

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
January 15, 2019**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order at 6:00 p.m. on Tuesday, January 15, 2019 in the Council Chambers located at 1500 Blowing Rock Road. Mayor Rennie Brantz presided. Council Members present included Mayor Pro-Tem Loretta Clawson, Lynne Mason, Sam Furgieuele, Connie Ulmer and Marshall Ashcraft. Staff present included Town Manager John Ward, Town Clerk Nicole Worley, Public Works Director Rick Miller, Fire Chief Jimmy Isaacs, and Lieutenant Chris Hatton. Town Attorney Allison Meade was also in attendance.

ANNOUNCEMENTS

Mayor Brantz presented the wife of former Town employee Daniel Mitchell with a resolution honoring his life and asked that anyone interested in speaking during the Public Comment period to please sign up.

TENTATIVE AGENDA ADOPTION

Mr. Ward stated he did not have any additions or deletions to the agenda. Upon a motion by Council Member Mason, seconded by Mayor Pro-Tem Clawson, Council voted to adopt the tentative agenda as presented.

VOTE: Aye: All
 Nay: None

PUBLIC COMMENT

Gail Bedell of Boone spoke in favor of the Town constructing a sidewalk in the area of Hardin Park School and Fieldstream Drive, noting that the area was unsafe for pedestrians and bikers due to the danger of traffic.

Matt Powell of Boone spoke in favor of the Town constructing a sidewalk in the area of Hardin Park School, and stated that he was concerned about the pedestrian situation in the area and that he would love to see walkways and crosswalks in the area so that everyone could feel safe.

PUBLIC HEARING

Since the meeting was running ahead of schedule, Council Member Furgieuele made a motion, which was seconded by Council Member Mason, to amend the agenda to continue with the presentation of the annual report of the Watauga County Public Library, in order to allow the Public Hearing to begin at the scheduled time of 6:30 p.m.

VOTE: Aye: All
 Nay: None

REQUESTED APPEARANCES

MONICA CARUSO - WATAUGA COUNTY PUBLIC LIBRARY

Monica Caruso of the Watauga County Public Library presented Council with the library's annual report.

A complete copy of the report is located online at
http://boonenc.iqm2.com/Citizens/Detail_Meeting.aspx?ID=2011 .

**PUBLIC HEARING - PUBLIC FINANCE AUTHORITY STUDENT HOUSING
REVENUE BONDS**

Mayor Brantz opened the public hearing regarding public finance authority student housing revenue bonds at 6:31 p.m. Mr. Furgieuele asked Town Attorney Allison Meade whether she believed the Town or Town residents would have any liability in the event there was a default on the loan by the University, other than that as a State tax payer. Ms. Meade stated that she had researched the topic and it was her opinion that there would be no liability to the Town. She added that the narrow way the bonds were written was intended to keep even state tax payers free of liability. Mr. Furgieuele asked whether there was any reason from a staff perspective that Council should not support these bonds, to which Mr. Ward answered no, that this project would help to encourage

housing and parking on campus and would relieve pressure on outlying areas. Mr. Furgiuele inquired whether the Town would have implemented more stringent stormwater regulations by the time construction began. Mr. Ward replied that he anticipated permits being issued before new stormwater regulations could be implemented and noted the progress of the daylighting project at the Peacock Lot. Mr. Furgiuele stated that he wanted staff to advocate for the contractors' implementing, on their own initiative, the strongest possible connections to abate the growing stormwater issues. Ms. Mason noted that since the project fell under the Town's planning jurisdiction, that construction would have to comply with the Town's zoning regulations, including stormwater regulations. Mr. Furgiuele stated that the Town's stormwater regulations were too little and asked about the time frame for construction. Matt Dull, Assistance Vice Chancellor for Finance and Operations replied that the permitting on the first phase would begin in the next two weeks, with construction beginning on February 15, 2019 and that construction on buildings 300 and 400 would begin in spring 2020 and 2021. He added that the University had recently participated in a traffic analysis study to address additional concerns during and after construction. With no further comments from the audience or from Council, Mayor Brantz closed the public hearing at 6:38 p.m.

GEORGE SANTUCCI - NEW RIVER CONSERVANCY

☉ George Santucci with New River Conservancy presented Council with information on phase two of the restoration project on the south fork of the New River and stated that earlier in the day, the Watauga County Board of Commissioners fully and unanimously supported the same request being presented to Council. Ms. Mason stated that there was no question about the need for this project and made a motion to appropriate funds in the amount of \$100,000 from the fund balance. Mayor Pro-Tem Clawson seconded the motion. Mr. Santucci noted that phase one was not yet completed, but that it was fully funded. He also noted that the projects were out of order according to location because the Town did not own the Bolick property when phase one began. Ms. Ulmer asked how long the need was apparent before funding became available. Mr. Santucci responded that the problem had been known for years and added that the type of construction used in the project had a projected impact of between 50-100 years. Ms. Mason noted that the Town had partnered with NRC in the past and that the work they do makes a vast improvement on many issues. Mr. Santucci expressed that NRC was in support of more stringent stormwater regulations within the Town. Ms. Ulmer stated that storms were getting worse and asked if there was a plan to better repair damages caused by flooding. Ms. Santucci noted that for this project he planned to implement natural elements into the design and noted the positive impact of the wetlands at Clawson-Burnley Park, adding that it would take several similar projects to offset flooding in the Blowing Rock Road corridor. When asked by Mr. Furgiuele who funded phase one of the project, Mr. Santucci answered that the North Carolina Clean Water Management Trust Fund and Soil and Water Conservation paid for the project, and that Watauga County contributed the conservation easement, noting that Town funds were not requested at the time due to a lack of need. Mr. Furgiuele asked whether the County's development of the athletic fields had a negative impact on erosion in the area, to which Mr. Santucci responded that it had not. Mr. Furgiuele inquired as to whether there were issues with the way the fields were fertilized or maintained. Mr. Santucci replied that the bigger the wooded buffer in between the fields and the stream, the better, in order to prevent chemicals from seeping in, and asked that the Town protect fifty feet of buffer along the entire Bolick property. Mr. Furgiuele expressed concerns with the letter of intent presented by Mr. Santucci, specifically whether there were permanent protections if the Town granted funding. Mr. Santucci stated that NCCWMTF would not allow construction to move forward unless there were deed restrictions, but that changes could be made to the letter of intent if desired. He added that the County already had their restrictive covenant drafted, but have not filed it. Mr. Furgiuele stated that he was concerned that if there was not a binding commitment that expressed if funding goes through the Town would respect the fifty-foot buffer, there was a potential that a future Council might find a reason to invade the buffer, that he believed funds should not be allocated if this requirement was not made. Mr. Ward noted that Assistant Town Manager Jim Byrne was working with the National Forestry Service on a reforestation plan that would extend the buffer past the fifty-feet mentioned. Mr. Furgiuele stated that he was in support of the request, but asked that the letter of intent be amended to bind the Town to a fifty-foot buffer area along the perimeter of the property. Ms. Mason and Mayor Pro-Tem accepted Mr. Furgiuele's amendment. Mr. Ward stated that the current vision was to be able to access the Greenway from the County side and to include looped trails along the bottom section of the property. He added that these restrictions could impact the ability to connect additional greenway systems. Mr. Santucci noted that the

