

Cullowhee Planning Council
Minutes
March 1, 2021
6:00 p.m.
Virtual Meeting

Members	Present	Absent	Members	Present	Absent	Members	Present	Absent
Rick Bennett	X		Jim Lewis	X		Chris Stuckey	X	
Joel Setzer	X		Mike Byers	X		Donna Huguelet	X	
David Claxton	X		Carol Burton	X				

Staff Present

Michael Poston, Planning Director
 John Jeleniewski, Senior Planner
 Heather Baker, County Attorney
 Allison Kelley, Administrative Assistant

Call to Order

Chairman David Claxton called the meeting to order at 6:02 p.m. and a quorum was present.

Additions to Agenda

Jim Lewis made a motion to approve the agenda as written. Joel Setzer seconded the motion and it passed unanimously.

Approval of Minutes

Mr. Claxton asked for clarity in the minutes of staff's answer to his question regarding response rates. Ms. Burton asked to add an introduction in the minutes that she was new member to the Council. Jim Lewis made a motion to approve the minutes with the amended changes from November 2, 2020. Joel Setzer seconded the motion and it passed unanimously.

Introduction of New Members

- David Claxton stated he is the Chairman of the Council, retired from WCU, and has lived in Cullowhee since 1995.
- Jim Lewis stated he lives on Gudger Hill Road, retired from WCU and has lived in Cullowhee since 1972.
- Mike Poston stated he was the Jackson County Planning Director, and the Planning Department is the staff to the Cullowhee Planning Council.
- Carol Burton stated she works at WCU and currently lives in Buzzard's Roost and this is her second Council meeting.
- Joel Setzer stated he moved to Cullowhee in 1966, and he lives on Madison Road and just moved into a house that was built in 1966. In addition, he is retired from NCDOT and has worked for an engineering consulting firm for 4.5 years.
- Chris Stuckey works at WestBridge Vocational in Sylva, his wife currently works at WCU, and he also lives on Gudger Hill Road.
- Mike Byers stated he works at WCU as the chief financial officer, and is appointed to the Council to represent WCU as a non-voting member.
- Rick Bennett stated he lives in South Wayehutta Road since 1993 and use to have a business in downtown Cullowhee.

- Donna Huguelet stated she grew up in Sylva but lives on Gudger Hill Road. She retired from teaching in Alaska, and moved back to the area a few years ago with her husband who also grew up in the area.
- John Jeleniewski stated he is the Senior Planner for the Planning Department.
- Allison Kelley stated she was the administrative assistant for the Planning Department, and the Clerk to this board and would be sending any board related information such as notices, cancellations.
- Heather Baker stated she is the county attorney and represents the Council and usually attends all meetings. Ms. Baker stated she moved to Cullowhee in 1971 with her family when she was three years old.

Public Comment- Sign-up sheet- 3 minutes per speaker

There were no public comments.

New Business

a) Approval Process Discussion

Mr. Poston stated when the Cullowhee Planning Council had many Quasi-Judicial Hearings they had a lot of feedback received by both the Council and community regarding the approval process. In the Cullowhee area, all of the development that has been approved has been through the issuance of Special Use Permits. In addition, the majority of the Special Use Permits that have been issued in the Cullowhee area have been related to student housing. The procedure that is used to approve these Special Use Permits is through the Quasi-Judicial Hearing process, which is a court system where the Council acts as a judge/jury that evaluates evidence that is presented. The Quasi-Judicial process is set out by state statute, and it is not your typical public hearing where people from the community can speak their opinions about the project, the legal standard states they must have standing to participate. Generally, if community members are not located within the immediate vicinity of the project, they would most likely not have the opportunity to participate during the hearing with standing. The Quasi-Judicial process has caused confusion with the public, as it is different from a legislative process. During the Quasi-Judicial Hearing, those that have standing must have factual, relevant, competent material evidence to show why the proposed development does not meet a specific standard that the Council is being asked to evaluate. In addition, the Council gave feedback to staff that this process makes it difficult to gain a lot of public input before or during the hearing. Mr. Poston informed the Council the county had a recent large proposed development in the Cashiers area and heard the same feedback for the need for community input.

Mr. Poston stated the Quasi-Judicial process places a burden on the Council as they are the determining decision-makers for these types of hearings that can take hours or days, and the applicant does have the opportunity to appeal the decision through superior court. This process differs from a legislative process such as text amendments or rezoning process, where the Council would act as a recommending body and not the decision-makers. In addition, he stated the more participating parties with standing, and attorneys involved the process becomes more complex with cross-examination. Staff plans to discuss alternative approval processes with Cashiers and 441 Planning Councils. The first alternative approval process already exists in the Cullowhee ordinance, but it is an optional type of process called Conditional Zoning or Special District Zoning. This is a legislative process for the Cullowhee Planning Council and it would make them an advisory board to the Board of Commissioners that would make the final determination. The rezoning process differs as it allows the public to speak regardless of the proximity of their property and it is not required to have factual evidence to present before the Council. In a legislative process, the community can discuss the reasons they do not like a project, traffic concerns, and property value concerns which are not allowed in the Quasi-Judicial process, as they have to have credentials for the ability to be heard by the Council.

