilt Road, to the five way intersection near Town Hall where Lone Pine, Stuyvesant Road, and Vanderbilt Road come together. The work would move east toward Lone Pine Road continuing North to the Town Hall (which is the top of the water shed), and heading southeast on Stuyvesant Road at the crest. There are issues with flooding at the five way intersection. Survey work on the project is 80% complete.

#### Public Comment

There was no public comment.

Mayor Goosmann adjourned the meeting at 5:39 p.m. The next meeting is scheduled for Tuesday, December 14, 2021 at 4:30 pm.

ATTEST:

Handwritten signature of Laura Jacobs in black ink, written over a horizontal line.

Ms. Laura Jacobs  
Town Clerk

Handwritten signature of George F. Goosmann, III in blue ink, written over a horizontal line.

George F. Goosmann, III  
Mayor