

**PLANNING AND
COMMUNITY DEVELOPMENT**

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**TRANSYLVANIA COUNTY PLANNING BOARD MINUTES
Regular Meeting, May 21, 2020**

Call to Order: Vice Chair, Kimsey Jackson - The Transylvania County Planning Board met in regular session on Thursday, May 21, 2020, in the Commissioners Chambers. Members present were Chair, Kimsey Jackson, Bob Twomey, Rick Lasater, Lauren Wise, John Wayne Hardison and Karen Gleasman. Beecher Allison was absent (unexcused). Staff members present were Transylvania County Manager, Jaime Laughter, Interim Director of Planning and Community Development, Allen McNeill, Planner, Darby Terrell, Transylvania County Management Fellow, Kate Hayes and Administrative Support Specialist, Beth Webb. No members of the public were present. No media attended.

I. Welcome: Kimsey Jackson, Vice Chair welcomed everyone. The meeting began at approximately 7:08 p.m. Bob Twomey said the invocation and Rick Lasater led the Pledge of Allegiance.

II. Public Comment: None

III. Approval of Agenda:
Staff recommendation to modify the agenda to remove the Floodplain Ordinance review.

Kimsey Jackson would like to add Meet and Greet to introduce ourselves.

Rick Lasater moved to approve the modified agenda, the motion was seconded by Lauren Wise and carried unanimously.

IV. Approval of Minutes:
Bob Twomey moved to approve the regular meeting minutes for December 19, 2019, as presented, the motion was seconded by Rick Lasater and carried unanimously.

V. Meet and Greet:
Members of the Planning Board and Staff introduced themselves.

VI. Election of New Chair and Vice Chair:
Rick Lasater nominated Kimsey Jackson for Chair, the motion was seconded by Lauren Wise and carried unanimously.

Rick Lasater nominated Lauren Wise for Vice Chair, the motion was seconded by Chairman Jackson and carried unanimously.

VI. Subdivision Approvals and Updates:
Darby Terrell notified the Planning Board that since December 19, 2019, there have been

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twenty-six (26) recombination of lots, two (2) greater than 10 acres, five (5) family subdivisions, twenty (20) changing of boundary lines, ten (10) two lot subdivisions, one (1) three lot subdivision, one (1) six lot subdivision and one review easement.

Jaime Laughter, shared updates with the planning board. Planning Director, Jason Stewart, resigned on Monday, May 18th and with that vacancy, Allen McNeill has been appointed our Interim Planning and Community Development Director. Floodplain Administration will be moved back to Building Services.

VII. Old Business:

A. Noise Ordinance – Kimsey Jackson advised that Planning Board members should have received updated copies of the draft Noise Ordinance. One copy should have comments and alterations suggested by County Attorney, Natalia Isenberg. Kimsey Jackson asked if the Board members have read the documents and if they want to make any further changes, additions, or deletions to the noise ordinance.

Bob Twomey commented that he looked over the changes from the new attorney, and it appears she was trying to make this a little more enforceable and easy to be enforced by law enforcement with clarity. Bob Twomey stated that he was good to go with it. Mr. Twomey commented that if the new attorney feels the changes are necessary to make the noise ordinance as complete as possible especially for the law enforcement that may eventually have to follow up on complaints, that was why we had law enforcement here last year talking to us, they wanted to make sure that the i's were dotted and t's were crossed and that there was no ambiguity.

Rick Lasater questioned, what happened to the old section 3, 3.4? Ms. Laughter requested Mr. Lasater be more specific about his question. Mr. Lasater clarified his question and the Board proceeded to recount previous meeting discussions pertaining to former section 3, 3.4.

Karen Gleasman questioned if we had a method to get back to the attorney to ask why section 3, 3.4 was taken out. Bob Twomey commented that the Board had decided that that section 3, 3.4 needed to be in the ordinance for a reason. Karen Gleasman questioned again why the section was removed and that it sounds like it was removed by the new County Attorney and not by the Board?

