MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
January 18, 2018

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order at 6:00 p.m. Thursday, January 18, 2018 in the Council Chambers located at 1500 Blowing Rock Road. Mayor Rennie Brantz presided. Council Members present were Mayor Pro-Tem Loretta Clawson, Lynne Mason, Sam Furgiuele, Connie Ulmer and Marshall Ashcraft. Staff present were Town Manager John Ward, Town Clerk Nicole Worley, Public Works Director Rick Miller, Deputy Public Works Director Josh Eller, Fire Chief Jimmy Isaacs, Police Chief Dana Crawford, Human Resources Director Peri Moretz, Safety and Risk Officer Terry Story, Cultural Resources Director Pilar Fotta and Downtown Boone Development Coordinator Brittney Clark. Town Attorney Allison Meade was also present.

ANNOUNCEMENTS

Mayor Brantz welcomed all in attendance and asked all that wished to speak during Public Comment to use the sign-in sheet near the entrance. Mayor Brantz presented retiring Human Resources Director Peri Moretz with a resolution honoring her time with the Town. Mayor Brantz also noted that since Joan Hearn was unable to attend the meeting, the proclamation honoring her late husband, Dick Hearn, would be presented at the February Council meeting.

Police Chief Crawford and Mayor Brantz recognized Corporal Andrew Smith for obtaining his Advanced Law Enforcement Certificate.

Town Manager John Ward introduced Dale Presnell as the new Human Resources Director. He noted that he believed Mr. Presnell would be a good fit for the Town and would be training along side current director, Peri Moretz until she retires at the end of January.

TENTATIVE AGENDA ADOPTION (FOR ACTION)

MOTION TO APPROVE TENTATIVE AGENDA

Upon a motion by Council Member Furgiuele, seconded by Council Member Mason, Council moved to adopt the tentative agenda.

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

PUBLIC COMMENT

David Harman of Huckleberry Trail spoke on behalf of Harvard Ayers, who was out of town, regarding their work on a proposed bill and passed out information on the "Town of Boone Energy Plan" which is included below.

"The Town of Boone Energy plan is based on the Town producing 100% of all the energy it uses for both providing electricity for all its needs for buildings, etc. plus the energy used by the 140 vehicles it currently operates. All the energy for the 140 vehicles is currently being provided by gasoline ad diesel fuels and all this energy from Duke Energy is being provided by fossil fuels (coal and natural gas) and nuclear. We hope to transition to electricity (probably hybrid-electric for all our vehicles which is produced by 100% clean renewable energy from solar and wind over the 13-year period from January 2018, to December 31, 2030.

About the first year of the project, 2018, will be about making decisions on the best locations for solar arrays and the second half, actually installing those arrays. We hope to do some rooftop solar in the Boone Corporate limits, but only on buildings which will be expected to be in use for at least about 20-30 years.

Since we expect to be constructing major new Town buildings on the Bolick property on the east side of town, we will emphasize building efficiency, solar and possibly wind installation on that property, a lot of big rooftop solar, possibly including some field solar. This solar installation may not be done for several years as the construction

schedule dictates. EV purchase for 2018 will be finalized by about July when we traditionally trade vehicles--likely we will consider the purchase (trade-ins) of one or two EVs for this first year.

New River Light & Power (NRL&P) and BREMCO

TOB pays part of its current electric bill to NRL&P. This is for all electrical service in the Town of Boone corporate limits. NRL&P electrical service is surrounded on all sides by BREMCO electrical service. All of TOB power for both utilities comes from Duke Energy through BREMCO. BREMCO provides about 2/3rds and NRL&P 1/3rd.

This will change as of January 1, 2022, when all NRL&P energy will come from NTE, with no further involvement with Duke Energy. Thus the rules and regulations will be those of NTE and not those of Duke Energy.

Energy Efficiency

Improving energy efficiency of buildings in Boone is the lease expensive means of electricity improvement, so we need to do a state-of-the-art study done as one of our first steps to provide 100% clean renewable energy.

Three sources to check for efficiency improvements at the 60 Town buildings:
1) Paul Braese-facilities leadership at UNCA;
2)Dr. John Sterman-jsterman@mit.edu, deep retrofit;
3)Dr. Kristen Johnson, chancellor of the SUNY system, deep retrofit

Providing Clean Renewable Engery

Solar PB will be the main source of providing the 6-7 MW of electricity capacity that the Town currently requires. This will be done by installing rooftop and field solar in and near Boone. We may decide to install some wind power as the 13-year project continues. Since we will continue to supplied over half of our electricity through BREMCO, this opens some good possibilities for solar or wind in areas within the BREMCO service area, a considerable expansion from the Corporate limits of Boone, itself.

BREMCO is currently paying only about 5 cents/kWh for the energy we will produce. That will likely change by about June when BREMCO completes a study of shifting to a form of net metering for recompense of members' production, which may provide as much as about 8-9 cents/kwh to the Town, which is almost as much as the current rate charged us for electricity from either provider (BREMCO or NRL&P) which is about 9-10 cents/kWh.

NRL&P is currently paying only about 5 cents/kWh to us for the energy we produce. This will likely change on January 1, 2022, when the NRL&P begins receiving its energy from a non-Duke source, known as NTE, which is apparently friendlier to solar and other renewable sources of energy. We do not yet know what we will get for our production from NTD.

Vehicle Fleet Energy

The Town of Boone has about 140 vehicles, all of which are combustion vehicles, as they run on gasoline or diesel, both of which emit large quantities of CO2, as they are fossil fuels. About 40 are police cars and most of the rest are small to large trucks and some sedans. The energy used by these vehicles is about the same as the current electric energy from BREMCO and NRL&P.

The 40 police vehicles use as much fuel as the remaining 100 Town vehicles. The use of hybrid-electric police cars is especially important given the need at times to quickly refuel quickly.

Transitioning to electric vehicles has three big advantages:
1) the efficiency of combustion vehicles (power to the drive wheels) is about 20%, where as that of electric vehicles is about 60%
2) electric vehicles use 100% clean renewable energy from electric charging stations; and
3) electric vehicles do not have pistons, cylinders and valves, the main moving parts of a combustion vehicle. EVs have very few moving parts and thus should last years longer than combustion vehicles.

With both the purchase of EVs and the installation of solar and possibly wind will be expected to begin more slowly at first and to accelerate over the last half of the 13 year project period. The best sources for prediction of both solar/wind and EV prices indicate that by 2025, their prices will have dropped significantly. EV prices, are currently as much as 50$ more expensive that combustion vehicles. But by 2025, those electric vehicles are expected to be at parity with their combustion counterparts. With solar, installed prices will be about 60% less by 2025 compared to today's costs. Doing the math, what cost $100 today in solar panels and installation, will be only $40. With EV's, similar savings would be expected.

Taking these factors into account, we will be wise to start slowly with both vehicle purchase and solar installation. We could save up to half of the total cost of frontloading those purchases. Thus, we are looking at installing only about 1% of needed solar and vehicle purchase this first year of the 13, and ramping up to as much as 15% of solar needs in 2030 itself. EV purchase would likewise be slow at first and accelerate over the last half or so of the 13-year project."

Attorney Frank C. "Ham" Wilson of Boone addressed Council on behalf of his client, Dr. Chen. Mr. Wilson stated that although his client was out of the country for a large portion of the year last year, he was assessed around a hundred thousand dollars in civil penalties for the state of his property. Mr. Wilson expressed to Council that Dr. Chen has agreed to clean up the property, but would like an opportunity to negotiate the fines against his property. Mr. Wilson went on to state that the only other option he had would be to file a motion with the court to set aside the civil penalty judgment, but would like to solve the matter in an amicable manner.