NCCWMTF typically supported greenways as long as the language was in the deed. Mr. Santucci confirmed that the need for the project was due to the worsening stormwater problems in the Town, due in part to the increasing impervious surface. Mr. Furguele stated that he was disappointed that when Council discussed mandating the use of pervious concrete that there was resistance, and that he hoped this would be taken to heart in the future to help address the causes of stormwater issues in the town. Ms. Mason asked that it also be added in the letter of intent that the Greenway, including a pedestrian bridge, would be permitted within the restricted buffer area.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Council Member
SECONDER:	Loretta Clawson, Mayor Pro-Tem
AYES:	Mason, Clawson, Furguele, Ulmer, Ashcraft

APPROVAL OF ITEMS ON CONSENT AGENDA

Council Member Furguele questioned the encroachment agreement with BOP King Street, LLC, since as written would encompass both temporary and permanent encroachments. Mr. Ward explained that the main concern was leaving access for the Fire Department and suggested that the agreement be separated out into two agreements, a construction encroachment which would expire upon the completion of construction and a second which would include permanent encroachments such as the garbage receptacle station behind the building. Mr. Furguele suggested that action be deferred and that staff revise the agreement to remove the temporary pieces, dimensions added for all encroachments (lighting, awning, trash area) and a description of how they would interfere with the Town's future plans. Upon a motion by Council Member Furguele, seconded by Mayor Pro-Tem Clawson, Council voted to table the encroachment agreement with BOP King Street, LLC until Thursday to allow staff to make revisions.

VOTE: Aye: All
 Nay: None

Upon a motion by Council Member Mason, seconded by Council Member Furguele, Council voted to adopt the resolution honoring the life of Daniel Jhonathan Mitchell as presented.

VOTE: Aye: All
 Nay: None

RESOLUTION HONORING THE LIFE OF DANIEL JHONATHAN MITCHELL

WHEREAS, we the employees and elected officials of the Town of Boone, wish to express our gratitude and respect for Daniel Jhonathan Mitchell; and

WHEREAS, Daniel Jhonathan Mitchell was employed by the Town of Boone from November 1, 1999 until his passing on January 4, 2019 as a Fleet Mechanic with the Public Works Department; and

WHEREAS, Daniel Jhonathan Mitchell worked with diligence and vigor to achieve the goals of the Town of Boone; and

WHEREAS, the passing of Daniel Jhonathan Mitchell, a great employee, has caused a deep void of experience and knowledge within the department; and

WHEREAS, Daniel Jhonathan Mitchell served the community well and faithfully giving tirelessly of his time and good deeds to those in need; and

WHEREAS, Daniel Jhonathan Mitchell was a great husband and provider for his loving wife with a gentle spirit; and

WHEREAS, Daniel Jhonathan Mitchell lived in such a manner to touch each and everyone one of us with his great example of love and acceptance; and

THEREFORE, be it resolved that we as a community will mourn with the family because all of us have a common bond and will continue the great work of Daniel Jhonathan Mitchell; and

THEREFORE, let it be known that we cannot replace Daniel Jhonathan Mitchell, but we will attempt to improve our lives and live our lives as demonstrated by the great example set by Daniel Jhonathan Mitchell; and

NOW THEREFORE, let it be known that we know the deep loss and sorrow your family is experiencing. We want

to share in your sorrow recognizing that the Lord has accepted into his presence a good and faithful servant.

This the ____ day of January, 2019.

Rennie Brantz, Mayor

ATTEST:

_____(SEAL)
Nicole Worley, Town Clerk

COUNCIL MATTERS

CONSIDERATION OF APPROVAL OF RESOLUTION - PUBLIC FINANCE AUTHORITY STUDENT HOUSING REVENUE BONDS

Council Member Furguele made a motion to adopt the resolution for public finance authority student housing revenue bonds as presented, but asked that the university engage the contractor to do everything possible to go beyond the requirements for stormwater control currently in place by the Town of Boone. Mayor Pro-Tem Clawson seconded the motion.