Rick Lasater commented that if section 3.4 is taken out, then you may as well shred the whole thing. John Wayne Hardison commented that the largest common noise complaint is barking dogs and he just does not see that this noise ordinance is going to stop that by the way that it must be measured and the times. Rick Lasater commented that barking dogs has nothing to do with his concerns. John Wayne Hardison felt that all along barking dogs was the biggest complaint in the county and he does not see how section 3.4 would help stop barking dogs.

John Wayne Hardison mentioned his one concern is that if there is ever an event that occurs for our county that wants to have music and make noise for the betterment of the county and for the majority of people, now we have made it where they can't do that at all. It is not going to stop the largest complaint in our county, which are barking dogs, but it could prohibit other things in the county that could be good economically for the county.

John Wayne Hardison implied that he does not know how to fix that.

Chairman Jackson commented that the ordinance is not going to stop the dogs from barking. The idea is that you will have the owner do something about them. Lauren Wise commented that he thinks in the existing Noise Ordinance there is no provision for barking dogs; however, he totally agrees with what Chairman Jackson is saying as well and thinks that Board could use clarification on why 3.4 was struck out, he would like to understand that. He also agrees that he thinks the dogs are probably the largest concern, but what can the Board do to give the ordinance the teeth it needs.

Jaime Laughter called County Attorney Natalia Isenberg with the questions the Board had been proposing concerning the removal of section 3.4. With Ms. Isenberg on the phone, Ms. Laughter read former section 3.4 aloud. Ms. Laughter indicated that this section had been struck through and the comment said, "deleted the knowingly permitting language" and then references Section 2, defining what is unlawful. Ms. Laughter asked if she is understanding the attorney's note correctly, that basically Ms. Isenberg is saying that if someone were to be operating a vehicle in such a manner as to create unreasonably loud or disturbing noise, it would fall under the definitions of the decibel reading. Is that correct? Natalia Isenberg agreed.

Ms. Laughter then asked if the explanation for this alteration extended to noise made by barking dogs. Ms. Isenberg confirmed Jaime's interpretation to be correct.

Ms. Laughter asked the Board if the removal of section 3.4 now made sense. Lauren Wise commented that it was starting to come back to him. Jaime commented that so even though it is not listed as a "prohibited noise" the fact that any noise would still be considered as long as it is not on an exempted list would still be subject to that noise level that is in section 2. So as long as it's still those definitions, but the ordinance is specifically saying yes, we are going to include the barking dogs during these hours or yes, we are going to include the other elements that are on that list. But, the vehicle would still be a violation if it had that reading above that ambient noise level. Natalia Isenberg responded yes, that way you are accounting for the noise level and to make it more uniform and make it easier for law enforcement to apply. They have the decibel meter to use that to consider the level of the volume. Jaime asked if that answers the questions to the Board.

John Wayne Hardison commented that under section 2, all noises aside from those listed as exempt, are covered under the noise ordinance, it doesn't matter whether it is a dirt bike or remote-controlled car or scooter. The Board can't list everything, there is no point in listing everything, once the Board puts a noise decibel reading on it, and it covered everything except sirens for emergency vehicles, farm equipment, and those things that the Board has exempted.

Bob Twomey questioned if the decibel reading was going to be accurate for a barking dog. John Wayne Hardison answered, no. Karen Gleasman commented that she looked up the decibel level of the average barking dog and it says it is 65 decibels, which is very close to the limit that the Board had set, so she thinks that if a barking dog is annoying enough and it doesn't happen to be above that 65 decibels, it's important that it gets highlighted. Lauren Wise commented that he agrees and that's why the Board made this list and actually tried to keep this additional noise list fairly short. Lauren stated that he does not

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remember exactly why the Board added in SECTION 3.4, but he could totally see how dogs could be a hard one to get a good reading on.

Jaime Laughter mentioned that through the night from 9:00 p.m. to 6:00 a.m. the noise level is 15 decibels above, so that is going to be different than during the day with a measure of 65 decibels.

