

MINUTES OF THE MEETING OF THE MAYOR AND THE TOWN COMMISSIONERS OF  
BILTMORE FOREST HELD JANUARY 11, 2022

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. The meeting was held remotely via Zoom for purposes of limiting the spread of Covid-19.

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

Commissioner Loomis made a motion to approve the minutes from December 14, 2021. The motion was seconded by Commissioner Cogburn. Roll call was taken by the Clerk and the minutes were unanimously approved.

Chief Trevor Lance gave the report for the Skyland Fire Department. Chief Lance said there were a total of 22 calls for the month of December. Most of the calls were medical calls to assist EMS. Chief Lance said the ride through with Santa Claus also went very well. Mayor Goosmann thanked Chief Lance for the hard work of Skyland Fire Department.

Chief Chris Beddingfield gave the report for the Police Department. There were a total of 523 calls last month versus 482 calls for November. Chief Beddingfield said the two new police vehicles are in and they are getting new equipment installed and they should be in service soon. There were more issues with vagrancy and some overnight camping. The police department has

networked with Asheville Police to see how they handle these issue with vagrancy and homelessness to combat this problem. Chief Beddingfield mentioned the upcoming ordinances that will be discussed shortly.

Chief Beddingfield discussed the break in at a home in The Ramble on Niagara Drive where the alarm system was activated and officers arrived in less than one minute. The alarm scared the suspect away. When officers arrived, they also noticed another home was broken into as well. Officers worked with Asheville Police and had one of the K-9 units to run a track. A large amount of costume jewelry was taken and they are trying to identify this. Officers are being proactive and making sure residents feel secure. Mayor Goosmann thanked Chief Beddingfield for all their hard work.

Mr. Harry Buckner gave the report for the Public Works Department. Leaf collection has taken up a lot of time. Public Works is working with Duke in supplying street lights in a more code compliant way. The street light will be moved at the intersection of the Parkway and Stuyvesant Road. The vast majority of mulch has been put down at Brookside Park and three large mulch beds at Rosebank Park.

Recycling, trash, and brush calendars are being distributed by public works staff. A stream stabilization update will be provided next month after staff meets with the consultant. Mr. Buckner also said there will be a meeting this week on the Town wide traffic study. Mr. Buckner said he has reached out to a contractor for a culvert replacement at 13 and 15 Park Road.

In January, Mr. Buckner said they will have the power system updated for the street lights and there will be improvement to the garbage trucks as well as trash cans.

Mr. Buckner also said there have been challenges with illness and COVID but public works staff is working together well to work with the lack of employees at this time.

Mayor Goosmann thanked Mr. Buckner for his department's hard work.

Mr. Kanipe gave the report for the Town. The latest Buncombe County positivity rate is 13.7% which is double what it was the prior month. Mr. Kanipe said staff are abiding by CDC recommendations regarding quarantine and isolation periods, and appropriate mask usage is being reinforced among all employees. The Town remains aligned with Buncombe County's mask order. This renewed order is now effective through February 5, 2022. Because of the significant increase in transmission and case numbers, the January Board of Commissioners meeting is virtual. Information for accessing the meeting is posted on the Town's website. Staff will coordinate with chairs of other Town boards regarding meeting virtually or in-person over the course of the next month.

Mr. Kanipe discussed the American Recovery Plan funding update. We received great news on January 6<sup>th</sup> when the Treasury Department released their final rule for American Recovery Plan funding. You likely recall the interim rules included specific restrictions for funding use. While reporting requirements remain, the Treasury Department made it much easier for local governments to use the funds for any purpose. Previously, a local government could utilize recovery funds to replace revenue that was lost during the thrust of the pandemic. This was calculated through a formula and the local government had to show the methodology for replacement. The Treasury Department's new rule, however, allows local governments to take a "standard revenue replacement" that, in essence, will allow the funds to be utilized directly for any general government purpose. The Town's plan continues to be funding significant stormwater needs, but there is much greater flexibility now.