Dr. Zhiyuan Chen of Boone thanked Council for the opportunity to speak and stated that as a part of his job duties as a professor at Appalachian State University, he is required to travel internationally for six months out of every year. Dr. Chen went on to say that since he works twelve hours each day, he does not have time to take care of his property. Dr. Chen stated that in the past he has been harassed by neighbors due to the state of his property. He stated that some have thrown rocks into the windows of his home, threw rocks at him and intimidated him on the street. Dr. Chen noted that although Town Manager John Ward had his contact information, his email did not work properly in China.

John Paul Pardy of Boone spoke in support of the potential skate park in Boone. Mr. Pardy stated that the newly formed Cruzin' Committee has worked hard at working to solve the recreational skateboarding issues in Boone. He went on to include that the committee has found a prospective location for the skate park, and have received permission from the Transportation Committee to present to Council at the February Council meeting.

REQUESTED APPEARANCES

REQUEST TO MODIFY MEMORANDUM OF UNDERSTANDING - APPALACHIAN THEATRE

Frank Mohler on behalf of the Appalachian Theatre of the High Country presented a request for Council to approve the modification of a 2015 Memorandum of Understanding between the Theatre and the Town. Mr. Mohler gave a brief history of the acquisition of the Theatre property and the need for space in one of the wings of the stage, which resulted in the Town granting the Theatre a small area in the Town Hall parking lot to accommodate the addition to the stage. Mr. Mohler stated that due to many factors including construction inflation, architectural needs were reevaluated. He stated that in order to continue with construction at the Theatre, an easement from the Town would be needed, as well as an updated Memorandum of Understanding to define the additional 25 sq. ft. on the west side wing for an exit. Mr. Mohler detailed that the memorandum would need to be modified to adjust the shape and location of the left wing and the dressing rooms. He stated that the changes would conform to ADA requirements and that the Theatre would be willing to work with the Town on the future parking deck. Mr. Mohler explained that an updated memorandum was required before the Theatre architect could modify construction plans and to stay on track for a 2019 opening. Council Member Furgiuele expressed his opinion that since the original memorandum had expired, there would be no need to update, but that a new memorandum would need to be created. Mr. Mohler stated that the attorney representing the Theatre had advised that the fact that the original memorandum had expired would not be an issue. Mr. Mohler added that the changes would result in an additional three and a half feet into the Town Hall

parking lot, but that other dimensions would remain unchanged. Council Member Furgiuele stated that he was in support of this addition to the Memorandum of Understanding, but would like to add in a provision that the Town be able to hold Council meetings at the Theatre. Mr. Furgiuele stated that he believed that Council meetings should be held downtown, and that instead of moving Council meetings to the new Municipal Complex on the Bolick Farm, the Theatre could allow Council the use of their space. Mr. Mohler stated that the Theatre has been communicating scheduling needs with Appalachian State University and that he was unsure of commitments, but that he believed the Theatre board would be willing to discuss the possibility of holding Council meetings at the Theatre. Council Member Mason added that the Town of Wilmington is part owner of their Town Theatre and believed that the Town may want to explore that path in the future. Council Member Ashcraft asked whether there would be any material effect on the Town Hall parking lot to which Town Manager John Ward answered that the Town Hall parking lot would lose a total of fifteen spaces as a result of the proposed amendments. Council Member Furgiuele asked why the space behind the Theatre could not be utilized for displaced Town employee parking. Mr. Mohler noted that there were only three spaces behind the Theatre and those would be used for Theatre employees. Mr. Ward stated that he would be in favor of holding Council meetings at the Theatre and that this change could potentially lower construction costs at the municipal complex. Council Member Furgiuele added that he believed the Theatre was an important project for the town and would be in favor of accommodating their request for additional space, but would like to review the language in the memorandum to see if it would be possible to have the Theatre available for Town Council meeting space. Mr. Ward stated that he would work with others to work out the details for presentation at the February Council meeting. Council Member Mason asked for clarification that the initial memorandum called for the loss of five Town Hall parking spaces for the construction of the left wing. Mr. Ward stated that the new memorandum would call for the loss of more parking spaces than initially called for, but that construction could not continue if Council does not agree to a new memorandum. Upon a motion by Council Member Mason, seconded by Council Member Clawson, Council directed staff to move forward with amending the proposed Memorandum of Understanding between the Town and the Theatre to incorporate proposed language for future use for Council meeting space, and to bring the document back to Council at the February meeting.

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

MARKET ANALYSIS PRESENTATION - NC SCHOOL OF GOVERNMENT

Andrew Trump with the UNC School of Government presented a power point presentation to update new Council members on the Development Finance Initiative project in Downtown Boone. Council Member Furgiuele expressed concern that Council, the Planning Commission and the Historic Preservation Commission are currently engaged in a joint conversation about what the appropriate scale for downtown is, and that he would be uncomfortable moving forward with the DFI project. Council Member Furgiuele expressed that he had issues with the scale of buildings downtown currently, and is concerned about endorsing an idea of what constitutes proper scaling. He asked if the materials used in the project would be sustainable and compatible with the downtown historic district. Mr. Furgiuele went on to question why a public-private partnership is a better model than the government or private model. Mr. Trump answered that the DFI group would strive for a way for the Town to leverage public investments. He went on to state that the team would take a proactive strategy and that Howard Street would be the main project focus. Mr. Trump assured Council that the Town would have a role in when and how development happens as a part of this project. Council Member Furgiuele noted that the Town has worked on the Howard Street project in the past without success, but that he was in support of the concept. Discussion ensued regarding the positive and negative impacts on the downtown area, and with the statement from Council Member Clawson that she believed in neighborhoods, and that she would like to see space carved out for them.

A complete copy of the power point presentation is available online at

http://boonenc.iqm2.com/Citizens/Detail_Meeting.aspx?ID=1731

CONSENT AGENDA ADOPTION

Mayor Rennie Brantz noted that the Proclamation honoring Dick Hearn would be removed from the agenda.

Council Member Furgiuele stated that in the future he would like to see all agenda items placed under Council Matters. He expressed his opinion that it is important to have discussion and that the Consent Agenda did not save much time. Mr. Fugiuele stated that he wished to remove the audit contract and encroachment agreement from the Consent Agenda.

APPROVAL OF RESOLUTION OF APPRECIATION - P. MORETZ

RESOLUTION OF APPRECIATION

WHEREAS, Peri L. Moretz will retire from the Town of Boone, North Carolina as of February 1, 2018; and,

WHEREAS, she has served the citizens of Boone as Human Resources Director with great distinction since 1991, and;

WHEREAS, she has always shown great dedication and genuine concern for the citizens of the town, town employees and Town Council; and,

WHEREAS, she has been an honest, loyal and committed public servant to the town.

NOW, THEREFORE, BE IT RESOLVED, that the Town Council of the Town of Boone, North Carolina, hereby expresses their sincere appreciation and gratitude to Peri L. Moretz for her contributions to the Town of Boone.

BE IT FURTHER RESOLVED that the Town Council extends to Peri L. Moretz and her family blessings for good health and best wishes for the future.

Adopted by unanimous vote of the Town Council on the 18th day of January, 2018.