Jaime Laughter questioned if Board members were okay if she released Natalia Isenberg from the call. The Board acknowledged they were okay with ending the call with Ms. Isenberg. Jaime Laughter thanked Natalia Isenberg for her time.

Bob Twomey questioned if section 4.1 dogs and restrained animals that is going to cover it. Jaime Laughter stated that the language in section 2 and section 4 are talking to each other.

Karen Gleasman questioned if law enforcement feels that the language around the dogs is enough for them to do anything about the dogs. Ms. Gleasman mentioned that the Board had the Sheriff or Deputy Sheriff in to discuss the noise ordinance. Does anyone on the Board remember specifically about the dogs and the language that is in there now being discussed with Law Enforcement? Could the Board do anything with this document to handle the most frequent complaints?

John Wayne Hardison does not recall anyone from law enforcement saying yes this is the best that can be done to be able to enforce it or this is not applicable to be able to enforce it. Law enforcement has been upfront if there were things in there that they did not like. Mr. Hardison does not think that law enforcement has an issue with it.

Lauren Wise commented that he thinks it has been a little bit untested, they have not had to do it before, because there has not been an ordinance to cover it. So, in the past there has been no ordinance that said anything about barking dogs. Law enforcement did come in with their meters and Planning Board members set up some benchmarks. Mr. Wise stated he would not be surprised if some of that needs some fine tuning, but that's a great question, because he doesn't think they really know either.

Karen Gleasman commented that the Board just needs a stick in the ground that we can move around as needed. If it needs more teeth, then it gets adjusted.

Bob Twomey commented that the Board can't put every single thing in the ordinance, some of it is just going to have to be modified or changed as needed through time and we'll just have to see how this is going to apply. Mr. Twomey does know that the law enforcement guys want something to hang their hat on. When they go out, they want the ordinance to back them up.

Chairman Jackson asked if members were okay with the way it is written in the clean copy about dogs. John Wayne Hardison, Karen Gleasman and Rick Lasater were all okay with the dog part. Rick Lasater stated that he was not okay with deleting the old 3.4 section. Lauren Wise is good with 4.1, Bob Twomey is okay with it.

Chairman Jackson asked members to refer to the marked-up copy originally under section

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4 or what was 3.4 about “Operating or permitting the operation of any automobile...”
What is the Board going to do about that? John Wayne Hardison asked Rick Lasater what is your problem with that one? Rick Lasater responded “neighbors”. John Wayne Hardison questioned, what do you mean neighbors? Rick Lasater responded neighbors that he had and there is nothing that they can be charged with right now, it is a private road and Chapter 20 does not apply to private roads. Chairman Jackson does not remember us saying that is what they wanted to do or having any discussion about it. John Wayne Hardison commented that he is not familiar with Chapter 20 and Rick Lasater responded that is the motor vehicle law does not apply on private roads. John Wayne Hardison commented that if they are in the county and it is over a certain noise decibel. Rick Lasater commented that right now you don’t know what the decibel levels are and you have no way to know.

Chairman Jackson asked Jaime Laughter if that would be covered by the decibel part of it. Jaime Laughter answered, “Right, it would still be a violation if it met the decibel test.” Ms. Laughter informed the Board that they had the option if wanted to add section 3.4 back in, the attorney is consulted by the Board of Commissioners, so if there is a specific legal reason why she advises us to take it out, we can also include that when it goes to the Board of Commissioners.

Jaime also advised that even if you leave section 3.4 in, it will still have to meet that decibel test because the way it is written that wouldn’t help the law enforcement officer whether or not it crosses over that unreasonably loud. John Wayne Hardison commented that was his understanding.

John Wayne Hardison asked Rick Lasater if he wants it written in there as specific an automobile, a motorcycle. Rick Lasater answered to look at 4.1 “Dogs or any other constrained animals that...” Rick Lasater stated that if it read something like that to include all of these, he would be okay with that. John Wayne Hardison commented but the only way to determine an unreasonably loud or disturbing noise is by measurement. Rick Lasater commented not necessarily, it aggravates the absolute hound out of a neighborhood that is unreasonable and disturbing. John Wayne Hardison commented that the whole reason to have the decibel reading is to take that interpretation out of it, because what is annoying to you might not be annoying to Kimsey Jackson. It might be annoying to John Wayne Hardison but might not be annoying to Bob Twomey. That is the reason for the decibel reading, it takes the personal interpretation out of it.

