MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
January 17, 2019

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order at 6:00 p.m. on Thursday, January 17, 2019 at the Council Chambers located at 1500 Blowing Rock Road. Mayor Rennie Brantz presided. Council Members present were Mayor Pro-Tem Loretta Clawson, Sam Furgiuele, Connie Ulmer and Marshall Ashcraft. Staff present included Town Manager John Ward, Town Clerk Nicole Worley, Planning Director Jane Shook, Planner Marty Little, Police Chief Dana Crawford and Cultural Resources Director Pilar Fotta. Town Attorney Allison Meade was also in attendance.

ANNOUNCEMENTS

Mayor Brantz welcomed all in attendance and asked anyone who wished to speak to use the sign-up sheet.

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Brantz announced the following board vacancies:

BOARD OF ADJUSTMENT
Two alternate positions

COMMUNITY APPEARANCE COMMISSION
Four positions

CULTURAL RESOURCES ADVISORY BOARD
Three positions

DOWNTOWN BOONE DEVELOPMENT ASSOCIATION
Two Council appointed positions

HISTORIC PRESERVATION COMMISSION
Two positions

OUTSIDE AGENCY FUNDING REVIEW COMMITTEE
One position

SUSTAINABILITY, ECONOMICS AND ENVIRONMENT COMMITTEE
One position

WATER ADVISORY COMMITTEE
Two positions

Council Member Furgiuele made a motion to amend the agenda to allow for consideration of the board application submitted by Andrew Paletta and the encroachment agreement with BOP King Street, LLC to be considered later in the meeting.

VOTE: Aye: All
Nay: None

TENTATIVE AGENDA ADOPTION

Upon a motion by Council Member Furgiuele, seconded by Mayor Pro-Tem Clawson, Council voted to adopt the agenda as amended and asked that the new additions (board application of Andrew Paletta and encroachment agreement with BOP King Street, LLC) be heard as the first two matters under Council Matters.

VOTE: Aye: All
Nay: None

PUBLIC COMMENT

Diane Blanks of Boone signed up to speak regarding the Plaag Properties, LLC & Tait Annexation. It was suggested by Town Attorney Allison Meade that Ms. Blanks hold her comments until the public hearing.

Andy Brooks of Boone addressed Council regarding the issue of R-1 zoning districts and the necessity of maintaining the integrity of Boone's neighborhoods. Mr. Brooks stated that the Blanwood community was already part of a conservation district and that the Town was aware of an issue regarding a neighbor's basement apartment that could be considered an illegal, non-conforming use. He added that even if the use was grandfathered into current zoning regulations, it should still not be considered a conforming use and asked that the Town consider a moratorium process since there was currently no way to tell what was a non-conforming use. Mr. Brooks continued by adding there was a second issue on Pine Street with what could essentially be called a "frat house" and that the property was located in the R-1 zone as well. He noted that he had spoken to Town officials and that to the best of their investigation there were only two people living at the property, but that there was always a number of cars parked overnight at the property overnight. Mr. Brooks stated that he respected the fact that Boone was a university Town and that he enjoyed living near the University, but that a line would have to be drawn to protect different demographics in the neighborhood. Mr. Furgiuele asked how long Mr. Brooks had lived in the area, to which Mr. Brooks responded that he had lived the Blanwood neighborhood for two years and lived on Woodland Drive prior to that. Mr. Furgiuele asked Mr. Brooks if he knew whether the house had been continuously used as a duplex. Mr. Brooks said that he was not sure, but that in his time on Blanwood the home had been rented sporadically and that he believed it to be empty currently because it was recently sold. He added that because the home had new owners, that now would be a perfect time to fix the situation and that it was a Council decision to do so. Ms. Meade clarified that if Council could have acted on the situation it would have. She stated that Council was restrained by state law regarding grandfathering rights, which ran with the land, not with the owner. She clarified that it was not a moratorium process as mentioned previously, but an amortization process that was needed to address issues such as this. Ms. Meade added that there was a new statute of limitations on enforcing zoning violations and noted that citizens needed to come forward if they had knowledge on a non-conforming use so that the Planning Department could investigate. She also encouraged Mr. Brooks and his neighbors to take advantage of the noise ordinance and the Police Department's services. Mr. Brooks stated that it was his understanding that the statute of limitations only applied when there was an on-going use at the property and that if the use stopped for 180 days, the use would lose its grandfather status. Mr. Furgiuele stated that date stamped photographs could serve as evidence of a non-conforming use, with Ms. Meade adding that a witness could take notes that could later be used to provide evidence. Mr. Furgiuele stated that if the Town were to adopt an amortization requirement, which he favored, he would not want to interfere with tenants who had legally occupied a place through a lease, and asked whether Mr. Brooks had followed up with the Police Department on the noise violations from his neighbor. He further stated that the noise ordinance carried an escalating level of fines, noting that there was some value of complaining every time a violation occurred to create a higher penalty to the offender. Mr. Brooks stated he was unsure if fines were imposed.

