

Minutes-Special Meeting of the Boone Town Council

Water Use Committee

January 24, 2011

A special meeting of the Boone Town Council was called to order at 5:30 p.m., Monday, January 24, 2011, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council Members present were: Mayor Pro-Tem Lynne Mason, Rennie Brantz, Stephen Phillips Jamie Leigh, and Andy Ball. Members of the Water Use Committee Present were: Tim Wilson, Pam Williamson, Patrick Beville, Dr. Kristan Cockerill, Kimberly Marland and Bunk Spann. Staff Members present were Greg Young- Town Manager, Rick Miller- Public Utilities Director and Lane Weiss-Water Conservation Program Coordinator. Town Attorney Sam Furguiele was also in attendance.

Mayor Clawson called the meeting to order and welcomed all in attendance.

Tentative Agenda Adoption

Mayor Loretta Clawson presented the following changes to the agenda:

1. Addition of Agenda Item number three: "Approval of Encroachment Agreement- Casey & Casey Law Offices-Canopy/Sign."
2. Request by Committee Member Pam Williamson to discuss agenda item number six "Discussion of Water Numbers and Reprioritizations" before agenda item number four "Discussion of Ordinance #05-01- Sun-Setting."

Upon a motion by Council Member Andy Ball, seconded by Council Member Lynne Mason, the tentative agenda was adopted.

Vote: Aye-All
Nay-None

Approval of Encroachment Agreement- Casey & Casey Law Offices- Canopy/Sign

Town Manager Greg Young clarified that at the prior Town Council meeting there had been some confusion as to what had been previously approved, stating that the canopies at Casey & Casey Law Office had been approved in meeting in August of 2010. Town Manager Young explained that the Town Council would be voting on the encroachment of the signs at Casey and Casey Law Offices, referencing the color photo included in the agenda packet. **(Permanently on file in the January 2011 meeting information file.)** Council Member Brantz, seconded by Council Member Mason, moved to adopt the following encroachment agreement:

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the 24th day of January, 2011, by and between the TOWN OF BOONE, party of the first part; and Casey & Casey Law Offices, party of the second part.

W-I-T-N-E-S-S-E-T-H

THAT WHEREAS, the party of the second part desires to encroach on public land designated as (CHOOSE ONE) a public sidewalk/public street/public park/public land (hereinafter referred to as the "public land") located at 891 West King Street with the following: a canopy sign (hereinafter referred to as "the encroaching facility"); and

WHEREAS, it is to the material advantage of the party of the second part to effect this encroachment, and the party of the first part, in the exercise of authority conferred upon it by

statute and ordinance, is willing to permit the encroachment on public land, subject to the conditions of this agreement;

NOW, THEREFORE, IT IS AGREED that the party of the first part hereby grants to the party of the second part the right and privilege to make this encroachment upon the following conditions, to wit:

That the party of the second part complies with all pertinent provisions of the North Carolina State Building Code, the Town of Boone Unified Development Ordinance and Town of Boone Municipal Code, and such other laws, regulations and ordinances which might apply;

That the said party of the second part binds and obligates itself, its successors and assigns, to install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said public land, nor obstruct nor interfere with the proper maintenance thereof, to reimburse the party of the first part for the costs incurred for any repairs or maintenance to its roadways, sidewalks and other structures resulting from the installation and existence of the encroaching facility of the party of the second part, and if at any time the party of the first part shall require the removal of or changes in the location of the encroaching facility, that the said party of the second part binds itself, its successors and assigns, to promptly remove or alter the said encroaching facility in order to conform to the said requirements of the party of the first part, without any cost to the party of the first part.

That the party of the second part agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and/or other warning devices, as necessary or as requested by the party of the first party Director of Public Works or his designee, for the protection of the public and in the case of encroachment into a street right of way, in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and amendments or supplements thereto. Information as to the above rules and regulations may be obtained from the party of the first part.

That to the extent permitted by law, the party of the second party shall be responsible for all liability associated with the encroachment and encroaching facility. In furtherance of such responsibility, the party of the second part agrees to indemnify and hold harmless the party of the first part from and against any claim by any third party based upon any action or omission occurring during construction and maintenance of the encroaching facility, as well as from and against any and all claims, demands, suits, causes of action, or other assertion of responsibility, however denominated, for personal injury, damage to property, losses and expenses, including court costs and attorney's fees, arising out of or in any way related to the encroachment or encroaching facility;

That where pertinent and requested by the party of the first part, the party of the second part agrees to name the party of the first part as an additional insured on its and/or its contractor's general liability insurance policies applicable to the encroachment or encroaching facility.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such encroaching facility as the party of the first part carries out its construction and maintenance operations, and the party of the second party expressly waives all claims of liability or responsibility against the party of the first party for any damage that may be caused to the encroaching facility as the result of the Town carrying out any construction and maintenance operations. The party of the second part acknowledges that with regard to canopies, awnings, signs and similar encroachments, even where same fully comply with the Town of Boone Unified Development Ordinance, when placed less than ten feet above the surface of a public sidewalk, such obstructions are at great risk of damage by the equipment of the party of the first part during snow removal and general sidewalk construction and maintenance, and the party of the second part understands that by

placing the encroaching facility less than ten feet above the surface of a public sidewalk, the party of the second part is knowingly and intentionally assuming that heightened risk of damage.

That the party of the second part agrees to be bound by such other and additional conditions as the Town Council may impose in connection with the encroaching facility.

The party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; silting or pollution to the rivers, streams, lakes, reservoirs, other water impoundments; ground surfaces or other property; or pollution of the air. The party of the second part shall comply with all applicable all rules and regulations of the North Carolina Sedimentation Control Commission, the Town of Boone Unified Development Ordinance and all other applicable laws and regulations relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover, the party of the second part agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the satisfaction of the party of the first part. The party of the second part shall comply with all pertinent ordinances, rule, regulations and laws, and failure to do so shall be a basis for revocation of this encroachment agreement by the party of the first part.