Rick Lasater commented that he still thinks that it needs to stay in there. Chairman Jackson commented that he suspects that everyone would be annoyed by a continuation of these things. John Wayne Hardison commented that if it is loud enough then they would be violation and if it is not loud enough then it is under that violating sound. Jaime Laughter commented legislating whether it is annoying or legislating the term unreasonable is part of the problem of the existing noise ordinance, so that measurement of decibel becomes critical. Even if it is on the list, it must meet that decibel reading. John Wayne Hardison commented that would be a hard case for the court to pursue and for the law enforcement to upkeep if we say an unreasonable noise or an annoying noise – that’s an interpretation thing, thinks that is why we used the decibel. Rick Lasater is saying that 3.4 needs to stay in there, because it gives specific examples of things that need to be looked at.

Chairman Jackson asked Jaime Laughter if the Board should ask the attorney if we want to look at that and perhaps rewrite it so that it is okay to stay in there. Ms. Laughter stated the she will go back and get more clarity there and see if there is a way to include the same kind of activities under her recommendation.

Bob Twomey stated if left in there it is still going to come back to a numbered decibel level, so, it is not going to hurt to leave it in there, but it will still have to be measured by decibel. Chairman Jackson commented that another thing too is that the decibels are going to depend on how close you are. If you measure the decibels at his house, and I'm farther away, the decibels aren't going to be the same. John Wayne Hardison commented that it says in here at the point where the complaint is made.

Chairman Jackson stated that his suggestion is to have the attorney to take another look at this and propose language to keep it in there. Jaime Laughter commented okay.

Rick Lasater commented that what he is saying is that it talks about the dogs being frequent, recurrent, or constant and a number of things otherwise cause unreasonably loud or disturbing noises. Then you go back to the definition in the front, you could make a case where it talks about definitions, where she deleted the definition unreasonably loud and disturbing noise. Jaime Laughter commented that the reason for that deletion was because it is going to a decibel reading, and the decibel reading is what has deemed barking unreasonably loud. John Wayne Hardison commented that he thinks we need to eliminate any room for interpretation because if there is room for interpretation, there is room for an attorney to interpret it differently and to get a violator off of a violation. If it is more cut and dry and simple, and it's the decibel readings and the time, it doesn't matter whether it's a dirt bike, a remote controlled car, a dog, a cat, it just doesn't matter what it is.

Chairman Jackson asked the Board if they wanted the attorney to look at the noise ordinance one more time. Planning Board members responded yes. Chairman Jackson instructed Jaime Laughter to follow up with the attorney and we will put it on the agenda for the next Planning Board meeting.

Chairman Jackson asked if there was anything else Planning Board members wanted on this ordinance? The Board had no further input to be reviewed by the county attorney.

B. Roster – review information and be sure it is correct.

Chairman Jackson stated that the roster should be corrected to reflect that he no longer has P. O. Box 207.

John Wayne Hardison had asked about a county email that would be great to receive all county emails, and provide to citizens. Setup county email for Karen Gleasman, resend instructions to John Wayne Hardison.

VII. New Business

A. Floodplain Ordinance Review

Jaime Laughter informed the Board that due to the allocation of Floodplain administration to the Building and Inspections Department this item was removed from the agenda.

Bob Twomey questioned if the oversight of the Transylvania County Floodplain ordinance goes back to Building and Inspections, does that mean that the Planning Board will not be reviewing that ordinance? Jaime Laughter advised that is correct. In the history, the Planning Board did not have any jurisdiction over that ordinance, it is directly under the Board of Commissioners and the implementation is up to the County Manager under that ordinance.