**RESOLUTION APPROVING IN PRINCIPLE THE
ISSUANCE OF NOT TO EXCEED \$195,000,000 OF PUBLIC
FINANCE AUTHORITY STUDENT HOUSING REVENUE
BONDS (BEYOND BOONE, LLC – APPALACHIAN STATE
UNIVERSITY PROJECT) FOR THE BENEFIT OF
BEYOND BOONE, LLC, OR AN AFFILIATE THEREOF**

WHEREAS, the Public Finance Authority (the “Authority”), a Wisconsin bond issuing commission created under Section 66.0301, 66.0303 and 66.0304 of the Wisconsin Statutes, proposes to issue tax-exempt and taxable revenue bonds, in one or more series in an aggregate principal amount not to exceed \$195,000,000 (the “Bonds”) and to lend the proceeds thereof to Beyond Boone, LLC, a Delaware limited liability company, or an affiliated or related entity (the “Borrower”), to be used pursuant to a plan of finance to acquire, construct and equip a student housing development containing student housing, parking, dining and related improvements in three phases, expected to consist of (i) an approximately 590-bed student housing facility (“Building 100”) and a structured parking garage with approximately 477 spaces (the “Parking Garage” and, together with Building 100, the “Phase I Project”), (ii) an approximately 505-bed student housing facility (“Building 300”) and approximately 230 surface parking spaces (together with Building 300, the “Phase II Project”) and (iii) an approximately 683-bed student housing facility (“Building 400”) and approximately 171 surface parking spaces (together with Building 400, the “Phase III Project” and, together with the Phase I Project and the Phase II Project, the “Projects”);

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”), provides that the governmental unit having jurisdiction over the area in which any facility financed with the proceeds of tax exempt private activity bonds is located must approve the issuance of such bonds; and

WHEREAS, pursuant to Section 66.0304(11)(a) of the Wisconsin Statutes, prior to their issuance, bonds issued by the Authority must be approved by the governing body or highest ranking executive or administrator of the political subdivision within whose boundaries the project is to be located; and

WHEREAS, all of the Projects are located within the corporate limits of the Town of Boone (the “Town”), and the Town Council of the Town (the “Council”) constitutes the elected legislative body of the Town; and

WHEREAS, the Borrower has requested that the Council approve the financing of the Project and the issuance of the Bonds in order to satisfy the requirements of (a) Section 147(f) of the Code and (b) Section 4 of the Amended and Restated Joint Exercise of Powers Agreement Relating to the Public Finance Authority, dated as of September 28, 2010 (the “Joint Exercise Agreement”) and Section 66.0304(11)(a) of the Wisconsin Statutes; and

WHEREAS, the Bonds shall not be deemed to constitute a debt of the Town or a pledge of the faith and credit of the Town, but shall be special limited obligations of the Authority payable solely from the loan repayments to be made by the Borrower to the Authority and certain funds and account established by the trust indenture for the Bonds, and shall contain on the face

thereof a statement to the effect that neither the faith and credit nor the taxing power of the Town is pledged to the payment of the principal of or interest on the Bonds; and

WHEREAS, the Council has today held a public hearing concerning the Projects and the proposed Bonds, as evidenced by the Certificate and Summary of Public Hearing attached hereto as Exhibit A, and notice of such hearing was published in *The Watauga Democrat* on December __, 2018.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA THAT:

1. The Council approves the issuance of the Bonds in an amount not to exceed \$195,000,000 by the Authority for the benefit of the Borrower, pursuant to a plan of finance to finance the Projects, as required by Section 147(f) of the Code and Section 66.0304 (11)(a) of the Wisconsin Statutes. It is the purpose and intent of the Council that this Resolution constitute approval of the issuance of the Bonds by the Town as a governmental unit having jurisdiction over the area in which the Projects will be located, solely for purposes of Section 147(f) of the Code, Section 66.0304(11)(a) of the Wisconsin Statutes and Section 4 of the Joint Exercise Agreement.

2. The approval of the issuance of the Bonds does not constitute an endorsement to a prospective purchaser of the Bonds of the creditworthiness of the Borrower, the feasibility of the Projects or the credit quality of the Bonds. The issuance of the Bonds as requested by the Borrower will not constitute a debt or pledge of the faith and credit of the Town, and the Town shall have no responsibility or liability with respect to the Bonds or the payment thereof.

3. The approval of the issuance of the Bonds contained in this resolution is independent of any other approval or approvals by the Council or the Town that may be required in connection with the Projects (the "Additional Approvals"), and nothing contained in this resolution shall be construed to imply that any such Additional Approvals will be granted or to bind the Council or the Town in any way with respect to any Additional Approvals.

4. This resolution shall take effect immediately upon its adoption.

* * * * *

[Remainder of page intentionally left blank]

I, Nicole Worley, Town Clerk of the Town of Boone, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and complete copy of so much of the proceedings of the Town Council for the Town at a regular meeting duly called and held on January 15, 2019, as it relates in any way to the resolutions hereinabove referenced and that such proceedings are recorded in the minutes of the Town Council. Pursuant to G.S. § 143-318.12, a current copy of a schedule of regular meetings of the Town Council for the Town is on file in my office.

WITNESS my hand and the official seal of the Town of Boone, North Carolina this 15th day of January, 2019.

(SEAL)

Nicole Worley
Town Clerk
Town of Boone, North Carolina

Exhibit ACertificate and Summary

The undersigned Town Clerk of the Town of Boone, North Carolina, hereby certifies:

1. Notice of a public hearing (the "Hearing") to be held on January 15, 2019, with respect to the issuance of Bonds by the Public Finance Authority (the "Authority") for the benefit of Beyond Boone, LLC, a Delaware limited liability company, was published on December 23, 2018 in *The Watauga Democrat*. A copy of the Affidavit of Publication of such notice is attached hereto.

2. The presiding officer of the Hearing was _____.

3. The following is a list of the names and addresses of all persons who spoke at the Hearing:

4. The following is a summary of the oral comments made at the Hearing:

IN WITNESS WHEREOF, my hand and the seal of the Town of Boone, North Carolina, this ____ day of January, 2019.