Mr. Kanipe discussed the Greenwood Park Stream Restoration and said the Town submitted all documents as requested to the Division of Water Infrastructure (DWI) before the Christmas holiday. We are awaiting a final authorization to proceed from DWI and will then hold a pre-construction meeting with Baker Construction.

Mr. Kanipe said the trash containers will be ordered this week with a delivery timeline of 12-18 weeks.

The Duke targeted underground project is coming along and they are about to start phase 2. Mr. Kanipe set up a meeting with their team and our team to go over construction procedures. They are moving forward on their end and the project is running smoothly.

Levonía Reese, partner with Carter P.C., gave the FY 21 audit presentation. The Local Government Commission has made it mandatory that the audit report is to be presented in front of the Board. Carter issued an internal control letter regarding the segregation of duties within the financial staff, and this is noted as a significant deficiency. The Town is not doing anything incorrectly, it is a result of the small staff size.

Ms. Reese said there was a budget violation that occurred as the result of spreadsheet miscalculations. This is disclosed in the financial statements. Management's corrective action plan is a second review on any budget ordinance and to create amendments. There was no disagreement with management regarding accounting principles.

The total assets increased \$280,000. Liabilities decreased almost \$400,000. The net position increased \$422,000 for the fiscal year. The ending net position is \$6,100,000. Investments in capital assets is \$5,500,000. The total revenue increased \$216,000. The expenses decreased nearly \$140,000. The general fund revenue was \$150,000 more than budgeted. The expenses were \$270,000 less than budgeted. Regarding the water fund, it was \$40,000 less than budgeted and the expenses were \$189,000 under budget. The town maintains a property valuation of \$805,000,000 and has maintained a 99% tax collection rate. Mayor Goosmann thanked Ms. Reese for all of their hard work.

Mr. Kanipe discussed the Consideration of Ordinance 2022-01 to amend the Town Code regarding loitering and temporary structures. This proposed ordinance would amend the Town code's chapter on general offenses and include specific regulation regarding loitering and temporary structures. This is NCGS 160A-175. This 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.

Recent changes to North Carolina state law require the Board of Commissioners to consider an ordinance related to public safety only after the ordinance was introduced at a previous meeting. In this case, the proposed ordinance was introduced to the Board during the December 14, 2021 meeting. The ordinance draft contains specific language noting this compliance and provides a

record of the motion, second, and vote tally if the ordinance is adopted. If adopted, this ordinance is effective immediately.

In accordance with NCGS 14-4, this ordinance states the maximum fine may exceed \$50.00 but may not exceed \$500.00. NCGS 14-4 was revised as part of SB 300 to specifically require criminal penalties be affirmatively stated within the ordinance to be applicable.

Commissioner Cogburn made a motion to approve the ordinance, Commissioner Kelly seconded the motion. Roll call was taken by the clerk and unanimously approved.

Mr. Kanipe discussed the consideration of ordinance 2022-02 to amend the Town code prohibiting public urination and defecation. Last month, the Board of Commissioners received a potential ordinance to the Town Code of Ordinances. This proposed ordinance would amend the Town Code's chapter on General Offenses, and include specific regulations prohibiting public urination and defecation which relates to NCGS 160-A-175. This ordinance specifies that urination or defecation occurring in the manner described in the ordinance is a misdemeanor violation. Previously, the Police Department has relied upon trespass or littering portions of the General Statutes in order to prohibit or respond to similar actions.

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A motion was made to adopt the ordinance by Commissioner Loomis. Commissioner Cogburn seconded the motion. Roll call was taken by the Clerk and the motion was unanimously approved.

The next issue addressed was a request to amend the Town Code regarding “no trespassing” signs. Mr. Billy Clarke discussed this matter. This particular issue came to our attention last month with a petition by Mr. Richard Wyde and Ms. Angela Branch. The current sign ordinance does not address “no trespassing” signs and Mr. Clarke said the ordinance needs to address this. Mr. Clarke said he and Mr. Kanipe hoped to put together a recommendation but have not been able to do so at this time. Mr. Clarke said there are a number of “no trespassing” signs that exist throughout Town and Mr. Clarke said they hope to get something to the Board next month.