Rick Bennett stated he agreed to volunteer for the Council, as he wanted to help serve his community. He believes that the Council has helped the community and set standards during his term. However, he believes the Quasi-Judicial process is unfair to the community and county. Mr. Bennett stated that they did not anticipate the unprecedented growth in Cullowhee, and a good portion of the community is still uneducated in this process. In addition, in the Quasi-Judicial process developers bring in attorneys, and traffic engineers that they have paid for their service that usually support the developer. Mr. Bennett

stated the community does not have the funds to seek outside help from attorneys or expert witnesses. Some of the developments approved can impact the entire county such as traffic problems, but he believes the Council should not be charged with the decision it should be the Board of Commissioners that makes the final determination. In addition, he stated he has done research and Asheville is having the same issues as the Cullowhee area with big growth in a small community, and many bigger cities that are having increased growth issues are looking at other processes. Mr. Bennett stated he is glad this discussion has been presented to the Council and would like to consider this process for the future.

Mr. Poston stated there are a couple of ways they can handle approval processes. There is the Quasi-Judicial process that is currently in effect. The second option is Conditional Zoning which is a legislative rezoning decision, in which both the Cullowhee Planning Council and the Planning Board would act as an advisory board. The Board of Commissioners would make the final determination. In addition, they are required to evaluate rezoning based on the Cullowhee Small Area Plan, and county landuse plan. This legal process was formerly called contract zoning, which occurs when a developer would agree to make changes to make the development proposal worthy of being approved. The Conditional Zoning allows the Cullowhee Planning Council and Board of Commissioners to mitigate the community concerns as the process is occurring. During this process, the Council would still receive a site plan and they can develop the standards in the ordinance for this new process. Currently, the ordinance does not have a requirement to hold a community meeting before the submission of the application, which may be useful for the Council to explore. The Village of Forest Hills has started to require a community meeting before the application submittal and before letters are sent out to adjacent property owners. In addition, the applicant would still be required to submit a site plan, and the Council would still have the ability to discuss traffic, other aspects of development, and put conditions on the proposed development to address the issues the community has about the development. Another downside of Quasi-Judicial Hearings is there have been changes to the state statute that puts a huge burden on the Council and county on how they are reviewed in superior court. Mr. Poston stated there is a provision that for any error in law found in the Quasi-Judicial process if it goes to superior court all attorney fees are paid for by the county, which is a liability and those attorney fees can be however much it takes to adjudicate the issue.

Heather Baker stated from a legal perspective, it is not just the risk of attorney fees in court, but it is a rigid Quasi-Judicial process and the county has to be strict, follow the rules, and sometimes staff feels pointed out as the "bad guys". However, the minute they do not follow these rules, the appeal process is opened up to the applicant, and community members with standing which can be a long and difficult process in court. Ms. Baker stated the Conditional Zoning process would take care of many of the current issues with a Quasi-Judicial Hearing process.

Mike Poston stated to change the Quasi-Judicial process to Conditional Zoning staff would have to revise the special use table in the ordinance. He asked the Council for feedback if they were interested in moving forward to a Conditional Zoning process. Ms. Burton inquired what is the typical time frame for making a decision, and if this body has the final decision authority to move to a Conditional Zoning process. Mr. Poston stated the time frame is dictated by the Council. The staff would be working with all three of the planned area regulated districts in the county to discuss if this change is for the best for the community. He believes that most of the Councils would be willing to make the change because they have gone through the Quasi-Judicial process and would find value in moving away from this process. However, they cannot get rid of this process entirely, staff still has to provide variance relief options, and appeals to staff determinations that have to happen in a Quasi-Judicial setting.

Mr. Claxton inquired why the Council started with the Quasi-Judicial process. Mr. Poston stated it was traditional and a well-vetted process for landuse decision-making and it has been around for many years especially in small communities. In addition, he stated bigger areas like Charlotte have been doing Conditional Zoning before it most likely was technically legal to do so, but because of the work they have done, it has brought that issue into the light and has made it a legal process that is open for governments to utilize. Mr. Lewis stated he believes this is an idea worth talking about and potentially moving in this direction for more community involvement. Mr. Byers inquired if it was possible to add in the ordinance a public hearing component that allows the community to come to a public hearing and speak regarding the Special Use Permit application. In addition, they have a public comment component already in place, and inquired if there was a way to elevate the public involvement to help educate and give them the chance to come to speak their thoughts and opinions. Mr. Poston stated during the Quasi-Judicial Hearing they can make that an option, however, the Council cannot assign any weight to those comments as they