Nicole Worley
Town Clerk
Town of Boone, North Carolina

(SEAL)

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Sam Furgiuele, Council Member
SECONDER:	Loretta Clawson, Mayor Pro-Tem
AYES:	Mason, Clawson, Furgiuele, Ulmer, Ashcraft

REPORT ON MOUNT LAWN MEMORIAL PARK AND GARDENS OF BOONE

Mr. Ward presented Council with a memo which was originally distributed to Council in October containing information regarding the potential donation of Mount Lawn Memorial Park and Gardens to the Town of Boone. Mr. Furgiuele stated that he originally expressed concern over the Town refusing to take over the cemetery due to history with its previous owners and the number of people who had been defrauded. He added that many Town residents had relatives buried at the cemetery, but he believed the cemetery to be an area of legitimate concern for the Town and that given the financial situation of the Town, he did not believe there was any way to make this kind of financial investment. Mr. Furgiuele stated that he felt the Town should only consider taking over the cemetery under the following conditions: 1. The legal issues associated with the office parcel be completely resolved, since taxpayers should not have to pay to litigate a longstanding issue. 2. Perpetual care funds in the amount of approximately \$107,000 be turned over to the Town. 3. Watauga County revise the sales tax distribution to restore the funds which were taken away from the Town when the method of distribution was changed to ad valorem. He stated that a fair amount of people had contacted Council members in support of the Town taking over the cemetery. Mr. Furgiuele asked that the same people put effort into compelling the County to restore the sale tax to per capita, noting that if taxes were restored, the Town would have the funds to be able to consider projects such as this. Mr. Furgiuele stated that if these things happened, he would be in favor of the Town taking over Mount Lawn. Ms. Mason expressed concern with the Town's commitment for unfunded obligations with the loss of the pre-sale bonds, and added that this issue needed to be addressed. She also noted that the Town would need to know what the cost to operate would be and what the revenue sources were, as well as what would be funded by taxpayers and what would be funded by fees. Ms. Mason felt that this was a big undertaking, and that more information was needed before making a decision. Mayor Brantz inquired about outstanding violations at the memorial park, and noted the poor condition of the access road. Klee Liles, current owner of Mountain Lawn Memorial Park stated that the cemetery was audited in November and he had not received any violations. Council Member Ulmer stated that she did not view this as a positive undertaking for the Town due to the lack of funding.

DISCUSSION REGARDING SIDEWALK CONSTRUCTION TO HARDIN PARK SCHOOL AND FIELDSTREAM DRIVE

Council Members Furgiuele and Mason presented a request for discussion regarding the construction of sidewalks along Highway 194 to Hardin Park and Fieldstream Drive. Mr. Furgiuele noted that there was a problem with this area 33 years ago when his children attended Hardin Park school, and that it was more dangerous now. He added that he was disappointed with previous Council members moving quickly to stop progress on the project, and asked about potential funding and what steps could be taken in order to move forward. Ms. Mason noted that she was on Council at the time when progress was ended, and that she did not support the action. She added that part of the issue was not being able to certify the right-of-way, and that staff was directed to pursue property easements, though this was not noted in minutes from the 2016 meeting. Public Works Director Rick Miller stated that in January 2015, staff was authorized by Council to pursue a \$500,000 grant and to begin with an engineer to develop a plan for the two sidewalks. Mr. Miller continued by saying that staff came back to Council in 2016 with five options for the sidewalk construction, with Option 5 ("Vote to terminate the contract and abandon the project, but complete a side walk connection with New Market Drive in front of the school on our own. This option will require an easement from Watauga County Schools, plus an encroachment agreement with NCDOT but the only other associated costs will be for the construction of the sidewalk. Staff has estimated \$25,000.00 to complete this with our personnel.") being chosen in a 3-2 vote by Council. Mr. Furgiuele asked how far the proposed sidewalks would have gone, to which Mr. Miller replied that they would have gone directly across from Hardin Park School and added that the estimates they received did not consider extending them any further. Town Manager John Ward noted that another component at the time

was that the widening of Highway 194 was an identified DOT project and that if the Town would have constructed the sidewalk, DOT construction would have wiped out the improvements. Mr. Miller noted that staff was close to negotiating easements, but was met with resistance by DOT and that due to these facts, the \$500,000 in grant funding was relinquished. Mr. Furgiuele stated that this was an important issue since there were so many housing units and a school in the area and he believed it should be revisited. Mr. Miller agreed and stated that other entities, such as DOT, Watauga County and the School Board would have to be involved in the process. He stated that he believed there were other resources that could help with the problem, adding that a traffic signal could help, which would be the responsibility of DOT and would also save the Town money. Mr. Ward suggested that Council nominate the project through the State Transportation Improvement Program. Mr. Miller stated that staff would contact DOT regarding the Perkinsville Church area, though he was unsure how far staff would get. Mr. Ashcraft stated that this project was identified as the Town's number one priority and that Council's actions should reflect the same. Mr. Ward proposed that if the Town and County identified different segments of the project as a STIP priority that it would move up the list in terms of funding. Mr. Furgiuele stated that since the conversation about this area was initially started, there had been much development in the area, and added that this was the kind of thing he believed the Town's lobbyists should be used for, since they had connections with DOT. Ms. Mason added that the Town would have to become more biker and walker friendly if there were to be less vehicles on the road. Council Member Ulmer suggested that Council consider the project on a smaller scale and that discussions needed to be held with the County and the School Board. Mr. Miller asked Council for direction on funding since the original grant was no longer available and added that the project would cost a substantial amount of money. Mr. Furgiuele proposed that staff work with the DOT and County about the project and if they were not responsive, then discussions should be continued up the ladder. Ms. Mason added that she believed Council should pursue moving it up on the STIP priority list, but that the Town needed to do something in the interim. Mr. Miller stated that staff would contact DOT and noted that three property owners in the area were willing to help with the project in terms of easements. Ms. Mason asked whether a traffic light could be installed at Hardin Park School, to which Mr. Miller answered the DOT installed traffic lights, not the Town. Town Attorney Allison Meade stated that she did not believe a light at the school would help due to a back-up of traffic trying to get to Todd. Mr. Furgiuele added that the problem could not be viewed as just access to Hardin Park School, but that development in the area had to be considered as well. Mr. Furgiuele made a motion to amend the agenda to allow members of the public to speak who did not get a chance earlier in the meeting. Ms. Mason seconded the motion and the motion received a unanimous vote from Council. Dave Freireich presented information to Council which highlighted his and other residents' concerns regarding safety issues in the area. Mr. Furgiuele stated that those who would like the Town to take on projects that required funding needed to ask the County Commissioners to restore sales tax to per capita. Michael Odom, parent of a Hardin Park second grader, stated that he believed sustainability and safety all tied together and asked that Council consider other grants to fund this project. He finished by suggesting that the only reason the Town Council might be interested in addressing the situation was because of the Town's potential liability.