Mr. Kanipe asked the Board if they would like to see additional information included in this ordinance. Commissioner Cogburn said they need limitations on the number of signs allowed, the distance on the street for public viewing (no closer than twenty feet), and limitations to color. Mayor Goosmann said it should be in the front yard of homes and the distance of the sign is important as well.

Mr. Kanipe discussed artificial turf. The Board of Adjustment did make a unanimous ruling at their December meeting that artificial turf does not constitute as an accessory structure. There was, however, unanimous agreement among the Board of Adjustment members to request the Board of Commissioners review the matter and determine whether artificial turf should be explicitly regulated within the Zoning Ordinance. A neighbor who expressed disagreement with the Board’s decision also has presented the Board of Commissioners with a request to consider addressing this issue. Artificial turf regulation would be included within the Zoning Ordinance. Potential zoning ordinance amendments require review and recommendation from the Planning Commission, and then require a public hearing before the Board of Commissioners may consider the matter. The purpose of bringing this matter to the Board now is to determine whether you want staff to proceed with creating a draft ordinance, and if so, what the Board would like included within that framework.

Commissioner Loomis said she would like to see how other municipalities are handling this and to see alternatives presented to the Board to see how this is addressed. Commissioner Kelly asked if there is an ordinance that covers someone placing a large artificial tree in their yard. Mr. Clarke said they received a request from a neighbor on Holly Hill Road from a lawyer representing the neighbor to determine if artificial turf is an accessory structure. Mr. Clarke and Mr. Kanipe said based on the ordinance, the artificial turf is not an accessory structure. This

decision was appealed to the Board of Adjustment, and the Board of Adjustment considered it at length at the December meeting. The Board members affirmed Mr. Kanipe's decision but suggested the Board of Commissioners review it as well. Mr. Clarke responded to Commissioner Kelly and said an artificial tree in a yard would most likely be considered an accessory structure.

Commissioner Cogburn asked if artificial turf is considered impervious. Mr. Clarke said it depends on how it is installed. Commissioner Cogburn asked Mr. Kanipe if it has to go before the Board of Adjustment to be installed. Mr. Kanipe said, no it does not. Mr. Clarke said it would be best to ask people when they are presenting their projects. Mr. Kanipe said it would be best to get ideas from other places and see what they do.

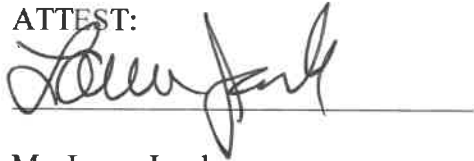
Mr. Paul Zimmerman discussed the Town issued survey results. The Planning Commission created a survey and the results of the survey were delivered to the Board of Commissioners. January 25<sup>th</sup> is the next Planning Commission meeting. They will develop a series of goals and from each of these goals, the Board will develop strategies. The Planning Commission will be getting together and listing what they feel are appropriate goals and strategies for meeting this requirement by July 1<sup>st</sup>. The Commission hopes to have a public meeting and will work with the Town on how to handle a Public meeting which would explain the result and open it up to resident viewpoint. We hope to have this done in February. Following this meeting, a Comprehensive Plan will be developed and reviewed by Mr. Clarke, Mr. Kanipe, and the Board of Commissioners. Mayor Goosmann thanked Mr. Zimmerman for his efforts with this. Mr. Kanipe thanked Mr. Zimmerman for stepping up as Chairman of the Planning Commission.

#### PUBLIC COMMENT

Ms. Lauren Karlsson made comment and mentioned the plan to build a "little free library" at Rosebank Park on the Park Road side. Mr. Zimmerman said the design of the house fits with the character of Biltmore Forest for the little free library.

Mayor Goosmann adjourned the meeting at 5:27 p.m. The next meeting is scheduled for Tuesday, January 11, 2022 at 4:30 pm.

ATTEST:

A handwritten signature in blue ink, appearing to read "Laura Jacobs", written over a horizontal line.

Ms. Laura Jacobs  
Town Clerk

A handwritten signature in blue ink, appearing to read "George F. Goosmann III", written over a horizontal line.

George F. Goosmann, III  
Mayor