_____
Mayor Rennie Brantz

ATTEST:

_____
Town Clerk

RESOLUTION TO BE TYPED IN BOOK 3 PAGE 337

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

APPROVAL OF BUDGET AMENDMENTS

-Reimbursement from an Insurance Claim for damages to Street Division's 2016 Chevrolet Silverado HD 2500

-Reimbursement check to pay for repairs on asset 6314

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

COUNCIL MATTERS

TOWN COUNCIL - REGULAR MEETING - NOV 16, 2017 5:30 PM

Town Attorney Allison Meade stated that there were errors in the minutes of the November 16, 2017 Council meeting that needed to be amended and asked that Council table this item until the February meeting.

RESULT:	**TABLED [UNANIMOUS]**
MOVER:	Sam Furgiuele, Council Member
AYES:	Furgiuele, Ulmer, Ashcraft, Mason, Clawson

TOWN COUNCIL - SPECIAL MEETING - DEC 21, 2017 4:30 PM

RESULT:	**ACCEPTED [UNANIMOUS]**
MOVER:	Lynne Mason, Council Member
SECONDER:	Loretta Clawson, Mayor Pro Tem
AYES:	Furgiuele, Ulmer, Ashcraft, Mason, Clawson

TOWN COUNCIL - REGULAR MEETING - DEC 21, 2017 5:30 PM

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

ENCROACHMENT AGREEMENT - KING & COLLEGE, LLC

Public Works director Rick Miller explained that the encroachment agreement presented in regards to King & College, LLC would be to grant encroachment upon the Town's public right of way located on Wallace Circle to install a five feet wide concrete sidewalk, block retaining wall to support sidewalk, storm drainage pipe and two storm drainage boxes for the project. Upon a Motion by Council Member Mason, seconded by Council Member Clawson, Council moved to approve the encroachment agreement for the King & College, LLC project as presented.

STATE OF NORTH CAROLINA
ENCROACHMENT AGREEMENT
COUNTY OF WATAUGA

THIS ENCROACHMENT AGREEMENT is made and entered into this the 3rd day of January, 2018, by and between the TOWN OF BOONE, party of the first part; and King & College, LLC, party of the second part.

WITNESSETH

THAT WHEREAS, the party of the second part desires to encroach on public land designated as

(CHOOSE ONE) a public sidewalk/public street/public park/public land (hereinafter referred to as the "public land") located at: Wallace Circle with the following: 72 lf 5' wide concrete sidewalk, 27 lf segmental block retaining wall to support concrete sidewalk, 7 lf 15" hdpe storm drainage pipe and two (2) storm drainage junction boxes, for the King & College Mixed-Use Planned Development.
(Hereinafter referred to as "the encroaching facility", see attached site plan for details); and

WHEREAS, it is to the material advantage of the party of the second part to effect this encroachment, and the patty of the first part, in the exercise of authority conferred upon it by statute and ordinance, is willing to permit the encroachment on public land, subject to the conditions of this agreement;

NOW, THEREFORE, IT IS AGREED that the party of the first part hereby grants to the party of the second part the right and privilege to make this encroachment upon the following conditions, to wit:
That the party of the second part complies with all pertinent provisions of the North Carolina State Building Code, the Town of Boone Unified Development Ordinance and Town of Boone Municipal Code, and such other laws, regulations and ordinances which might apply;
That the said party of the second part binds and obligates itself, its successors and assigns, to install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said public land, nor obstruct nor interfere with the proper maintenance thereof, to reimburse the party of the first part for the costs incurred for any repairs or maintenance to its roadways, sidewalks and other structures resulting from the installation and existence of the encroaching facility of the party of the second part, and if at any time the party of the first part shall require the removal of or changes in the location of the encroaching facility, that the said party of the second part binds itself, its successors and assigns, to promptly remove or alter the said encroaching facility in order to conform to the said requirements of the party of the first part, without any cost to the party of the first part.

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

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

That where pertinent and requested by the party of the first part, the party of the second part agrees to name the party of the first part as an additional insured on its and/or its contractor's general liability insurance policies applicable to the encroachment or encroaching facility.
It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such encroaching facility as the party of the first part carries out its construction and maintenance operations, and the party of the second party expressly waives all claims of liability or responsibility against the party of the first party for any damage that may be caused to the encroaching facility as the result of the Town carrying out any construction and maintenance operations. The party of the second part acknowledges that with regard to canopies, awnings, signs and similar encroachments, even where same fully comply with the Town of Boone Unified Development Ordinance, when placed less than ten feet above the surface of a public sidewalk, such obstructions are at great risk of damage by the equipment of the party of the first part during snow removal and general sidewalk construction and maintenance, and the party of the second part understands that by placing the encroaching facility less than ten feet above the surface of a public sidewalk, the party of the second party is knowingly and intentionally assuming that heightened risk of damage.

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

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

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

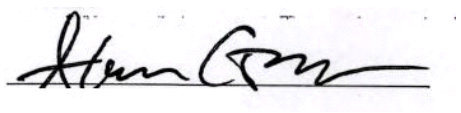
That the party of the second part agrees to have available at the encroaching site, at all times during construction, a copy of this agreement showing evidence of approval by the party of the first part. The party of the first part reserves the right to stop all work unless evidence of approval can be shown.
Provided the work referred to in this agreement is being performed on a completed public street open to traffic, the party of the second part agrees to give written notice of when work will begin to the party of the first part.

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

That it is agreed by both parties that this agreement shall become void if actual construction of the work contemplated herein is not begun and completed within 2 year(s) from the date of this agreement unless written waiver is secured by the party of the second part from the party of the first part.

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

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed as of the day and year first above written.
Town of Boone
By:
Mayor
ATTEST:
Town Clerk
Party of the Second Part
Robert Flanigan, King & College, LLC
Printed Name Party of the Second Part



Attest:

Mayor Brantz declared a break at 7:53 p.m. Council reconvened at 8:03 p.m.

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

MOTION TO RECUSE COUNCIL MEMBER FURGIUELE

Council Member Furgiuele stated that he was concerned that he might have a conflict with Case PL01240-122217 since he and his wife own property adjacent to the property being discussed. Town Attorney Allison Meade stated that although Mr. Furgiuele was not necessarily required to recuse himself from this item, that it would ultimately be his decision. Council Member Furgiuele stated that Ms. Meade has written a memorandum expressing her legal opinion regarding the potential conflict, and asked that she distribute copies to other Council Members. Council Member Furgiuele then asked to be recused from this matter. Upon a motion by Council Member Clawson, seconded by Council Member Ulmer, Council moved to recuse Council Member Furgiuele from Item Number 6: Request to Send Case to Public Hearing.

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

REQUEST TO SEND CASE TO FEBRUARY 26TH PUBLIC HEARING

Planning Director Jane Shook presented the request to send case PL01240-122217 Howard Street Ventures General Use Zoning Map Amendment to the February 26th Public Hearing. Ms. Shook noted that the request was to re-zone property from PD (Marketplace) back to B1 Central Business. Ms. Shook noted that the property had previously been zoned as B1, but that the applicants had subsequently obtained a Planned Development approval. She went on to state that the applicants have indicated that they wish to withdraw the PD approval, and have requested to re-zone the property back to B1 and would request that the case be sent back to Public Hearing. Ms. Shook noted that since this is a general use re-zoning request, there are no site specific plans. Town Attorney Allison Meade pointed out that the property owner cannot do anything further with the property until it is re-zoned as per the PD ordinance. Upon a motion by Council Member Mason, seconded by Council Member Ashcraft, Council moved to send case PL01240-122217 to the February 26th Public Hearing.