That the party of the second part agrees to assume the actual cost of any inspection of the work considered to be necessary by the party of the first part.

That the party of the second part agrees to have available at the encroaching site, at all times during construction, a copy of this agreement showing evidence of approval by the party of the first part. The party of the first part reserves the right to stop all work unless evidence of approval can be shown.

Provided the work referred to in this agreement is being performed on a completed public street open to traffic, the party of the second part agrees to give written notice of when work will begin to the party of the first part.

That in the case of noncompliance with the terms of this agreement by the party of the second part, the party of the first part reserves the right to stop all work until the encroaching facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

That it is agreed by both parties that this agreement shall become void if actual construction of the work contemplated herein is not begun and completed within 1 year(s) from the date of this agreement unless written waiver is secured by the party of the second part from the party of the first part.

The party of the first part expressly reserves the unrestricted right to require the party of the second part to change the location of the encroaching facility described herein at no expense to the party of the first part.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed as of the day and year first above written.

TOWN OF BOONE

BY: _____
Mayor

ATTEST:

Town Clerk

BY: _____
President/Member-Manager/Owner

Printed Name: Party of the Second Part

ATTEST:

Secretary/Witness

Vote: Aye-All
Nay- None

Discussion of Language Simplification to Ordinance #05-01

Town Attorney Sam Furguele opened the discussion by stating that he had been charged with updating the language in Ordinance #05-01, making it more organized and easier to read. These changes were presented at the last Water Committee meeting; however, no feedback was given at the time. Committee Member Cockerill made a motion to approve the textual non-substantive changes that have been drafted to Ordinance #05-01 seconded by Committee Member Williamson.

Vote: Aye-All
Nay- None

Discussion of Water Number and Reprioritizations

Public Utilities Director Rick Miller opened the discussion by directing the Committee's attention to the memo and charts contained in the agenda packet (**Permanently on file in the January 2011 meeting information file.**) Mr. Miller then went on to review the chart depicting the allocated amounts of water versus actual used, explaining that there was a difference of 16,687 gallons in the actual amount used as compared to the allocated amount, and 9,886 gallons remaining from projects that listed none noted in the actual usage, for a total of 26,573 gallons available. Mr. Miller then reviewed the two other charts contained in the packet, noting that one addressed the total monthly amounts of water treated since January of 2004 and the other depicted the maximum daily water demands for each month since January of 2004. Council Member Leigh reviewed the past years water allocations, noting that no project had been declined water due to a lack of water availability. After some discussion of past allocations, Public Utilities Director Rick Miller commented that some water had been added back to the allocation pool leaving a total of 115, 314 gallons to be allocated for the current year and he felt this was due to conservation efforts and the economy. Council Member Mason explained that when Ordinance #05-01 was drafted and the allocation process began there was an expectation of an additional water source in 5 years, however, 5 years later the Town is currently in the same position as before, leaving the Committee unable to determine exactly how much water will be available for future allocations. Committee Member Beville added that while Council had not declined projects due to water specifically, there was a perception among some town members that water allocations were considered an obstacle to gaining approval for a project. Lengthy discussion ensued concerning possible ways to extend the amount of water available for allocations so as not to negatively impact development, current users or the environment. Some of the items discussed were: adjustment of water rates, conservation programs, incentive programs and reprioritization of current allocations. During the discussion Committee Member Cockerill made a motion that the Committee places the available 26,573 gallons back into the

allocation pool for 2011 (bringing the total available for allocation to 141,887 gallons.) This motion was seconded by Committee Member Spann.

Vote: Aye- 11 (K. Cockerill, L. Clawson, A. Ball, S. Phillips, K. Marland, P. Williamson, B. Spann, R. Brantz, J. Leigh, L. Mason, T. Wilson)
Nay- 0
Abstain- 1 (P. Beville)

Discussion of Ordinance #05-01- Sun-Setting

Council Member Mason ushered in discussion of Ordinance #05-01 by stating that the Committee might want to approach this issue at a future meeting or due to a lack of information. Committee Member Williamson echoed the feeling. Council Member Brantz urged the need to make a decision concerning Ordinance #05-01 soon as to prevent any further ambivalence in the community. After some discussion, Committee Member Spann made a motion to move the discussion of Ordinance #05-01 Sun Setting to a Water Committee Meeting in June of 2011. This motion was seconded by Committee Member Williamson.

Vote: Aye-All
Nay-None

Discussion of Other Matters

Town Attorney Sam Furguiele noted that at a previous Town Council meeting an individual had approached the Council concerning the availability fee deposit for mix-use projects. (During this time Committee Members Spann and Cockerill left the meeting.) After some discussion, Council Member Phillips made a motion that this issue be revisited at the next Water Committee Meeting to be scheduled in March. Council Member Leigh seconded this motion.

Vote: Aye- All
Nay- None

Council Member Phillips then urged the Committee to begin thinking about the old high school property and the water allocation that it would require. Council Member Phillips then made a motion that this item be added to the next scheduled meeting of the Water Committee. Council Member Leigh seconded this motion.

Vote: Aye- All
Nay- None

The Committee then entered discussion of possible dates and times for the scheduling of the next Water Use Committee meeting. Council Member Ball then made a motion to schedule the next Water Use Committee for Wednesday March, 9 at 5:30 in Council Chambers. Council Member Mason seconded this motion.

Vote: Aye- All
Nay- None

The meeting was adjourned at 7:45pm.

Mayor, Loretta Clawson

Committee Secretary, Lane Weiss