Mayor Brantz declared a break at 8:42 p.m. Council reconvened at 8:53 p.m.

Mr. Furgiuele asked the Town Attorney whether the Town would be liable if someone were killed in an accident due to a traffic issue in the area. Ms. Meade stated that she did not believe there would be a liability issue, and added that this should not be a motivating factor in the Town's decision. Mr. Furgiuele made a motion to direct staff to engage in discussions with the DOT regarding possible solutions, and to instruct the Town Manager to contact Cullie Tarleton of the NC Board of Transportation to discuss the issue with him and to also engage the Town's lobbyists about what action might be taken to get DOT to become actively involved in this situation. Council Member Mason seconded the motion and suggested an amendment to add discussions regarding a slower speed limit in the Hardin Park School area on Highway 194. Mr. Furgiuele accepted this amendment. Mr. Miller stated that he believed the speed limit was lower during school hours and that he would report back to Council in February with an update.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sam Furgiuele, Council Member
SECONDER:	Lynne Mason, Council Member
AYES:	Mason, Clawson, Furgiuele, Ulmer, Ashcraft

REQUEST FOR DIRECTION - BARN QUILT AT WATER INTAKE STRUCTURE

Public Works Director Rick Miller asked Council for direction regarding the acquisition of a barn quilt for the new water intake structure. Mr. Furgiuele suggested that a contest should be held by Cultural Resources. Mayor Pro-Tem Clawson made a motion to direct Cultural Resources staff to arrange a contest for a barn quilt for the water intake structure. Mr. Furgiuele seconded the motion and offered a friendly amendment that the Town would reimburse the winner for materials for the barn quilt, which would be selected by staff, with the idea that the winner of the contest would be rewarded with recognition. Mayor Pro-Tem Clawson accepted this amendment.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Loretta Clawson, Mayor Pro-Tem
SECONDER:	Sam Furgiuele, Council Member
AYES:	Mason, Clawson, Furgiuele, Ulmer, Ashcraft

CONSIDERATION OF APPROVAL FOR "EARTH FIRST" FRIDAY SUSTAINABILITY FORUM EVENT

Council was presented with a request from the Sustainability, Economics and Environment Committee to approve the "Earth First" Friday Sustainability Forum Event. Mr. Furgiuele noted that the problem with the event last year was that the event was held above street level and that passers-by were unsure if it was a private event and were hesitant to visit. He stated that the committee had discussed closing North Depot Street to expand the event, with Ms. Mason adding she believed this would allow the event to get better exposure. Upon a motion by Mr. Furgiuele, seconded by Ms. Mason, Council voted to approve the "Earth First" Sustainability Forum Event.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sam Furgiuele, Council Member
SECONDER:	Lynne Mason, Council Member
AYES:	Mason, Clawson, Furgiuele, Ulmer, Ashcraft

CONSIDERATION OF REVISED TOWN CODE CHAPTER 50 CONCERNING SERVICE EXTENSIONS AND CONNECTIONS

Town Attorney Allison Meade presented proposed changes to Chapter 50 of the Town Code regarding service extensions and connections. She added that there were additional changes that she would like to make which included the following:

1. On page 3, section 3(c) remove the word "be" to read "For purposes of this provision, "substantial change" shall *be* mean any remodeling..."
2. In paragraphs 6 and 7 on page 4, add termination references
3. On page 2, section 50.290(b) amend sentence to read "...service connection for water or sewer services to a *habitable* single-family or duplex residential.."

Upon a motion by Council Member Mason, seconded by Mayor Pro-Tem Clawson, Council voted to approve the changes to Chapter 50 as amended.

Council Member Furgiuele made a motion to amend the agenda to add the Town Attorney update. Mayor Pro-

Tem Clawson seconded the motion.

VOTE:	Aye:	All
	Nay:	None

WATER AND SEWER CONNECTIONS AND EXTENSIONS

§ 50.285 GENERAL.

The intent of this subchapter is to set forth standard procedures whereby water and sewer connections may be made and whereby mains may be extended where no mains are presently laid. An "extension" refers to the continuation of a water main beyond its currently existing limits while a "connection" is defined as the linking of pipes serving a single customer to an existing water main.

§ 50.286 CONNECTIONS TO PROPERTIES WITHIN THE TOWN LIMITS

Except in the case of connections in the secondary pressure zone (which are governed by §50-292 below), and consistent with the requirements of §§ 50.105 through 50.124 herein, the town will make a water or sewer connection to a property wholly within the corporate limits upon the request of the property owner. The property owner shall bear the cost of such connection.

In the event a property is not wholly within the corporate town limits, the town shall provide a connection upon the owner agreeing to pursue voluntary annexation of the part of the property not in the town limits and executing a petition to annex or such agreement to annex in the future as the town may at its option require.

§ 50.287 EXTENSIONS OF SERVICE TO DEVELOPED PROPERTY WITHIN THE TOWN LIMITS.

Consistent with the requirements of §§ [50.105](#) through [50.124](#) herein, upon request of a property owner whose in-town property is not served by a water or sewer line, the town shall extend at its expense its water and sewer mains to serve already developed property unless it determines that the extension is unreasonable for the following reasons:

- (A) The cost of service extensions is excessive in terms of the number of customers to be served or because of topographical, engineering, or other problems;
- (B) The provision of service will adversely affect the supply of water to other customers; and/or
- (C) Other good and sufficient reason.