RESULT:	**APPROVED [4 TO 0]**
MOVER:	Lynne Mason, Council Member
SECONDER:	Marshall Ashcraft, Council Member
AYES:	Ulmer, Ashcraft, Mason, Clawson
RECUSED:	Furgiuele

MOTION TO ALLOW COUNCIL MEMBER FURGIUELE TO RE-ENTER THE MEETING

Upon a motion made by Council Member Mason, seconded by Council Member Ulmer, Council moved to allow Council Member Furgiuele to re-enter the meeting.

RESULT:	**APPROVED [4 TO 0]**
MOVER:	Lynne Mason, Council Member
SECONDER:	Connie Ulmer, Council Member
AYES:	Ulmer, Ashcraft, Mason, Clawson
RECUSED:	Furgiuele

CONSIDERATION OF APPROVAL OF LICENSE AGREEMENT - 2018 RAIL JAM

Cultural Resources Director Pilar Fotta presented the proposed license agreement for the 2018 Rail Jam. She noted that the event will be carried out the same as last year, with one exception: the ramp will be relocated to the center aisle of the venue. Ms. Fotta stated that she has sent this request to other departments and have not received any negative feedback on the change. Council Member Furgiuele noted that the event was not described in the agreement, and that he would appreciate that if in the future, the nature of the event was described in an agreement. Ms. Fotta stated that the attendance last year was approximately 2,500 attendees. Ms. Fotta expressed that the goal for the 2018 event was to attract people from out of town, and possibly around the country, as this event could potentially become a qualifier for the X-Games. Ms. Fotta introduced Danny Wilcox of Appalachian Mountain Brewery to further describe the event. Mr. Wilcox explained that the Rail Jam is a ski competition that was started four years ago in an attempt to attract visitors to different parts of town who were already in the area skiing. He stated that the event began to grow so rapidly, organizers reached out to the Town of Boone for assistance. Mr. Wilcox continued to say that the event consists of the construction of a ramp and dump-truck loads of snow to have kids of all ages compete. He stated that the southeast tends to get overlooked in terms of winter activities, and the Rail Jam is a way to put Boone on a national scale. Mr. Wilcox went on to list the ticket options for the event, and explained that since the event is held through the non-profit organization We Can So You Can, 100% of the proceeds from last year's event, plus additional funding from the organization went to the revitalization of the amphitheatre. Town Manager John Ward explained that this event was in part the result of direction from previous Council to increase programming without adding Town staff. Upon a motion by Council Member Clawson, seconded by Council Member Ashcraft, Council moved to approve the License Agreement for the 2018 Rail Jam.

STATE OF NORTH CAROLINA COUNTY OF WATAUGA

LICENSE

THIS LICENSE is granted this 18thday of January , 2018, by the Town of Boone, a North Carolina Municipal Corporation (hereinafter referred to as "Town" or "Licensor") and We Can So You Can, Inc., a North Carolina non-profit corporation (hereinafter referred to as "Licensee"). The term "Licensee" shall include, but is not limited to, Licensee's officers, agents, employees, participants, patrons, invitees and contractors. The term "person" as used herein includes any natural person or entity.

1. **Express Limitations:** This license is not intended to restrict in any way Licensor's use of the premises, nor to restrict Licensor's access to any part of the premises as it sees fit, including, but not limited to inspection to determine compliance by Licensee with the limitations and requirements of this License; maintenance, repair, alterations to the premises; safety inspections of any and all improvements as Licensor may deem necessary; and use of the premises as it sees fit.

2. **License Area:** As detailed on Attachment "A," and shown on Attachment "B" attached hereto and incorporated by reference herein, Licensee shall be entitled to the use of the described portions of "Daniel Boone Park," that certain piece, parcel or lot of land situated, lying and being in Boone Township, Watauga County, North Carolina, and the described improvements thereto, hereinafter collectively referred to as "the License area," during the times described and for the purposes provided herein.

3. **Term**: This License authorizes the described uses by Licensee during the times specified in Attachment "A". Additional dates for preparation or clean up may authorized by written approval of the Town Manager or his or her designee. As used in this agreement, "written approval" includes approval communicated via email.

4. **Scope of License**:

   A. The license area may be used by Licensee for the primary purposes of: hosting the 2018"Daniel Boone Rail Jam".

   B. This license includes and authorizes other and secondary activities conducted in association with the allowed uses as well as the use of such other and secondary facilities which are integral and necessary to support the authorized uses, so long as they are integral to the approved uses or constitute only an incidental and insubstantial part of the total activity; they are commonly associated with the use; and they are confined to the License areas and terms of use authorized in Attachment "A". Associated support activities shall include use of the parking lot in appropriate locations during appropriate times and use of restrooms on the property, as further described in Attachment "A".

   C. Any specific uses beyond the primary ones listed are permitted only with the advance written approval of the Town Manager.

   D. When not in use by Licensee during the term and at the conclusion of each authorized period permitted by this license, Licensee shall properly:

      i. Clean and make safe all structures to which it is entitled to only non-exclusive use;

      ii. Clean, secure and make safe all structures to which it is entitled to exclusive use; and

      iii. Remove any portable structures, or, if they do not interfere with potential use by other licensees, secure and make them safe.

      iv. For purposes of this section, the term "make safe" shall include remediation of hazards which do not involve alterations of facilities or repair work which requires a permit or an expert to perform; and removal of litter, debris, scrap materials, junk, trash, and other items which could cause injury to a person, promote rodent infestation, or the like.

      v. For purposes of this section, "clean" shall mean restoring all interior and exterior surfaces and floors of structures and facilities to a condition of cleanliness and sanitation which will allow a subsequent or intermittent licensee to utilize the structure and facilities with no more than a minimal amount of cleaning.

   E. Licensee shall not use or knowingly permit any part of the license area to be used for any purpose which violates any law, and Licensee shall familiarize itself and comply with all Town ordinances, including the Town's "Noise Control" ordinance, and the North Carolina State Building Code.

   F. Licensee acknowledges that Licensor may authorize other licensees to use portions of the license area in ways which do not unduly interfere with Licensee's licensed use and that Licensor shall be the sole arbiter of what constitutes undue interference. Licensor itself may also use, as it deems appropriate, any portion of the License area.

   G. During an emergency, as determined by Licensor, Licensor may utilize the License area to its full extent even if it substantially interferes with this License.

   H. Licensee will take no action(s) which are in any way inconsistent with Licensor's ownership interest in the property.

   I. Licensee will take no action(s) which is not in accordance with the procedures mandated by its duly adopted by-laws.

5. **Rules for Operation**: In addition to any rules adopted by Licensor for the use of the License area, which rules shall be effective when adopted even if they are adopted during the term of this license, Licensee shall have the right to promulgate such rules and regulations as it may deem appropriate

for the behavior of its employees, participants, patrons and invitees during its authorized use of the License area so long as they are not inconsistent with any rules promulgated by Licensor and are otherwise consistent with this License. Licensee shall provide Licensor with a copy of its rules and regulations, if any, sufficiently prior to their effective date to be kept on file with the signed copy of this license agreement.

6. **Licensing Fee; Consideration to Licensor; Disclosure Obligations**: In consideration of Licensor granting this license, Licensee agrees that (i) the Town will be granted all rights and privileges as a main sponsor of the event being hosted; and (ii) Licensee shall pay to Town eight percent (8%) of its gross ticket sales, to be paid within 10 business days of termination of the activities authorized by this License. Within the same time frame, Licensee also will provide to Licensor's Cultural Resources Director such financial information as is reasonably necessary to explain and document gross ticket sales as well as its net income for the event, including gross revenues, the nature and amount of expenses, and its overhead charges. Licensee further understands and acknowledges its obligations under N.C.G.S. § 55A-16-24.