Richard Randall of Boone stated that his mother owns a home on Blanwood Drive and stated that it was his position that the Town should disallow the grandfathering of non-conforming uses at the offending home on Blanwood Drive for two reasons: 1. The previous owner admitted that the house was not occupied for one year in 2003. 2. The Town had been unable to prove that the use should have been grandfathered in the first place. Mr. Randall continued by saying he believed the Town to be derelict in responding to this non-conforming use and that he would appreciate prompt action instead of rolling into an amortization process. Mr. Furgiuele stated that he understood Mr. Randall's concern and that although he was Town Attorney at the time, he had no recollection of how things proceeded with this matter. He added that Representative Jordan introduced this provision so that any non-conforming use would become legally allowable, and stated that even if mistakes were made in 2003, that the Town had no other option than amortizing uses across the board and passing an ordinance to give a reasonable period of time to come into conformity. Mr. Furgiuele continued by saying if one could prove that the duplex had been vacant for 180 days, the Town would be able to potentially take new action. Mr. Randall stated that he was disappointed that, given the long history of the event, this was the best that the Town could do for the neighborhood, and added that it seemed like the residents would have to sue the Town to get the result they desired. Ms. Meade stated that at the very least, the statute of limitations for the non-conforming use in question expired in 2010 and added that if there was any evidence of violations in the past eight years, that residents should bring it to the attention of Planning staff now, otherwise the Town's hands were tied.

Michael Krenn of Boone spoke regarding the Blanwood issue, stating that he was told an investigation would be done on the offending property. He added that there was no paperwork to prove how the house received its non-conforming status. Mr. Krenn stated that the Town made a legal mistake and that the house should be brought into conformity.

Jerry Highman of Boone stated that he lived on Blanwood Drive and that he feared for his life due to speeding drivers.

Mr. Furgiuele invited the community to the upcoming law enforcement forum in March in an effort to help focus the Police Department on some of these matters. He stated that it was his understanding that the Board of Adjustment found that the use was non-conforming and that there was an occupancy violation, though he was unsure what happened after that. He added that he was committed to taking action throughout the Town to force people to comply with zoning regulations. Ms. Meade added that the new statute had caused a lot of upset across the state because it went from no statute to a very short one and was written in a way to put towns in a hard place to enforce. She continued by saying that the law was troubling, but that state law trumped local law, and suggested citizens contact local state representatives. Upon a motion by Mr. Furgiuele, seconded by Mayor Pro-Tem Clawson, Council voted to add an item for discussion and possible action at the end of Council Matters regarding steps moving forward regarding amortization.

VOTE: Aye: All
Nay: None

PUBLIC HEARING

PUBLIC HEARING - CHARLES W. PERRY, JR. ANNEXATION

A public hearing was opened at 6:48 p.m. regarding the annexation petition filed by Charles W. Perry, Jr. which was initially filed in June as a requirement of a water request. Mr. Furgiuele asked staff whether this parcel was a part of a larger development in the R-A district. Planning Director Jane Shook responded that it was annexed R-A in three separate annexations during the time when the Town had the ETJ. Ms. Shook noted that a public hearing would take place on January 28, 2019 and if everything went as scheduled, Council would consider the case in February for a zoning designation. Mr. Furgiuele asked if it would be correct to say that there were more permitted uses in the R-A district as opposed to the R-1 district, to which Ms. Shook replied yes. Mr. Furgiuele inquired about the advantages to zoning R-A in terms of neighboring low density neighborhoods. Ms. Shook noted that R-1 would provide more protections, with the only other differences in terms of density being the minimum lot size and that R-1 limited the number of uses that were allowed. Mr. Furgiuele stated that if the property was annexed, that many may be thinking of zoning it as R-1 and he wondered if there was a possibility of encouraging the adjoining R-A subdivision to be rezoned to R -1 zoning. Ms. Shook stated that other than creating a non-conformity with the duplex, there would be no other issues to rezoning to R-1. There being no further comments, Mayor Brantz closed the public hearing at 6:56 p.m.

