MINUTES - SPECIAL MEETING
BOONE TOWN COUNCIL
SEPTEMBER 29, 2010

A special meeting of the Boone Town Council was called to order at 5:11 p.m., Wednesday, September 29, 2010, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council Members present were Mayor Pro-Tem Lynne Mason, Andy Ball, Rennie Brantz, and Jamie Leigh. Staff members present were Greg Young-Town Manager, and Kimberly Brown-Deputy Town Clerk. Town Attorney Sam Furgiuele was also in attendance. Members of the Downtown Boone Development Association (DBDA) Board of Directors present were Dempsey Wilcox-President, Bob Meier-Vice President, Sheri Moretz-Secretary, Jason Berry-Treasurer, Rich Jacobs, Jean Borhman, Marianne Doan, Omer Tomlinson, Sam Ratchford, and Andy Stallings. DBDA Executive Director Mary Baker was also in attendance.

The purpose of the meeting was to discuss the interim contract between the Town of Boone and the DBDA.

DISCUSSION OF INTERIM CONTRACT BETWEEN TOWN OF BOONE AND DBDA

Discussion began with Article II. Consideration of the contract. The following changes to the section were suggested:

ARTICLE II. Consideration: In consideration of the DBDA's performance of the duties and responsibilities set out herein, the Town will pay the DBDA **one-half of the 2010-2011 MSD tax revenues, when those revenues become available, estimated as** Fifty-Five Thousand,Two Hundred and Fifty-Five and no/hundredths dollars ($55,255.00) (hereafter, "MSD funds"), ~~representing one-half of the 2010-2011 MSD tax revenues, when those revenues become available.~~ Each party recognizes and confirms that all MSD funds are derived from MSD taxes and are subject to all relevant restrictions for MSD tax funds set out in the North Carolina General Statutes. **Should the Agreement be terminated or end before all funds have been paid, the Town shall reimburse the DBDA for any uncompensated activities performed pursuant to this Agreement.**

Discussion ensued on the issue of the MSD boundary and the area serviced by the Main Street Program. Town Manager Greg Young stated that his staff has researched the MSD boundary map and that he believes that the map is correct to the best of his knowledge.

Discussion ensued concerning Section A.6. of Article III. Responsibilities of the DBDA of the contract. Mr. Wilcox stated that due to the size of the organization and limited staff resources, he feels that a normal 8 a.m.-5:00 p.m. schedule for office hours cannot be attained. It was suggested that a schedule of office hours for the organization be publicized and that notice be given for such times as vacation, conferences, etc. The following change was recommended:

6. Establish and post on its website, and begin keeping in accordance with the posted schedule, regular ~~and full~~ public office hours, in amounts and at times authorized by the DBDA's board of directors.

After lengthy discussion regarding the designation of the DBDA fund balance, both the Town Council and the DBDA Board of Directors agreed on the following suggested language to Article XIV. Default and Article XV. Return of Unspent Funds:

The Parties acknowledge that due to past methods of record keeping and the passage of time it is not feasible to determine with precision the portion of the DBDA's fund balance which was comprised of MSD funds or direct earnings from those funds as of the close of its prior contract with the Town. Therefore, in order to resolve any future ambiguity and to protect the Town in its discharge of its fiduciary responsibility regarding MSD funds, the parties agree to the following:

A. The DBDA's full fund balance from all sources as of June 30, 2010 was 60,182.49.

B. Of said fund balance, the parties agree that 50% of the full fund balance are MSD funds and 50% derive from other sources. Should any funds be subject to remission by the DBDA to the Town at the end of the term of this

Agreement or due to early termination of this Agreement, this division of funds will guide the calculation of the amount of funds which must be remitted by the DBDA, recaptured by the Town or withheld by the Town.

C. The DBDA agrees that ninety percent (90%) of any funds not remitted, recaptured or withheld in connection with the foregoing shall nevertheless be subsequently expended by the DBDA solely on activities permissible under North Carolina State law and this Agreement for MSD funds, even if the term of this Agreement has expired, and the DBDA shall maintain sufficient records to confirm compliance with this provision until all affected funds have been fully expended and shall produce such records to Town upon request.

ARTICLE XV. Return of Unspent Funds: At the end of the term, the DBDA shall immediately remit and refund to the Town any unspent MSD funds**, subject to the provisions of Article XIV, paragraphs A, B, and C**.

In regard to the amount of DBDA fund balance, it was agreed that the actual amount of the fund balance be left open so that it could be adjusted after further review of past financial audits for the DBDA.

The following corrections were suggested:

ARTICLE VI. Compliance with ~~it's~~ its By-laws and Organizational Reporting to the Town:

ARTICLE VIII. Financial Reporting: ".....The DBDA will notify the Town in writing within five days if any member of its staff is charged with or convicted of any crime involving malfeasance or misfeasance, or ~~honesty~~ **dishonesty** in the use or handling of any DBDA funds, whatever the source, or if the DBDA itself is accused of any wrongdoing."

ARTICLE XIV. Default: If the DBDA defaults in the performance of any of its duties under ~~paragraph~~ **Article** III of this Agreement, all of which are deemed material, or violates any of the terms of Article IV through XIV of this Agreement, all of which are deemed material, the Town may immediately terminate the Agreement or suspend the payment of the funds, at its choice, without prior notice or an opportunity for the DBDA to cure its violation.

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve the above-referenced changes to the interim contract with the DBDA.

VOTE: Aye - All
Nay - None

By unanimous vote, the DBDA Board of Directors also approved the above-referenced changes to the interim contract with the Town of Boone.

ADJOURNMENT

With no further discussion, Mayor Clawson adjourned the meeting at 6:44 p.m.

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Deputy Town Clerk Mayor