7. **Utilities**: Licensee shall be responsible for paying directly or reimbursing Licensor or SAHA, as applicable, all utility costs incurred in connection with its use of the license area. If more than one licensee is authorized to use all or a portion of the license area concurrently, Licensor may apportion these costs in an equitable way in proportion to the relative use of the license area by different licensees, and Licensee shall promptly reimburse Licensor for its share of these costs. Should Licensee fail to pay its share of utility costs within the time set by Licensor, this License shall terminate. To the extent Licensee's use of the Licensed area is exclusive and the utilities used relative to that exclusive use can be placed in an account in Licensee's name by the relevant utility company, Licensor may require that Licensee obtain such utility service in its own name. If Licensee obtains utility service in its name, it must keep its account in good standing and notify Licensor immediately if it receives any notice of the possible disconnection of service or if service is actually disconnected.

8. **Maintenance**: During and after its use of the License area, Licensee shall provide all maintenance necessary to keep and restore the license area to a good and sanitary condition as the result of its use. Such maintenance shall be performed as often as necessary to insure that any other licensee authorized to use the license area will find the license area in a sanitary and orderly state. For purposes of this section, "maintenance" shall include collection and removal of trash, garbage, and litter, regular cleaning of facilities and structures, which should be cleaned after every event, and other activities required to conserve the condition of the property while minimizing wear and tear. Should Licensee fail to properly maintain the License area, Licensor may terminate the License or itself provide maintenance, but if Licensor provides such maintenance, it will be at the expense of Licensee, which shall promptly reimburse Licensor for its expenses in doing so.

9. **Repairs**: Licensee must notify Licensor, in writing, of any and all conditions in need of correction or repair which it discovers, whatever the origin of the conditions (caused by Licensee, its employees, contractors, invitees, or others). Licensee shall make no repairs, and no person will be hired to evaluate, assess or undertake any repairs without first notifying Licensor in writing, at least ten days in advance, of Licensee's intention to evaluate, assess, undertake or make such repairs, or in the event of an emergency, without first notifying Licensor by telephone at (828) 268-6200 of the condition and repairs contemplated. Repairs may only be performed by Licensee with express authorization of the Boone Town Manager. Any repairs made to the license area shall be done in a workmanlike manner and shall become the property of Licensor. In making any authorized repairs, Licensee shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all relevant federal and state laws relating to its operation of a facility and enterprise open to the public, and to its use of paid employees therein. Should Licensee be given permission to make repairs to the License area, for repairs requiring skilled workers, such as electrical repairs, plumbing repairs, structural repairs, and the like, Licensee shall only employ appropriately licensed workers to make the repairs. If Licensor itself undertakes needed repairs of conditions which are the result of Licensee's failure to discharge its maintenance responsibility; License' negligence; an intentional act of destruction by Licensee's participants, employees, patrons, invitees, agents or contractors; or other breach of its responsibilities under this License; Licensee shall be responsible for reimbursing Licensor the cost of such repairs, and its failure to promptly reimburse Licensor shall constitute a basis for the termination of this License. For purposes of this section, "repairs" shall refer to fixing something which has been damaged, broken, or is not working correctly, so that it is in good condition and working properly.

10. **Alterations**: Licensee agrees to neither make nor arrange for any alterations to the license area without the advance written approval of Licensor. Should any alterations be approved by Licensor, they shall be done in a workmanlike manner, and they shall become the property of Licensor. Should Licensee be given permission to make alterations to the License area, for alterations requiring skilled workers, such as electrical installations, plumbing installations, construction activities, and the like, Licensee shall only employ appropriately licensed workers to make the alterations. In making any alterations, Licensee shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all other relevant Federal and State laws. For purposes of this section, "alterations" includes, but is not limited to: removal of vegetation, other than weeds removed as part of normal maintenance, permanent modification of any existing structures, and construction of new structures.

11. **Compliance with Laws**: In particular, and not by way of exclusion, in any and all its actions and activities, Licensee will comply and hereby certifies its compliance with the Americans with Disabilities Act, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Fair Labor Standards Act, as amended, the Occupational and Health Safety Act, as amended, the North Carolina Employment Security Act, as amended, and the North Carolina Worker's Compensation Act, as amended, to the extent each such law applies to Licensee or any of its activities. Should Licensee's corporate status be revoked by the North Carolina Secretary of State, this license shall immediately
terminate. Licensee commits that it will act in accordance with all laws related to its status as a North Carolina Corporation.

12. **Information Required to be Furnished:** Licensee shall provide Licensor with its current by-laws at any time requested. Within ten days of any change, Licensee shall provide to Licensor any change to its by-laws, shall notify Licensor of any change to its management staff, and at the execution of this license and any time such composition changes, upon request shall advise Licensor of the names and addresses of each member of its board of directors.

13. **Termination or Expiration**: This license is terminable at will by either party. Upon termination or expiration of this license, Licensee shall remove its personal property from the license area and shall surrender the license area to Licensor in good order and repair, reasonable wear and tear excepted.

14. **Abandoned Property**: Following the termination or expiration of this license, any property left by Licensee on the license area shall be considered abandoned and may be retained by or disposed of by Licensor as it sees fit. However, Licensee shall have a ten day period following the termination of this lease to remove any building(s) which it owns. Thereafter, such building(s) will be deemed donated to Licensor. Licensee shall not leave, place, or store any personal property unrelated to the scope of the License in the License area, and any such property shall be considered abandoned and may be disposed of by Licensor.

15. **Waiver and Exculpation, Indemnification:** Licensor shall not be liable for, and Licensee hereby waives all claims against Licensor for damage to its property, or for injury, illness or death of any person in, upon or about the License area arising from any act or neglect of Licensee or caused to or suffered by any person using the license area pursuant to Licensee's authority.

    In addition, Licensee shall indemnify, defend, protect and hold harmless Licensor from and against any and all claims, actions, loss, cost, damage, expense, and liability associated with personal injury, damage to property, or any other matter arising out of any occurrence in, upon, or at the License area, or associated with any act or omission of the Licensee, or associated with Licensee's use, occupancy or activities in the license area or access thereto by Licensee; provided, however, that the foregoing indemnity shall not be applicable to claims arising by reason of the gross neglect or willful misconduct of the Licensor. In the event that the Licensor is made a party to any litigation brought against the Licensee or by reason of or related to the Licensee's use or occupancy of the License area, the Licensee shall defend, protect and hold harmless the Licensor from any and all liability that may result therefrom, including Licensor's costs in defending itself against any claim, action, litigation or other assertion of liability.

16. **Insurance**: Licensee shall provide and maintain event insurance coverage, including general liability

and host liquor liability insurance, in an amount of no less than one-million dollars ($1,000,000.00), against all risks for which Licensee is required to indemnify and hold Licensor harmless, including but not limited to personal injury, bodily harm, or death of third parties and damage to the property of third parties as more fully set out in paragraph 16, as well as damage which Licensee, its participants, employees, patrons, invitees, agents, or contractors may cause to the real or personal property of Licensor. Licensor shall be named as an additional insured on every liability insurance policy of Licensee relating to the license area. Certificates of insurance for each policy required to be obtained by Licensee in compliance with this paragraph shall be filed and maintained with Licensor. Licensee shall provide the aforesaid insurance policies to Licensor for its review at least 10 calendar days prior to the initiation of any activity on the licensed premises authorized by this License. Licensee shall immediately advise Licensor of any injury, damage, or assertion of claim or litigation that arises from the event, regardless of whether it may result in a claim of liability against Licensor.