PUBLIC HEARING - PLAAG PROPERTIES, LLC & TAIT ANNEXATION

A public hearing was opened at 6:57 p.m. regarding the annexation petition filed by Plaag Proeprties, LLC & Adrian and Heidi Tate which was initially filed in June as a requirement of a water request. Mr. Furgiuele asked staff whether they had seen copies of the development plans which were presented in June as a part of the initial water request. Ms. Shook stated that staff had seen copies of the plans. Mr. Furgiuele asked whether there had been an analysis on whether the development was possible under either zoning designation. Ms. Shook stated that staff had not looked at either zoning district, but that staff had held discussions with the applicant. Mr. Furgiuele inquired about stormwater controls at the project site, with Ms. Shook responding that all impervious area would have to capture the 25-year storm requirements. In response to a question raised by Mr. Furgiuele, Ms. Shook stated that the property was mapped in the viewshed, but that it did not appear to be actually visible from the corridor, but that staff had not yet made a final determination. She noted that there were no regulations preventing the removal of large trees on residential property.

Diane Blanks of Boone spoke regarding her concerns of the development using the name of the Junaluska Heritage Association and of Boone's 100-year-old black community. She stated that she missed the public hearing for the water request and asked if in the future the Town could send letters advising the public of water and sewer hearings. Ms. Meade noted that the Town was in the process of instituting a change in which property annexation would come before service requests, which would require that nearby property owners were sent written notification. Ms. Blanks stated that there were concerns of water run-off and increased traffic as a result of the development. She questioned what measures the developers would take to mitigate stormwater run-off due to the recent record rains and steep land with the removal of trees and undergrowth. Ms. Blanks stated that the road was narrow and poorly maintained and was concerned about construction equipment passing cars in the area. She continued by saying that there were sharp curves in the road, and that the area already faced problems with students that live in the area. Ms. Blanks stated that she felt $200,000 homes were not affordable to Boone's workforce and stated that she would support the project more if the homes were more affordable and smaller to allow Junaluska community members a better chance of buying to preserve the area. Ms. Blanks finished by expressing concern that allowing this development in the Junaluska area would have a domino effect of development on the mountain.

Roberta Jackson of Boone stated that she lived on Junaluska and that the community members were worried about the new development's effect on their property taxes, as well as the increase in traffic, and drainage issues due to the slope of the property. Ms. Jackson stated that currently, standing water remained in her yard half the summer due to the slope in the property. She added that community members wanted that area to remain a small, quiet neighborhood. Mr. Furgiuele asked Ms. Jackson if she knew who maintained that part of Junaluska Road. Ms. Jackson responded that she thought it was the County, with staff clarifying that NCDOT maintained the road. Mr. Furgiuele inquired as to whether there was an alternate route to the property in question. Ms. Jackson stated that there used to be a small access road, but that it had been closed, and added that the community around Eastview Drive did not like through traffic using Eastview Drive. Mr. Ward noted that Eastview Drive was posted "no through trucks". Mr. Furgiuele stated that this would be pushing trucks onto Junaluska Road, with Ms. Jackson adding that trucks often would go that way to Howard's Knob when building homes. Mr. Furgiuele asked whether there was a way to prohibit traffic on Junaluska Road the same way as Eastview Drive and still have access from the back side of the mountain. Police Chief Dana Crawford stated that trucks could use Howard's Creek Road, though drivers would not like to do that. Mr. Furgiuele stated that Council's responsibility was to the people who live in Town, and likened the condition of Junaluska Road to a footpath. Chief Crawford noted that the problem would be the restriction of traffic on a state road. Mr. Furgiuele stated that he thought the NCDOT had offered the possibility of the Town taking the road over. Mr. Ward stated that he only knew of verbal discussion regarding this topic, though no action had been taken. Ms. Jackson continued by saying the community did not mind development and new things coming into the area, but that they liked their community the way it was. Mr. Furgiuele stated that it seemed like the lack of maintenance might reduce the amount of traffic that used the neighborhood to cut through, and asked whether she would want to see the upper part of Junaluska Road improved. Ms. Jackson agreed with Mr. Furgiuele when he stated that improving the road could cause it to become a super highway. Ms. Blanks returned to the conversation to add that Jason Gaston got permission from a previous Council to build 20 units at the bottom of Green Street, which resulted in six sewer back-ups the day after moving in and asked Council to consider the whole picture and how well things had been maintained in the past before they considered adding something new to it.

Dr. Eric Plaag of Boone spoke regarding his proposed development and stated that he felt it was ironic that after living in the area since 2014, and as someone who had complained to NCDOT and the Town, and begged for assistance with maintenance on Junaluska Road, that the current Council had finally taken issue and hoped the concern would be addressed. Dr. Plaag stated that NCDOT adopted the position that Junaluska Road was low on the priority list of plowing and maintenance. He added that inquiries had been made about the NCDOT acquiring rights-of-way on Junaluska Road, but that property lines went to the center of the road, meaning there was no defined right-of-way. Dr. Plaag stated that nothing would be done until property owners gave right-of-way access to the portion of their property that lay in the road. Dr. Plaag stated that as a result of concerns voiced by neighbors, he and his partners would try to mitigate damages caused by construction to the extent they could, adding that sewer and grading upgrades were planned, even though they were not required. Dr.