§ 50.288 EXTENSIONS TO AND WITHIN NEW SUBDIVISIONS AND OTHER NEW DEVELOPMENTS WITHIN THE TOWN LIMITS

(A) The responsibility for extending water and sewer mains to and within new subdivisions or to and within other new developments lies with the subdivider or developer.

(B) Water distribution mains to serve undeveloped subdivisions generally will be handled as follows.

(1) The developer will submit plans for review and approval by the town, its engineer, the State Department of Human Resources and the State Department of Natural Resources and Community Development.

(2) Mains will be installed in accordance with the approved plans.

(C) Extensions of water mains to other new development within the town's service area generally will be handled as follows.

(1) The plans for the extension will be submitted for review and approval by the town, its engineer, the State Department of Human Resources and the State Department of Natural Resources and Community Development.

(2) The mains will be installed in accordance with the approved plans.

(D) The cost of extending water or sewer mains within new subdivisions or other new developments shall be borne by the subdivider or developer; except that, if the town requires water mains within a subdivision or other new development that are larger than those necessary to serve the project and are so located to serve other properties, the town shall reimburse the developer for any additional costs incurred as a result of installing the oversized mains. The reimbursements shall be paid or credited, at the town's option, at the time the mains are connected to the town's system.

(E) The subdivider or developer shall provide all necessary utility easements to the town, which easements shall include a minimum 25-foot wide easement area for maintenance, repair or improvements and access for the same, and such additional easement area as may be required by the Administrator, in the Administrator's discretion, in light of topography or other relevant circumstances.

~~(FE)~~ All costs required to be borne by the subdivider or developer shall be paid before service is initiated by the town.

§ 50.289 REPLACEMENT OF WATER AND/OR SEWER MAINS.

Where it is necessary or desirable to replace or improve water and/or sewer mains currently maintained by the town, benefitting property owners may be assessed according to G.S. §§ 160A-216 through 160A-239. If the town chooses to replace water or sewer mains with mains larger than those previously in place, benefitting property owners shall only be assessed the cost of replacing the original sized mains.

§ 50.290 HARDSHIP CONNECTIONS OUTSIDE OF TOWN LIMITS FOR SINGLE-FAMILY AND DUPLEX RESIDENTIAL DWELLINGS EXISTING AS OF JANUARY 1, 2018.

(A) The town has no responsibility to provide water or sewer service to property located outside the corporate limits, nor any continuing obligation to provide water or sewer service after having voluntarily provided such service. Notwithstanding any other provision of this Chapter, any grant of water or sewer service to a property outside the town limits creates no property rights in the property owner or such owner's assignees or transferees, and may be revoked at any time by the town for any or no reason.

The town may allow new connections for hardship cases outside the town limits as follows in this section.

(B) Where a service connection is available, the ~~Public Works Director~~Administrator may authorize a service connection for water or sewer services to a habitable single-family or duplex residential dwelling already existing as of January 1, 2018, subject to all other relevant provisions of this code, under the following circumstances:

(1) As to a request for a water connection, when the applicant has been approved for a hardship sewer connection per subsection (2) below, or when the applicant has shown a hardship as follows:

(a) The applicant has established through clear and convincing evidence the current contamination of a residential well by toxins in amounts determined by the North Carolina Department of Natural Resources or the United States Environmental Protection Agency as harmful to human life or health; or

(b) The applicant has established through clear and convincing evidence that an existing well cannot supply an adequate amount of water, and:

1. That the lack of adequate water could not have been reasonably predicted and was not reasonably foreseeable at the time the well was installed or development of the property served was last undertaken;

2. That no reasonable alternative exists for the provision of the water to the property, including that no alternative well can be established which will adequately provide water; and

3. That the amount of water requested is limited to that needed for the current use of the property served.

(2) As to a request for a sewer connection, when the applicant has been approved for a water connection hardship per subsection (1) above, or when the applicant has shown a hardship by establishing through clear and convincing evidence that:

(a) An existing septic or other wastewater system has or will soon fail;

(b) Due to lot size or other feature of the property outside the control of the applicant, not caused by the applicant and unknown to the applicant at the time of the acquisition of the property, the system cannot be repaired or an alternative wastewater system installed (e.g., if the unsuitable lot size has been caused by the applicant or a related entity to the applicant having subdivided the property originally served by the septic system, the applicant shall not be entitled to claim a connection hardship);

(c) The lack of an adequate septic system or other wastewater system could not have been reasonably predicted and was not reasonably foreseeable at the time the current wastewater system was installed or development of the property served was last undertaken

(d) No other reasonable alternative exists for the provision of a private wastewater system to the property; and

(e) No change in use of the property is planned or anticipated.

(3) If a connection is allowed under this subsection (B), such approval shall only be granted upon the following additional conditions:

(a) In the town's discretion pursuant to its currently adopted policy, a property owner granted a water connection shall also connect to the town's sewer, if a sewer connection is available, and vice versa; or, the owner shall commit in writing to connect into the town's water system or sewer system should the town later request that such a connection be made. This written commitment shall remain on file with the town's Public Works Department and may be recorded as of record with the Watauga County Register of Deeds as the town deems advisable in its sole discretion.

(b) The town shall provide the connection only upon the owner agreeing to voluntary annexation of the property.

1. If the property is currently annexable, the owner shall petition for annexation. A complete petition shall be filed no more than 90 days after the hardship connection has been approved.

2. If the property is not currently subject to annexation, the owner shall execute such agreement to annex in the future as the town may require within 30 days of being approved for service.