17. **Modification of License**: There shall be no modification of this License by Licensee unless the modification is in writing and signed by both parties; provided, however, that. Licensor retains has the right to modify the License unilaterally as it may determine necessary with notice and cause.in its sole discretion, such modification to take effect 30 days following written notice to Licensee unless Licensor, in its discretion, determines that the modification must go into effect immediately upon or at some earlier time following notice of the same to Licensee.
18. **Assignments**: This license may not be assigned.

19. **Not a Lease or Estate:** The parties agree and acknowledge that in no event shall this License constitute a lease or grant or create any leasehold estate or other estate in the License area. This license is intended and shall be construed as granting a License or right of use in the License area, and Licensee's use and occupancy of the license area shall not be deemed to be a tenancy under the laws of North Carolina, and Licensee shall not enjoy, and hereby waives, any protections afforded tenants under federal, state, or local laws or regulations. Furthermore, the parties expressly disavow that this instrument creates any contractual responsibilities on the part of the Licensor.

20. **Governing Law:** This license shall be governed by and construed in accordance with the laws of the State of North Carolina. Venue concerning any dispute regarding this license shall be in Watauga County, North Carolina.

21. **Severability:** If any provision of this license or the application thereof to any person or circumstance shall, for any reason and to any extent, be held invalid or unenforceable, that provision shall be severed, and the remainder of this license and the application of that provision to other persons or circumstances shall not be affected, but rather shall be enforced to the extent permitted by law.

22. **Parties' Relationship:** Nothing contained in this License shall be deemed or construed by the parties or by any third party to create the relationship of principal and agent, employer and employee, or of partnership or joint venture or of any association whatsoever between Licensor and Licensee other than as is contained herein, it being expressly understood and agreed that none of the provisions contained in this license nor any act or acts of the parties hereto shall be deemed to create any relationship between Licensor and Licensee other than the relationship of a Licensor and Licensee.

23. **Waiver**: Licensor's failure to strictly enforce its rights under this license shall not constitute a waiver of such rights.

24. **Entire Agreement:** This License contains all of the terms and conditions concerning the licensing and use of the License area by Licensee. There are no oral terms or conditions agreed to by the parties which are not contained in this License. Licensor has not made and is not making, and Licensee, in executing and delivering this License, is not relying upon any warranties, representations, promises or statements, except those that are expressly set forth in this License. All prior verbal agreements previously made by and/or between the parties, if not contained herein, are hereby expressly null and void, and insofar as such prior agreements and understandings between the parties are included herein, the same have merged into this License, which alone fully and completely expresses the current terms of this License.

25. **Execution: Licensee** represents and warrants that all necessary authorizations and approvals required for execution and performance of this License have been given and that the

undersigned individual is duly authorized to execute this License and bind the Licensee to the conditions set forth.

26. **Notices**: All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, to the following addresses:

If to **Licensor**, to: John Ward
Town Manager
Town of Boone
P.O. Drawer 192
Boone, NC 28607

If to **Licensee**, to: Sean Spiegelman, Registered Agent
182 Kalmia Lane
Boone, NC 28607

Copy to: Danny Wilcox, _____

27. **Execution in counterparts**: This license agreement may be executed in separate counterparts, all of which together shall constitute and be effective as an original.

IN WITNESS WHEREOF, the **Licensor** and **Licensee** have executed this Lease Agreement in duplicate originals, and agree to all of the terms and conditions set forth above, the day and year first above written.

Town of Boone, Licensor

Rennie Brantz, Mayor

Attest:__
_____(Seal) Town Clerk, Town of Boone

We Can So You Can, Inc., Licensee, by

Sean Spiegelman, President

Attest:_____(Seal)
Secretary
[Print name:_____]

ATTACHMENT "A"

1. The License area shall consist of the outdoor Structures, Grounds, and Parking Lots at Daniel Boone Park as shown in "Attachment B", on Saturday, March 17, 2018 beginning at 4:00 p.m., and extending through 10:00 p.m., excluding six parking spaces in the upper parking lot reserved for the Southern Appalachian Historical Association, Inc., and four spaces in the lower parking lot reserved for the Daniel Boone Native Gardens. Additional dates for preparation or clean up may authorized by written approval of the Town Manager or his or her designee.

   Licensee agrees that it will prevent participants and patrons from parking in such a manner as to

interfere with access to the recycling facilities or emergency access to the License area or other areas accessed through the License area. Licensee will ensure that its participants and patrons promptly honor any request by any law enforcement officer, fire official, and/or any representative of Licensor that vehicles be moved.

2. Licensee is responsible for the cleaning the walkways, paths, restrooms and stage areas before, during, and after use.

3. Licensee will provide trash containers for the event, and will provide for the removal of all trash and trash receptacles at the conclusion of the event.

4. Licensee is responsible for securing all necessary permits and scheduling all applicable inspections.

5. Food trucks may be incorporated into this event, but their location(s) must be approved by the Town of Boone Fire Marshall prior to their operation, and they must have all required permits and inspections, including but not necessarily limited to those required by the Watauga County Health Department.

6. Licensee and all its contractors, employees, agents, partners, and vendors will abide by all applicable rules, regulations and laws, including but not limited to those of the Town of Boone and the NC ABC Commission.

7. Wine, beer and/or hard cider may be sold and served, but only after Licensee has obtained all necessary licenses and permits at such location(s) as are approved in advance by the Town Manager or his or her designee.

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

REQUEST FOR DIRECTION - STREET POLE BANNER FEES

Downtown Boone Development Coordinator Brittney Clark on behalf of the Downtown Boone Development Association presented Council with a request for direction regarding whether or not there should be fees for banners placed in Downtown Boone by outside parties. She also presented Council with a draft policy which was created before she began working at the Town. Ms. Clark stated that the reason for this discussion was that the High Country Grizzlies inquired about having their banners placed in Downtown Boone during a time period that the Town does not have any other banner commitments. She noted that she had previously brought this issue up to the DBDA board who had concern with waiving fees for for-profit agencies. Ms. Clark stated that there were approximately 22 banners in the Downtown area. Discussion ensued regarding the rotation and content of banners, with Town Attorney Allison Meade expressing concern with the policy from a First Amendment perspective. Ms. Meade suggested that Council table this request to allow time for her to review together with the sign ordinance. Council Member Furgiuele expressed discomfort with competing codes and policies, and stated that he believed that street pole banners and fees should be a part of and consistent with the UDO's section regarding signs. Mr. Furgiuele also expressed concern with scheduling conflicts between the Town and outside parties. He believed the Town should have a set fee schedule for installing and removing banners. Town Manager John Ward outlined the additional staff time that would factor into the cost of the installation and removal of banners. Mayor Brantz asked to table this item and have Town Attorney Allison Meade work with DBDA Coordinator Brittney Clark and come back with more information at the February meeting. Mr. Ward clarified that Council did wish to charge fees for street banner installation and removal, but not at an inflated rate so as not to become cost prohibitive.

REQUEST FOR COUNCIL TO REVIEW ORDINANCE 96.01 - SIDEWALKS

Downtown Boone Development Coordinator presented a request to Council to review Town Code Chapter 96.01 Sidewalks, as well as the UDO pertaining to temporary signage and for the usage of sidewalks for rack/sidewalk sales. She specifically asked for guidance pertaining to the space constraints placed on merchants for these privileges. Council Member Furgiuele asked that the different sized sidewalks throughout Town be taken into consideration when reviewing this ordinance. He stated that there needed to be a certain amount of sidewalk left for pedestrians, and that that amount needed to be clearly defined in the revisions. Mr. Furgiuele asked that any policy change or ordinance presented to Council should first be sent to Ms. Meade for review to save time and discussion. He went on to question who the administrator would be for sidewalk sale permits, to which John Ward answered that permits have never been issued in the past. Mr. Furgiuele stated that he didn't believe permits needed to be issued for sidewalk commerce, including buskers, but would like to look into having parties sign one-time encroachment agreements to shift liability away from the Town. Ms. Clark stated that the DBDA board did create a list of recommendations pertaining to sidewalk commerce and was asked by Ms. Meade to forward the list to Council and herself. All were in agreement to table this matter to allow the Town Attorney and Ms. Clark to work together to develop a policy regarding sidewalk commerce in downtown.