Plaag stated that there were historic cherry trees in the area and that he planned to have a tree buffer to protect them, adding that he planned to replace dead and diseased trees on the property. Dr. Plaag continued by saying the development was required to comply with swale requirements for collecting stormwater on the parcel and that he and his partners planned to meet or exceed the stormwater requirements for a 25-year flood. He added that they were not required to collect common area water, but chose to do so, and that they also planned to capture driveway water runoff as well. Dr. Plaag stated that, although previous speakers failed to mention it, he and his partners approached the pastor of the Mennonite church in December, as the church served as the home office of the Junaluska Heritage Association, and asked to hold community input meetings regarding the development at the church, but that the pastor declined the request. Dr. Plaag stated that as a result of this decision, the meeting was held at the library and that postcards were mailed to every property owner nearby, even though it was not a requirement. Dr. Plaag stated that seven people attended the meeting, including Ms. Jackson, and perceived that most comments about the development, including comments by Ms. Jackson, to be positive. He noted that one concern expressed at the meeting was water runoff from the development. Dr. Plaag added that residents from Tall Timber Street noted that they had seen an increase in runoff from the Hoffman property on Eastview Drive, which was previously fully forested and did not have swales installed. Discussion turned to traffic in the area, with Dr. Plaag noting that every time residents had approached the NCDOT and Town regarding truck restrictions, they were told these restrictions were not a possibility. He expressed concern about students living in the area never stopping at stop signs, and felt it would be helpful if the Town and NCDOT could provide additional signage to the area. Covenants were discussed briefly, with Dr. Plaag stating that there were restrictions to what can be done on covenants, but that the goal was to create a development which was appealing to families, empty nesters and retirees. Mr. Furgiuele inquired about pools of water at the stormwater swales and wondered whether these would draw mosquitoes. Dr. Plaag stated that the water would quickly descend and that there would not be any standing water. Mr. Furgiuele asked whether Dr. Plaag would be open to try to implement stormwater controls to address more than a 25-year storm. Dr. Plaag stated that he felt he and his partners were already doing this, since they planned to capture driveway runoff, but added that they would consider a larger stormwater swale, as long as a home could still be located on the lot. He continued by saying that he believed that if the Town demanded a 500-year storm swale, that nothing could be built on the property. Mr. Furgiuele asked Dr. Plaag if he wanted Junaluska Road to be improved. Dr. Plaag responded that the road was already a natural cut-through and stated that the only circumstances under which he would want to see improvements is if the Town provided residents with the same signage as Eastview Drive and if the through truck rule was vigorously enforced. Mr. Ward noted that it was almost impossible to enforce the no through truck rule and that he believed there needed to be legal clarification on the matter. Mr. Furgiuele asked whether Dr. Plaag and his partners anticipated having other neighborhood meetings. Dr. Plaag replied that they had not planned to, but that he did not object to doing so. Mr. Furgiuele added that it was not mandatory that they hold additional meetings, but felt it could not hurt to continue to communicate with the community. Dr. Plaag stated that though there were expenses incurred to hold these meetings, he was not opposed to doing so. He added that he felt discouraged by previous communications from Ms. Blanks and to be told by the church that they were not interested in hosting the previous meeting, as well as the low turn out. Ms. Ulmer suggested that some residents were unable to walk to the church to attend the meeting and did not have another way to get there. Mayor Brantz asked if there was a timeline for completion of the project, with Dr. Plaag stating that there was not a timeline in place currently, but that all nine homes would not be built at the same time. There being no further comments, Mayor Brantz closed the public hearing at 7:55 p.m.

Mayor Brantz declared a break at 7:55 p.m. Council reconvened at 8:06 p.m.