B. 2020 Census

Chairman Jackson questioned if everyone has completed their census. Bob Twomey stated that he has not received one. Jaime Laughter advised just to let the Board know that we are encouraging all our Boards to make sure you reach out to your family and friends and remind them to fill out their Census.

C. Annual Report

The annual report review is due to Board of Commissioners by the end of May. Chairman Jackson asked if anyone wanted to add anything to it or strike anything off. Rick Lasater advised that we needed to strike review of the floodplain on the May meeting date.

VIII. **Public and Board Member Comments:**

Chairman Jackson commented on the Transportation meeting in January – the follow up meeting, which was held about two weeks later had more information on the cost. Chairman Jackson asked the state people the possibility on getting any of those projects and was advised we might get one.

Bob Twomey commented that he had a presentation on the floodplain but apparently this is becoming a moot point, since this will be an ordinance that this Planning Board we look at all the other ordinances, but we don't look at that one. Jaime Laughter commented that you don't look at all the ordinances, you do look at those under the planning scope. The floodplain ordinance originated out of the Board of Commissioners, but not under planning. The planning statutes do require that things come before the Planning Board and specifically you will be seeing the Cedar Mountain Area Plan. There are numerous checkpoints for the Small Area Plan that involve the Planning Board and you will be making recommendations at those checkpoints.

Chairman Jackson asked if Cedar Mountain was going to meet next week. Ms. Laughter answered that the Cedar Mountain Area Plan committee is not meeting next week. Staff is meeting with the Chair and Vice Chair tomorrow to talk about where they are in the process and chart out where they need to go. There will be more information coming on that, this Board will be very involved in that Small Area Plan process.

Ms. Laughter reminded the Board that another thing that will be coming up is the Comprehensive Plan for the whole county and that will be work that is undertaken by this Board.

Bob Twomey stated that he had a presentation for you all and he has talked with Jaime and Allen already, but personally feels that there are segments of our current ordinance whether it is based under FEMA federal rules or not that are being overlooked and that's why he wanted to make that presentation tonight. Jaime and Bob talked and he is disappointed that he

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wasn't able to make the presentation tonight, but he believes we are missing a point with some of our ordinance, he wouldn't say that if he didn't know the French Broad River, he's worked on that river 28 years and he knows flooding.

Jaime Laughter advised that staff would take Mr. Twomey's comments to the Board of Commissioners. Bob Twomey responded that all that the Members on the Board of Commission were there when he was still working in the county and they know what he did. Jaime Laughter advised Bob Twomey that staff would share his information with the Board of Commissioners and move that forward.

Lauren Wise welcomed Karen Gleasman to the Board and welcome to the new and shuffled staff.

Rick Lasater thanked Kimsey Jackson and Lauren Wise for agreeing to be our Chair and Vice Chair, he also welcomed Karen Gleasman and staff and thanked the staff for the work they do every day. John Wayne Hardison agreed, feels like things are getting back to normal and feels like we are contributing to our community, feels good to be back.

John Wayne Hardison also welcomed Karen Gleasman and it will be good to have her input and questions.

Karen Gleasman commented that she is a question asker and has opinions as well, and she is happy to be here.

Karen Gleasman asked a question about the Scenic Corridor Designation Ordinance, is that under the jurisdiction of this planning group? Jaime Laughter answered that it is not something that has been sent to the Planning Board for review before. Karen Gleasman questioned if the only enforceable thing that is out there is around the Sign Ordinance that is on the back of corridors? Jaime Laughter replied, yes and those four were adopted by the Board of Commissioners.

Chairman Jackson welcomed Karen Gleasman and said that it is good to be back.

- IX. **Adjourn:** The next Planning Board meeting is scheduled for June 18, 2020, at 7:00 pm in the Commissioners Chambers. There being no further discussion, John Wayne Hardison moved to adjourn. The motion was seconded by Karen Gleasman and carried unanimously. The meeting ended at 8:23pm.

MINUTES APPROVED


Richard K. Jackson, Chair


Beth Webb, Recording Secretary