CONSIDERATION OF CODE AMENDMENT TO ALLOW FOR NON-MOTORIZED WHEEL BASED TRANSPORTATION

Council Member Furgiuele presented a proposed amendment to the Town Code to allow for non-motorized wheel based transportation on all sidewalks except for the area of King Street along College Street and Straight Street, as well as along streets where there are no bike lanes. Mr. Furgiuele outlined his request and stated that he would like for a draft ordinance to be prepared for public hearing, possibly in March or April, when Appalachian State University would be in session. Mr. Furgiuele noted that as long as there were safety precautions that were taken, he didn't see a problem with these alternative methods of transportation. Council Member Ulmer stated that where she grew up in Chicago, bikes were allowed on sidewalks and on the streets, but that parameters needed to be set. Council Member Mason stated that with previous Council, specifically Jeannine Underdown Collins, the Town began having discussion regarding skateboarding in particular and noted the importance of having ASU's support in the matter. She continued to say that she'd like for students in support of skateboarding to attend the Council meeting in February to present their research so that an ordinance could be drafted and introduced to Council in April. Mr. Furgiuele also offered his opinion that there should be bike lanes on every street in Boone, and would like to see this as a requirement on any proposed new street in Town. Council Member Mason proposed that this request be sent to the Alternative Transportation Sub-Committee who meets on February 13 as their primary focus during the meeting so that they can discuss and send their recommendations back to Council at the February 15 meeting. It was agreed that a public meeting would be held to receive input from the public on the topic. Mr. Ward also noted that programming funds for awareness would need to be allocated during the budget process. He stated that alternatively, it may be possible to incorporate education at the annual Bike Rodeo with Council Member Mason adding in that Watch for Me NC could be utilized as well. Upon a motion by Council Member Mason, seconded by Council Member Ulmer, Council moved to gather additional input from the Cruzin' Committee at the February 13 Alternative Transportation Sub-Committee with that information being provided to Council at the February 15 Council meeting as an addendum to the Council packet and for Council to be prepared to provide additional input so that the Town can move forward with the development of a draft ordinance that will eventually go to public hearing.

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

CONSIDERATION OF POSSIBLE ORDINANCE REQUIRING TOWN TO FOLLOW ITS OWN ORDINANCES

Council Member Furgiuele presented a request to have the Town follow its own ordinances. Council Member Furgiuele stated that he would like to see a provision in the Town Code that the Town must follow its own ordinances, excluding emergency personnel. He stated that it does not instill confidence in local government if

they are not following their own ordinances. Mr. Furgiuele stated that unless specifically exempt, the Town should be required to follow its own ordinances. He expressed that exemptions should be specific and narrow so that it would not be perceived that the Town viewed itself as being above its own ordinances. Mr. Furgiuele gave the recent example of the discussion on social media regarding the Town's decision to cut a tree on its own property without following the tree ordinance. Council Member Ulmer raised the question of what would happen in the event Town employees chose not to follow their own ordinances. Council Member Furgiuele offered that it should be a part of the personnel policy that if an employee violates the code or UDO, that would become a disciplinary issue. Council Member Clawson stated that a single Town employee should handle the issuance of the permits. Town Attorney Allison Meade stated that she had discomfort with this proposal due to the fact that state statutes and Town ordinances do not apply to local government. She went on to say that despite this fact, the Town could create an ordinance requiring the Town to follow its own ordinances, but that she would rather review each ordinance and add specific language pertaining to the Town as needed to avoid unintended consequences. Mr. Furgiuele stated that he had concerns with several of the Town's ordinances being unreadable and unenforceable, and suggested a comprehensive review of the Town Code. Ms. Meade agreed that she felt this would be a good idea, and offered to review one or two ordinances per month. Council Member Furgiuele made a motion, which was seconded by Council Member Clawson, to approve a provision to be added to the Town Code/UDO that the Town must follow its own ordinances, and to have Ms. Meade review the Town Code/UDO at a rate of one chapter per month to determine whether or not amendments needed to be made. After brief discussion regarding the potential problems with the Town governing its own sign usage, Council Member Furgiuele withdrew his motion. Council Member Clawson also withdrew her second to the motion. Upon a motion by Council Member Furgiuele, seconded by Council Member Clawson, Council directed the Town Attorney to review sections of the Town Code and UDO to improve the codes and identify where the Town could submit itself to its own ordinances. Ms. Meade also suggested that there be out-language that would satisfy particular government concerns. Council Member Furgiuele agreed that a catch-all would satisfy most concerns in the Town Code, but not necessarily the UDO.

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

CONSIDERATION OF APPROVAL OF GREENWAY TRI-PARTY AGREEMENT

Town Manager John Ward presented a tri-party agreement between the Town of Boone, Watauga County and Appalachian Regional Healthcare System, Inc. for a Greenway connector between Watauga Medical Center and the Wellness Center. Mr. Ward noted that the County and Appalachian Regional Healthcare System, Inc. would each contribute $50,000 as their portion of grant funding to go toward materials and engineering, with the Town providing construction labor and holding the easement. Mr. Ward noted that the current estimate for materials came in at $100,000. Council Member Furgiuele inquired as to how much the construction was projected to cost the Town, since there are state laws that limit the amount of force labor account for projects. Mr. Furgiuele stated that he believed the total amount of a project could not exceed a total cost of $125,000, and was concerned that this particular project might exceed that amount. Mr. Ward confirmed that he was under the impression that the total cost would be below the $125,000 limit but would confirm with staff. Public Works Director Rick Miller stated that construction on the project would move quickly, so it would not be as costly as some might think. Upon a motion by Council Member Ashcraft, seconded by Council Member Clawson, Council moved to approve the proposed tri-party agreement between the Town of Boone, Watauga County and Appalachian Regional Healthcare System, Inc. for a Greenway connector between the Watauga Medical Center and the Wellness Center.

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA **TRI-PARTY AGREEMENT**

THIS AGREEMENT, dated as of the ___ day of January, 2018, by and among Watauga County, a North

Carolina unit of local government (hereinafter referred to "County"); Appalachian Regional Healthcare System, Inc., a registered North Carolina non-profit corporation (hereinafter referred to as "ARHS"); and the Town of Boone, a North Carolina unit of local government (hereinafter referred to as "Town").

W I T N E S S E T H:

WHEREAS, the County and the ARHS are partnering with the Town to construct an extension of the Town's greenway that will connect Watauga Medical Center to the ARHS Wellness Center. The under-construction Appalachian State University College of Health Sciences and the future Watauga County Recreation Center will also be connected to the Wellness Center by this extension. The project consists of approximately 850 linear feet of 8-foot-wide asphalt greenway, including a 30-linear foot 60-inch culvert stream crossing, and 280 linear feet of 5-foot-wide concrete sidewalk. Also included will be directional signs, and bollards and wooden guard rail fence as needed. Project engineering, design and permitting, including flood plain development permitting and no-rise certification, are part of the project. The County and ARHS will each receive a legislatively-directed grant of $50,000 (a total of$100,000.00) (collectively, the "Grant Funds"), which will be used for the Greenway. The project will begin upon full execution of the contract and is anticipated to be completed by June 30, 2018; and

WHEREAS, the Town represents that it has the legal right to enter upon the property upon which the extension to the greenway will be constructed.