REQUESTED APPEARANCES

BRETT SCANTLIN - ASU PLANNING DESIGN AND CONSTRUCTION

Brett Scantlin with ASU Planning, Design and Construction spoke regarding a potential zoning change for a portion of the former Watauga High School property from B-3 to E-1. He stated that the University intended to relocate its athletic facilities for track, tennis and softball away from Kidd Brewer Stadium in order to allow for more parking on campus and to allow greater access to the facilities for students and members of the community. Mr. Scantlin added that plans for the remaining parcels of the property had not been finalized, but

that the remainder of the property would remain zoned as B-3. He added that there were no anticipated costs to the Town associated with this request. Mr. Furgiuele asked if there was any reason the University would not submit to conditional district zoning, and stated that the project looked like an excellent use of property. He added that his only issue was the lack of control over future use of the property, and asked if the University would be willing to bind itself to conditional district zoning regulations. Mr. Scantlin stated that he was unsure, but that the University was interested in partnering with the Town on this project and being a good neighbor. Paul Forte, Vice Chancellor for Business Affairs stated that conditional use zoning would be a separate issue that would have to be reviewed with the University's legal counsel. He added that the University was thinking about the future as well, and that the intent was to comply with zoning regulations and to enhance the area. Mr. Furgiuele asked that University representatives engage in discussion with the Town Attorney and Planning and Inspections staff about conditional use zoning, and added that it would tie a developer to a specific site plan, but would still offer some flexibility. Mayor Brantz asked if the facility would allow for community access, to which Mr. Forte answered that in the past, the University had struggled with usage of facilities, due to it's small footprint, but that the beauty of this proposed site was that it opened it up to have non-athletes on the property by renting out the space and creating walking trails on the property. Mr. Forte indicated that the most important issue right now was to get the track in place and to work on the end-zone project. He added that funding was lined up, but that it may take a while to come in. Mayor Brantz asked whether there were plans for additional construction on the property, to which Mr. Forte replied that there was not. Mr. Furgiuele stated that he could not imagine a better use for the property than what was presented.

APPROVAL OF ITEMS ON CONSENT AGENDA

Upon a motion by Mr. Furgiuele, seconded by Ms. Ulmer, Council voted to approve the following items on the Consent Agenda:

1. November 13, 2018 Regular Meeting Minutes
2. November 15, 2018 Regular Meeting Minutes
3. December 18, 2018 Regular Meeting Minutes
4. December 20, 2018 Regular Meeting Minutes
5. Budget Amendments:
    a. Sale of surplus radios (Police Department - $18,000)
    b. Funds needed for trailer purchase (Police Department - $5,856)
6. 2019 Rail Jam License Agreement
7. Encroachment Agreement - BOP King Street, LLC

VOTE: Aye: All
Nay: None

COUNCIL MATTERS

Mayor Pro-Tem Clawson nominated Andrew Paletta to seats on the Board of Adjustment (Alternate) and the Water Committee. There being no further nominations, Mayor Brantz called for a vote.

VOTE: Aye: All
Nay: None

Mr. Paletta's term on the Board of Adjustment will expire on June 30, 2022. His term on the Water Committee will expire on January 17, 2022.

Upon a motion by Mr. Furgiuele, seconded by Mayor Pro-Tem Clawson, Council voted to rearrange the agenda to allow for consideration of the encroachment agreement with BOP King Street, LLC, followed by the Town Attorney report and the report on annexation in regards to Blanwood Drive.

VOTE: Aye: All
Nay: None

Ms. Meade presented the revised encroachment agreement with BOP King Street, LLC. Upon a motion by Mr. Furgiuele, seconded by Mayor Pro-Tem Clawson, Council voted to approve the amended encroachment agreement.

VOTE:	Aye:	All
	Nay:	None

STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the ~~21st~~ ____ day of ~~December~~January, 2019, by and between the TOWN OF BOONE ("Town"), and BOP KING STREET, LLC ~~,~~("Encroacher"), who is/are the owner(s) of the business identified below.

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

THAT WHEREAS Encroacher and the Town entered into an Encroachment Agreement dated December 21, 2017 (the "prior Encroachment Agreement") related to the real property and public land identified herein;

WHEREAS, Encroacher and Town desire to revoke, replace and substitute said prior Encroachment Agreement with this Encroachment Agreement;

WHEREAS, Encroacher desires to encroach on certain public land, being public alleys ~~designated as a public sidewalk (hereinafter referred to as the "public land")~~ located along the western and southern boundaries of that real property known as ~~at 1st Alley, 2nd Alley –~~ 671 W. King Street, Boone, North Carolina 28607 ~~(, as~~ such real property being further described in that deed recorded at Book 1949, Page 702 of the Watauga County Registry of Deeds, in the Town of Boone, North Carolina, and said public alleys being identified in said deed as the "First Alley" and "Second Alley") with the following encroaching facilities~~: Residential/Retail, & Temporary Construction Access for the purpose of~~: window awnings located on the First Alley (on the westerly side of the building); ~~awning's and ADA Access, site lighting, construction/maintenance, rear access, working space,~~ and water/sewer/fire line connectors and refuse containers located on the Second Alley (on the rear, or southerly side, of the building), the latter as ~~further~~ shown ~~for illustration purposes~~ on the attached Exhibit A (hereinafter referred to collectively as "the encroaching facility"); and