(c) The connection is granted only as to the dwellings existing on the property as of January 1, 2018. In the event of a substantial change in ~~the a~~ property ~~that has not been annexed~~, service shall be terminated upon 90 days advance written notice; provided, that any such termination shall be stayed during the pendency of an appeal of the termination to the Town Council. For purposes of this provision, "substantial change" shall ~~be~~ mean any remodeling, redevelopment, change of use or other modification resulting in (i) an increase of more than ~~45%~~500 square feet of the footprint of the structure(s) on the property; (ii) an increase of more than 50% of the gross floor area of the

structure(s) on the property; or (iii) a change in the use or occupancy of the dwelling resulting in a materially different or more intense use (e.g., from single-family to multi-family or commercial).

~~(d) In addition to all the other fees and charges normally charged to customers outside the town limits, the applicant will be required to pay the town's system development charges per §50-113. In this regard, the existing development on the property will be deemed "new development" for purposes of calculating the system development fee.~~

~~(de)~~ The owner shall sign a statement affirming the owner's understanding and agreement that the town may terminate service at any time should the owner fail to abide by any of the conditions set forth in this subsection (3) or for any other reason considered good and sufficient by the Town Council.

(4) An application shall be submitted on such forms and with such accompanying information and documentation as the ~~Public Works Director/Administrator~~ deems appropriate. The ~~Public Works Director/Administrator~~ may require additional information or documentation as the Director deems necessary, and may deny an application that is determined to be incomplete. A decision by the ~~Public Works Director/Administrator~~ that an application is incomplete is final and unappealable, but a new application may be submitted.

(5) The ~~Public Works Director/Administrator~~ may decline to make a decision on a complete application, in which event the application shall be heard by the Town Council as provided at subsection (7) below.

(6) Except for a denial based on the incompleteness of an application, a decision by the ~~Public Works Director/Administrator~~ to deny or terminate a hardship service connection may be appealed to the Town Council. The appeal must be filed with the ~~Public Works Director/Administrator~~ on such form as the Director may provide no more than 10 calendar days following the applicant's receipt of written notice of the denial or termination. The applicant shall be conclusively presumed to have received written notice of the denial or termination three (3) days after such notice was mailed to the applicant's address provided on the application or (for terminations) used for billing purposes.

(7) The Town Council shall hear and determine an appeal of a denial or termination, or an application not decided by the ~~Public Works Director/Administrator~~, on a *de novo* basis, according to such quasi-judicial procedures as it may adopt, and its decision shall not be subject to further appeal. Any hardship connection permitted by Town Council shall be approved subject to the conditions set forth at subsection (B)(3) of this section.

§ 50.291 EXTENSIONS AND NON-HARDSHIP CONNECTIONS OUTSIDE OF TOWN LIMITS PROHIBITED EXCEPT UPON APPROVAL OF ANNEXATION AND ZONING.

Except in cases of hardship connections approved pursuant to §50-290, no water or sewer connection or extension will be allowed until the property owner has petitioned and been approved for annexation and the property has been zoned.

§ 50.292 EXTENSIONS AND CONNECTIONS IN THE SECONDARY PRESSURE ZONE

In general, the "secondary pressure zone" includes all areas at an altitude above 3,400 feet above sea level. Notwithstanding any other provision of this chapter, requests for extensions and connections into the secondary pressure zone may only be approved if the following additional criteria are satisfied.

(A) *Requests for extensions into the secondary pressure zone.* No service extensions into the secondary pressure zone shall be considered for approval unless:

(1) The property for which service is requested was located inside the town limits on or before March 8, 2007; and

(2) The applicant agrees to adhere to town secondary pressure zone specifications, and among other things, agrees at its expense to:

- i. Use minimum eight-inch minimum pipe diameter;
 - ii. Provides all needed booster pumping station(s) of EFI design with fire pumping capabilities;
 - iii. Provides a minimum 100,000 gallon welded joint steel storage tank;
 - iv. Installs pressure protection for each individual water service; and
 - v. Install dataflow systems radio telemetry compatible with existing town system is provided;
- and

(3) All portions of a proposed extension are below 3,620 feet in elevation.

(B) *Request for connections into the secondary pressure zone.* A connection to an existing water main in a secondary pressure zone may be approved in cases in which such connection:

- (1) Creates no negative impact on the town's distribution system;
- (2) Allows adequate pressure to be maintained as may be necessary to comply with the requirements of the Fire Department and applicable fire codes;
- (3) Results in no additional costs to the town; and
- (4) Otherwise complies with the requirements of the town water and sewer code for connection to the town's water system.

§ 50.293 EXTENSIONS AND CONNECTIONS MADE BY OTHER THAN TOWN FORCES.

(A) All additions to the town's water or sewer system installed by other than town forces, whether inside or outside the town, shall be installed in accordance with the provisions of this chapter as well as other town specifications and requirements. Among other matters, the specifications shall govern the size of all mains, their location, grade, materials used, manner of installation and provision for future extensions.

(B) No construction of an extension to the town's water or sewer system shall commence until detailed plans have been reviewed and approved by the Administrator. The plans shall include whatever information the Administrator deems reasonably necessary to determine whether the proposed extension complies with all applicable town specifications and requirements.

(C) To avoid excessive utility cuts and to protect street surfaces, the town may require that whenever extensions of water or sewer mains are to be made to properties or within new subdivisions, laterals be extended to all properties expected to tap onto the water or sewer mains.

(D) By making application for extension to the town's water or sewer system, the person responsible for the extension agrees to indemnify and hold the town harmless for all loss, cost, damage, liability or expense resulting from injury to any person or property arising out of the extension of the service mains.

§ 50.294 INSPECTION BY TOWN OF WORK DONE BY OTHERS.

(A) All work on the extension of water or sewer mains not performed by town forces (whether inside or outside the town) shall be subject to inspection by the town and must be completed in conformance with the town's specifications and requirements as determined by the Administrator.

(B) If, in the judgment of the Administrator, there is a demonstrated lack of competent supervision by a contractor, the Administrator may, at his or her option:

(1) Halt work until competent supervision is provided and the work recommenced in accordance with the town's specifications and requirements; or

(2) Provide constant inspection by town personnel at the expense of the applicant.