are classified as "hear-say" and not factual, competent material evidence by an expert in that field. The Conditional Zoning process is more open and allows the Council members to discuss freely with community members. The Village of Forest Hills has a Conditional Zoning process and requires that the developer host a public meeting before submitting a formal application, which the Council could incorporate this requirement as well in the process. Mr. Jeleniewski stated in those application meetings that are held in the community are very valuable as they are forced to take minutes. In addition, when the application is submitted, the applicant would also submit the minutes of the feedback they received from the community, and based on that they may revise their original plan. Mr. Setzer stated to follow up with Ms. Burton's questions of the timing of the process, he clarified the Council would make a recommendation to the Board of Commissioners who would have the final decision to adopt this change. He also stated that under the current process the only remedy for the applicant when the Council denies an application is through superior court, and they have to wait a year to re-apply if they want to make a change. Mr. Setzer stated he felt this process is harsh for the Council and the county, and believes the county should be in power to where they can negotiate and reach a settlement. Mr. Poston stated the Quasi-Judicial process is set up through the state. If an application is denied there are no "do-overs" as the decision is final unless the court system tells the county they have to restart the process. For special use permits, applicants can come back only if they have a substantial change to the application. For a rezoning application, they have a year waiting period to come back to the Council with changes to the application that address the main concerns from the denial. This is the difference between the Quasi-Judicial and legislative process. Mr. Setzer also stated it would be difficult as the process is about unanimous consent when they go through their checklist of standards for the Special Use Permit process. Mr. Poston stated that Mr. Setzer was correct that the Council has to find an affirmative through all of those standards to approve the application. The legislative process is different, there are no set standards that state the applicant has to meet all standards to be approved and it would be evaluated based on criteria. He stated that the Council has to address consistency with all of the county's adopted plans, and make a statement of reasonableness as it is required by the state of NC.

Mr. Claxton stated that if he remembers correctly the Council reviewed an application for housing behind Cullowhee Valley School, and they went through the process of the seven standards and one of the questions was if the development would cause traffic issues. The developers brought in a traffic expert that had done their survey and determined if "x" number of people lived in the potential new housing that it would not cause any problems to HWY 107 at Cullowhee Valley School. In addition, he stated several of the Council members did not agree with that but Ms. Baker reminded the Council that they are not traffic engineers and if they were to vote against that standard the county could be sued because they had an expert and the Council is not one. Mr. Poston stated the Council voted to approve the permit, but the applicant has not built anything at this time and he is unsure if they would. Mr. Claxton asked if they were in the Conditional Zoning process, could the Council forward their recommendations to the Board of Commissioners that the plan was good but could they legally state the project would cause traffic problems. Mr. Poston stated the process would allow those traffic concerns to be discussed and how to mitigate those concerns, and the Council could recommend conditions to alleviate those concerns when considering approval of the application. The Commissioners would take those concerns, conditions, and recommendations under advisement when determining if it addresses the issue or they can deny. Both the Council and Commissioners would have the ability to negotiate these concerns.

Ms. Baker stated during a Quasi-Judicial hearing the Council has to listen to competent substantial evidence, which in that particular hearing the applicant hired an expert traffic engineer, and there was no other expert evidence presented. In addition, she stated in the legislative process, the Council could have the community members speak and send those public comments to the Board of Commissioners. She stated that also during that hearing, there were other concerns from the community that they asked the applicant to consider but they said no they would not do that. However, the Council could set conditions and the developer could make those changes before going before the Planning Board and Board of Commissioners. Mr. Bennett stated an example from that hearing the traffic engineer recommended that a shortcut route through the Camp Laboratory or Cullowhee Valley School, which was a laugh from the community members, but the traffic engineer said it was perfectly legal and the Council did not have a rebuttal. Mr. Poston stated this process would not get rid of controversial issues that come before the Council, those issues would still arise and they may still have longer meetings on larger developments.

The Conditional Zoning process would give more flexibility and freedom for the Council and community to interact during the process.

Mr. Setzer asked staff if they could provide material on the pros and cons of the Quasi-Judicial, and Conditional Zoning processes. Ms. Baker stated she would email an article from the Asheville Citizen-Times that Mr. Bennett sent to her that discusses an issue Buncombe County was dealing with and analyzes both the Quasi-Judicial and Conditional Zoning process.

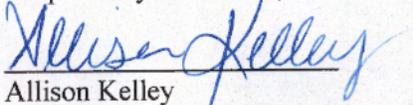
Mr. Stezer made a motion for staff to provide additional information regarding this process and to place it on the Council's agenda for the next meeting. Carol Burton seconded the motion, and it passed unanimously.

Mr. Stezer withdrew his motion as he was implying they would get additional information and make a decision at the next meeting. He believes it would be more appropriate to get the information following a draft ordinance, and then the Council can make a decision. Carol Burton withdrew her second.

Adjournment

With no further business, Rick Bennett made a motion to adjourn. Carol Burton seconded the motion and the meeting adjourned at 6:58 p.m.

Respectfully Submitted,



Allison Kelley
Administrative Assistant- Planning

David Claxton

David Claxton
Planning Council Chair