WHEREAS, it is to the material advantage of Encroacher to effect this encroachment, and the Town, in the exercise of authority conferred upon it by statute and ordinance, is willing to permit the encroachment facility on public land as specifically described in the foregoing paragraph (hereinafter, "encroachment"), subject to the conditions of this agreement;

NOW, THEREFORE, IT IS AGREED that the prior Encroachment Agreement is hereby revoked and discharged, and the Town hereby grants to Encroacher the right and privilege to make this encroachment upon the following conditions, to wit:

A. That Encroacher, intending to bind itself, its successors and assigns and hereby obligating itself, its successors, and its assigns, agrees that it will:

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1. comply 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 as apply;
2. 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;
3. reimburse the Town 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;
4. promptly remove or alter the encroaching facility in order to conform to the requirements of the Town, without any cost to the Town, if at any time the Town shall require the removal of or changes in the location of the encroaching facility;
5. provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and/or other warning devices, as necessary or as requested by the Town's Director of Public Works or his or her 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;
6. be responsible for all liability and potential liability associated with the encroachment and encroaching facility and hold harmless and indemnify the Town for the same to the maximum extent allowed by law. In furtherance of such responsibility, Encroacher agrees to indemnify, defend, and hold harmless the Town and the Town's employees, councilors, officers, officials, and agents 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;
7. require its contractor(s) who are installing or constructing the encroaching facility to add the Town as additional insured on the contractor's general liability policy, requiring the insurance carrier to give the Town at least 10 days' notice of cancellation or reduction of coverage, and provide to the Town evidence of such coverage at least 10 days prior to the beginning of installation or construction.

B. Encroacher, intending to bind itself, its successors and assigns and hereby obligating itself, its successors, and its assigns, agrees to the following additional terms:

1. The Town will assume no responsibility for any damage that may be caused to the encroaching facility as the Town carries out its construction and maintenance operations, and Encroacher expressly waives all claims of liability or responsibility against the Town for any damage that may be caused to the encroaching facility as the result of the Town carrying out any construction and maintenance operations. Encroacher 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 Town 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 party is knowingly and intentionally assuming that heightened risk of damage.
2. Encroacher agrees to be bound by such other and additional conditions as the Town Council may impose in connection with the encroaching facility.
3. Encroacher agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the Town. Encroacher shall comply with all applicable 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, Encroacher agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the satisfaction of the Town. Encroacher 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 Town.
4. Encroacher agrees to assume the actual cost of any inspection of the work considered to be necessary by the Town.
5. Encroacher agrees to have available at the encroaching site, at all times during construction, a copy of this agreement showing evidence of approval by the Town. The Town reserves the right to stop all work unless evidence of approval can be shown.
6. If the work referred to in this agreement is being performed on a public street open to traffic, Encroacher agrees to give written notice of when work will begin to the Town.
7. In the case of noncompliance with the terms of this agreement by Encroacher, the Town 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 Town.
8. The parties agree that this agreement shall become void if actual construction of the work contemplated herein is not begun and completed within one (1) year(s) from the date of this agreement unless written waiver is secured by Encroacher from the Town.

9. The Town expressly reserves the unrestricted right to require Encroacher to change the location of or to remove the encroaching facility described herein at no expense to Town.
10. This Agreement shall be revocable at will by the Town of Boone Town Council.
11. Encroacher shall obtain permits as necessary from the Town's Planning & Inspection Department.
12. By making this agreement, the Town does not guarantee in any way the extent or sufficiency of its right-of-ways. Encroacher is responsible for verifying all right-of-way on Town roads.
13. Town may, in its discretion, record this agreement with the Watauga County Register of Deeds.

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

[signatures follow on next pages]

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TOWN:

The foregoing instrument is approved, this ____ day of _____, 201__.

Town of Boone

By:_____
Mayor

Attested By: _____(SEAL)
Clerk, Town of Boone

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

I, a Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this day and acknowledged that she is the Clerk for the Town of Boone, a North Carolina municipality, and that by authority duly given and as an act of the Town of Boone, the foregoing instrument was signed in its name by its Mayor, _____, and attested by her as the Town Clerk.

Witness my hand and official stamp or seal, this ____ day of _____, 201__.

_____
Notary Public

_____
Printed Name of Notary Public

My Commission Expires: _____

THIS INSTRUMENT APPROVED AS TO FORM:

_____

Town Attorney

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ENCROACHER:

~~_____~~BOP KING STREET, LLC

By:~~_____~~: _____
Signature

Name: William C. Warden, Jr.~~_____~~

Title: ~~_____~~Managing Member

_____

Corporation/LLC/Partnership

State of North Carolina - County of _____

I, certify that _____ personally came before me this day and acknowledged that s/he is the _____ of _____, a North Carolina ~~corporation~~/limited liability company~~/partnership (choose one)~~, and that by authority duly given and as the act of such entity, s/he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this _____ day of _____, 20__.