(C) Inspection of a project by the town does not consist of or imply supervision. The person requesting the extension is solely responsible for ensuring that the project is completed according to town specifications.

 § 50.295 EASEMENTS NECESSARY FOR LINE EXTENSIONS.

Service mains shall be extended only within the rights-of-way of public streets; except that extensions may be made within private streets or property when the town is furnished with the necessary easements. Whenever easements are required under this section, the responsibility for obtaining and furnishing the town with the easements (including all costs associated with easement acquisition) shall lie with the person seeking the extension.

 § 50.296 DEDICATION OF WATER AND SEWER LINE EXTENSIONS.

(A) All water and sewer extensions constructed and connected with the facilities of the town shall be dedicated to and become the property of the town upon completion and acceptance by the town. Connection to the town's facilities shall constitute dedication of an extension ~~by the person responsible for the extension.~~ The property owner dedicating the extension shall demonstrate the legal authority to do so.

(B) Following dedication and acceptance by the town, the town shall have exclusive control of all water or sewer extensions and shall be responsible for their maintenance, repair and operation. However, the dedicator of the extension shall guarantee the entire project against any failure or deficiency, including but not limited to defective material and workmanship, for a period of 12 months from the date of acceptance, and shall be responsible for the costs of repair and replacement, associated engineering costs, and all damages to persons or property which result from any such failure or deficiency.

Upon a motion by Council Member Furgiuele, seconded by Mayor Pro-Tem Clawson, Council voted to approve the policy regarding proposed brownfields agreements as presented.

VOTE: Aye: All
 Nay: None

**Town of Boone Policy
Regarding Proposed Brownfields Agreements**

State law enabling Brownfields Agreements between the State and developers requires that developers serve a *Notice of Intent to Redevelop a Brownfields Property* on local governments with jurisdiction over the property. The law also provides an opportunity for public input and places particular emphasis on input from local governments. *See* §130A-310.34(d) (“The Department shall give particular consideration to written comment that is supported by valid scientific and technical information and analysis and to written comment from the units of local government that have taxing jurisdiction over the brownfields property.”)

Because Brownfields Agreements relating to property within or in proximity to the Town of Boone may have significant local impacts, the Boone Town Council enacts this policy to ensure appropriate consideration of and comment upon proposed Brownfields Agreements.

(A) Responding to a *Notice of Intent to Redevelop a Brownfields Property*

1. Any Town staff who receives a *Notice of Intent to Redevelop a Brownfields Property* shall immediately forward a copy of the same to the Town Manager, the Director of the Planning & Inspections Department, and the Town Attorney.
2. The Town Manager shall notify the Town Council of the *Notice of Intent* as soon as reasonably possible, and in any event in time for the Town Council to meet, review and take action within the required 21 days (to request a public meeting) and/or 30 days (to submit written comments).
3. The Town Council may take such action with respect to a *Notice of Intent* as it deems appropriate. Such action may include requesting a public meeting and/or providing written comments as provided at G.S. §130A-301.34.

(B) Town Council shall be informed whenever there is credible information obtained by Town staff that a property within or proximate to the Town’s corporate limits is being evaluated as a possible Brownfields Property.

(C) Town Council may consider an appeal of a NCDEQ decision to grant or deny a Brownfields Agreement as it deems appropriate. *See* G.S. §130A-310.36.

Approved and adopted the ____ day of _____, 2019.

Rennie Brantz, Mayor

Attest:

Nicole Worley, Town Clerk

Mr. Furguele questioned whether a default time period for filing appeals should not be added to the proposed Chapter 10.98 of the Town Code. Ms. Meade stated that she believed that all Town policies should advise people of their right to appeal and should have a time frame. Mr. Ward suggested that Ms. Meade join the next staff meeting to explain to directors the need for this policy and how to handle appeals appropriately. Ms. Meade suggested the time period be between 5-10 calendar days. Mr. Furguele proposed a 10-calendar day limit from the date of the notice of violation. He made a motion, which was seconded by Mayor Pro-Tem Clawson to approve the new Town Code section 10.98 as amended.

§ 10.98 Appeals.

Except where this code of ordinances specifically provides procedures for appeal, a notice of violation or civil citation may be appealed to the Town Manager. The alleged violator ("appellant") must notify the Town Clerk in writing of the specific grounds for the appeal within ten (10) days of the date of the notice of violation or citation. The Town Manager shall schedule a hearing on the appeal within a reasonable time, not later than fourteen calendar days from receipt of the written notice of appeal and shall consider all relevant evidence in reaching a decision. The Town Manager shall issue a written decision to the appellant not later than seven calendar days from the date of the hearing. The Town Manager's decision shall be final and not appealable.

VOTE: Aye: All
 Nay: None

It was the consensus of Council to discuss the remainder of Ms. Meade's update at the next regular meeting.

CLOSED SESSION

Upon a motion by Mayor Pro-Tem Clawson, seconded by Council Member Mason, Council voted to enter into closed session at 9:19 p.m. pursuant to:

1. N.C. Gen. Stat. § 143-318.11 (a)(1), to review, approve and seal closed session minutes from Council's prior closed session(s).
2. N.C. Gen. Stat. § 143-318.11 (a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and obtain legal advice, consider and/or give instructions to the attorney concerning one or more potential legal claims.
3. Pursuant to N.C. Gen. Stat. § 143-318.11 (a) (5) to establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property on W. King St. known as Watauga County Parcel ID# 2900-98-0786-000.

VOTE: Aye: All
 Nay: None

Upon a motion by Mayor Pro-Tem Clawson, seconded by Council Member Mason, Council voted to exit closed session at 10:00 p.m.

VOTE: Aye: All
 Nay: None

ADJOURNMENT

Upon a motion by Council Member Furguele, seconded by Council Member Mason, Council voted to adjourn the meeting at 10:05 p.m.

VOTE: Aye: All
 Nay: None

Nicole Worley, Town Clerk

Rennie Brantz, Mayor