_____
Notary Public

(Affix Seal)
My Commission Expires: _____

_____, Notary Public
Notary's Printed or Typed Name

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TOWN ATTORNEY UPDATE

Ms. Meade began her update by saying that information regarding trees and annexation would be brought back in February. She stated that issues had come up with respect to problems with the house located on Blanwood Drive grandfathered in as a multi-unit house. Ms. Meade suggested that Council consider to what extent the Town should be more proactive with zoning enforcement in the future. She noted that in the past, the Town had

addressed non-conformities on a complaint based system, but that with the new statute of limitations, the Town should consider enforcin more proactively, for example when new addresses were presented for addition to the 911 system or applications were made for building or vehicle permits. Mr. Furgiuele asked why the Town would not already do things this way, and asked whether GIS staff should report to Planning every time a new address was issued in an effort to prevent certain non-conformities. He added that he believed the problem would just get worse, especially with increasing Airbnb numbers. Ms. Ulmer stated that she believed action should be taken, but wondered under what parameters. Mr. Furgiuele questioned why the Town would have zoning regulations if they did not enforce them. Mr. Ashcraft asked whether the review process was sufficient enough to make a determination on a non-conformity. Mr. Ward stated that he believed it was, with Ms. Shook adding that the department was attempting to document better and that it was not always easy to capture information on non-conformities up front. Mr. Furgiuele suggested that GIS work with Planning on parcels that have multiple addresses so that staff could investigate. Mr. Ashcraft wondered if it was a matter of asking what the intended use of a structure was during the planning process. Ms. Meade stated that she did not recommend holding building permits up in any way, and added that there should be staff training on the enforcement of this issue. She asked whether Council wished to have staff police non-conformities and stated that in the past, there was a more complaint driven attitude toward these matters. Mr. Furgiuele stated he believed that the new statute of limitations changed everything, and that the Town needed to be more aggressive in identifying non-conformities. Ms. Shook stated there may be issues with NCD parking stickers and added that occupancy and the use of dwelling units were among the most difficult things to enforce because there was no way to know if a non-conforming use was taking place just by looking. Mr. Ward suggested Council allow staff to work on enforcement and to report back at the Planning retreat in March. Ms. Shook reassured Council that in the future staff would look more closely at applications and that the form may be revised to capture usage in some way. Mr. Furgiuele felt that the topic should have it's own written policy, and continued by saying that he wanted everyone to be on the same page and to protect the neighborhoods. Following brief discussion, Council came to the consensus to ask staff to work with the Town Attorney to look at training and to research what other towns have done regarding this type of situation. Mr. Furgiuele stated that Boone was in a unique situation due to not having ETJ powers and it's small size and topography, and that a policy may have to be crafted from scratch to address the unique situation. Mr. Ward stated that the newly elected State representative may be in support of repealing this new statute and that he believed it was good practice to keep these types of policies drafted by an attorney.

Discussion began on the Blanwood Drive issue with Mr. Furgiuele stating that people living in that area had the right to be indignant, and that the Town needed to express a collective view that when possible, the Town should act and not wait for people to make complaints to Council. He continued by saying that if staff was contacted and were able to come to the conclusion that there was a strong case against a non-conforming use that action should be taken, and added that the other component was that neighbors would have to be willing to participate in the process. Mr. Furgiuele asked that staff and the Town Attorney reach out to neighbors in the Blanwood area to see what basis there was for people believing there had been another interruption in use at the property in question. He went on to say that if there was a strong case regarding a non-conforming use, the Town should issue a notice of violation and the owner could appeal the case to the Board of Adjustment. Mr. Ashcraft suggested a limit to the number of complaints that could be made regarding specific property in a 12 month period. Mr. Furgiuele expressed concern with the noise ordinance violations brought up by Mr. Brooks previously. Chief Crawford stated that between August 15 and October 27, 2018, the Police Department received 5 calls at 305 Pine Street in regards to noise. He added that there was one arrest and citation as a result of a fight that occurred at the property and that there were other civil citations issued for noise violations. Mr. Furgiuele asked whether these citations were issued to the occupant of the house, to which Chief Crawford answered the occupant had received one citation, and on one occasion, officers were unable to locate the problem and that on another occasion, the citation was given to a different person at the residence. He added that a citation was given for noise ordinance violation as well as possession of drug paraphernalia. Mr. Furgiuele stated that people needed to be aware that they should report problems to the Police Department and that there should be a limit on noise complaints at a particular residence, at which point the Town should consider more aggressive action. He suggested that the Town's nuisance powers be used for this type of issue and that the noise ordinance may need to be amended to allow for civil action in some cases. Ms. Ulmer wondered if the Police Department would have success with reporting offenses back to the ASU Judiciary

Committee. It was the consensus of Council to direct staff to bring recommendations regarding nuisance issues back in February or March. Ms. Meade asked Council to prioritize her task list. Mr. Furgiuele suggested that the amortization issue be next behind wireless, with trees toward the end of the list.

RESULT:	**CONSENSUS**

TOWN MANAGER UPDATE

Town Manager John Ward updated Council on the following topics:

1. Introduced intern Autumn Gosheen
2. Presented MSD expansion schedule and asked if staff needed to advertise for rezoning all identified properties at once, or if Council preferred separate hearings/meetings for each property. It was the consensus of Council to handle all of the additional properties at one hearing. Mr. Ward noted that taxes would be collected the following fiscal year.
3. Public Works project updates - will look into Green Street sewer issue
4. 700 tons of road salt were used to treat Town streets and make salt brine between October through the end of December. Public Works had 2,380 man hours plowing streets, hauling snow, shoveling steps and clearing building entry ways.
5. Water Intake update
6. Highway 105 DOT project update
7. DOT signal work at King and College to begin in April
8. Review of Town Council supported road projects that are included in new DOT Short Term Work Improvement Plan
8. ASU/Town of Boone parking meeting
9. Boone Creek daylighting project update
10. Meetings and events reminder
11. NRLP solar project is a go
12. No news on the Army Corps stormwater project due to government shut down. Mr. Ward bringing in a consultant regarding the stormwater issue. Mr. Furgiuele stated that he did not want to see the Police Department property sold without having more stringent stormwater controls in place.

CONSIDERATION OF CHARLES W. PERRY JR. ANNEXATION PETITION - STEP 3

Council was asked to consider the annexation petition filed by Charles W. Perry Jr. for property located off Junaluska Road. Mr. Furgiuele inquired whether staff felt there was any impediment to providing Town services to the property, to which Mr. Ward replied that there were no impediments that staff was aware of. Mr. Furgiuele stated that in the future, water requests should not be entertained until zoning was handled. Mr. Furgiuele made a motion, which was seconded by Mayor Pro-Tem Clawson to approve the annexation petition and ordinance. Following a question raised by Mayor Brantz, Mr. Furgiuele added that the annexation be effective immediately.

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

CONSIDERATION OF PLAAG PROPERTIES, LLC & TAIT ANNEXATION PETITION - STEP 3

Council was asked to consider the annexation petition filed by Plaag Properties, LLC and Adrian and Heidi Tate for property located off Junaluska Road. Mr. Furgiuele stated that he thought the previous discussion on the topic was illuminating, and added what a destructive impact the Hoffman property had on others in the area.

Upon a motion by Mr. Furgiuele, seconded by Mr. Ashcraft, Council approved the annexation petition and ordinance, effective immediately.

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

CONSIDERATION OF APPROVAL FOR LINVILLE RIVER RAILWAY 100TH ANNIVERSARY EVENT

Upon a motion by Mayor Pro-Tem Clawson, seconded by Ms. Ulmer, Council voted to approve the Linville River Railway 100th Anniversary Event. Mr. Furgiuele asked that, due to complaints following another recent event which involved road closures, that staff and the committee explore alternatives to closing Depot Street.

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

CONSIDERATION OF SUSTAINABILITY COMMITTEE TERM LIMIT EXTENSIONS

Upon a motion by Mr. Furgiuele, seconded by Mr. Ashcraft, Council voted to extend the terms of three Sustainability, Economics and Environment Committee members as noted below in order to remain consistent with other board terms.

Committee Member	Current Term Expiration	Proposed Term Expiration
Christian Gentry	December 15, 2019	June 30, 2019
Nicholas Stover	January 8, 2019	June 30, 2019
John Prickett	January 21, 2020	June 30, 2020

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

CLOSED SESSION

Upon a motion by Mayor Pro-Tem Clawson, seconded by Mr. Furgiuele , Council voted to enter into closed session at 10:30 p.m. pursuant to 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. Pursuant to 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 Ms. Ulmer, Council voted to exit closed session at 11:10 p.m.

VOTE: Aye: All
Nay: None

ADJOURNMENT

Upon a motion by Mayor Pro-Tem Clawson, seconded by Ms. Ulmer, Council voted to adjourn the meeting at 11:20 p.m.

Nicole Worley, Town Clerk

Rennie Brantz, Mayor