NOW, THEREFORE, in consideration of the premises and the benefits to be derived by each of the parties hereto, the County, the ARHS, and the Town do hereby mutually agree as follows:

1. CONSTRUCTION OF GREENWAY EXTENSION. The Town shall be responsible for the construction of the greenway extension. This will include providing all labor and necessary permitting. The Grant Funds shall be used exclusively for engineering, design and materials necessary to complete the project. The County and ARHS shall not be responsible for any part of the construction of the greenway extension.

2. FUNDING FOR PROJECT. The Grant Funds were received from the North Carolina Department of Natural and Cultural Resources (hereinafter referred to as "NCDNCR") and terms concerning the use of the Grant Funds are contained in a separate Grant Contract attached as **Exhibit "A"** and incorporated herein by reference. In the event that any dispute arises regarding the use of these grant funds and this Agreement, the terms of the Grant Contract shall control.

If additional funds are required to complete the greenway extension project pertaining to this Agreement, the County and ARHS shall not be obligated for any additional funds beyond their respective $50,000 grant funds received from NCDNCR. Furthermore, if the project does not require the use of all of the grant funds, then those funds shall be returned to NCDNCR.

THE REMAINDER OF THIS PAGE WAS LEFT INTENTIONALLY BLANK

IN TESTIMONY WHEREOF, the parties have executed this instrument under seal for the dates indicated above.

COUNTY:

Watauga County, a unit of local government

By:_____(SEAL)
Deron Geouque, County Manager

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

I certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Deron Geouque, County Manager for Watauga County.

This the ____ day of _____, 2018.

_____(SEAL)

My Commission Expires:

ARHS:

Appalachian Regional Healthcare System, Inc.

By: _____(SEAL)
_____, CEO
STATE OF
COUNTY OF

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: _____, CEO of Appalachian Regional Healthcare, Inc.

This the ____ day of _____, 2018.

_____(SEAL)

My Commission Expires:

TOWN:

The Town of Boone, a unit of local government

By:_____(SEAL)
John Ward, Town Manager

STATE OF
COUNTY OF

I certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: John Ward, Town Manager for Town of Boone.

This the ____ day of _____, 2018.

_____(SEAL)

My Commission Expires:

W:\CHC\County Work\Greenway Triparty Agreement\Greenway Triparty Agreement.doc

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

CONSIDERATION OF APPROVAL OF NATIONAL PARKS RESOLUTION

On behalf of the Pew Charitable Trust in Washington D.C., Town Manager John Ward presented a resolution to encourage Congress to create a reliable stream of resources to help fund maintenance needs in the Country's national park system. Mr. Warded noted that there is currently $500 million dollars worth of repairs that needed to be made along the Blue Ridge Parkway alone. Mr. Ward stated that the lack of maintenance in the national park systems negatively effects the integrity of the national parks, as well as the local economies that benefit from the tourism associated with the parks. Mr. Ward stated that the trust is requesting communities along the Blue Ridge Parkway to pass the proposed resolution urging the infrastructure package that will go before Congress. He noted that a similar resolution of support was approved by Watauga County Commissioners at their December regular meeting. Upon a motion by Council Member Ashcraft, seconded by Council Member Clawson, Council approved the proposed resolution in support of national parks. Council Member Furgiuele expressed concern that the Town would be endorsing the potential exploitation of natural resources in the form of cutting trees in national parks and selling for profit, as well as concern with the Town supporting legislation that supports the exploitation of national parks. Council Member Ashcraft offered that he was under the assumption that the proposed package effects mineral revenues from all sources and from areas outside of park lands. Council Member Ashcraft shared Mr. Furgiuele's.

TOWN COUNCIL

OF THE
TOWN OF BOONE
STATE OF NORTH CAROLINA

A RESOLUTION ENCOURAGING CONGRESS TO CREATE A RELIABLE, PREDICTABLE STREAM OF RESOURCES TO ADDRESS DEFERRED MAINTENANCE NEEDS IN AMERICA'S NATIONAL PARK SYSTEM.

WHEREAS, America's National Park System is a living testament to our citizens valor, our nation's hardships, our victories, and our traditions as Americans, and has been called "America's Best Idea;" and

WHEREAS, the National Park System preserves the diversity, culture, and heritage of all Americans, and serves as a living classroom for future generations; and

WHEREAS, in 2016, the National Park Service celebrated its centennial, and currently manages more than 400 nationally significant sites and an invaluable collection of more than 75,000 natural and cultural assets that span 84 million acres across all 50 states, the District of Columbia, and several U.S. territories and insular areas; and

WHEREAS, North Carolina is home to ten national park units, including Cape Hatteras National Seashore, Moores Creek National Battlefield, Great Smoky Mountains National Park, and the Blue Ridge Parkway.

WHEREAS, the Town of Boone is a gateway community to the Blue Ridge Parkway, and benefits from the tourism associated with visitors to the park and the improved quality of place for residents; and

WHEREAS, the National Park Service's mission is to "to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations;" and

WHEREAS, in 2016, the National Park System had more than 331 million visits, including 15.2 million along the length of the Blue Ridge Parkway; and

WHEREAS, in 2016, National Park Service estimates indicate that park visitors spent more than $980 million in the communities along the Blue Ridge Parkway, supporting an estimated 15,600 jobs; and

WHEREAS, the National Park Service has the obligation to preserve our nation's history; promote access to national parks for all citizens; stimulate revenue to sustain itself and nearby communities; educate the public about America's natural, cultural and historical resources, and provide safe facilities and environs to enjoy these resources; and

WHEREAS, in 2016, the National Park Service estimated a deferred maintenance backlog of $11.3 billion, including $261 million along the North Carolina section of the Blue Ridge Parkway, which consists of repairs to aging historical structures, trails, sewers, thousands of miles of roads, bridges, tunnels, and other vital infrastructure.

WHEREAS, it is the responsibility of Congress to maintain America's national parks to ensure our natural places and our history is preserved and documented for future generations, and for the adjacent communities that rely on the direct and indirect economic benefits generated by visits to national park sites.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE TOWN OF BOONE that the Town of Boone urges Congress to create a reliable, predictable stream of resources to address deferred maintenance needs in America's National Park System, and to ensure that federal infrastructure initiatives include provisions to address park maintenance.

PASSED, APPROVED AND ADOPTED this 18th day of January, 2018.

_____
Rennie Brantz, Mayor

ATTEST:

_____(SEAL)

Nicole Worley, Clerk

RESOLUTION TO BE TYPED IN BOOK 3 PAGE 336

Mayor Rennie Brantz declared a break at 9:57 p.m. Council reconvened at 10:06 p.m.

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

CONSIDERATION OF ADOPTION OF YOUTH PROTECTION POLICY

Safety and Risk Officer Terry Story introduced the Youth Protection Policy template which was recommended by the Town's insurance carrier, Travelers. Mr. Story explained that since the Cultural Resources department has recently begun hosting music lessons to youth, a protection policy, while not required, was recommended by Travelers. Town Attorney Allison Meade read a list of changes submitted by Council Member Ashcraft. The changes included the striking of the word "narcotic" at the bottom of the page first page of the proposed policy under the "Disqualifications" section; at fourth bullet point under "Disqualifications" section, add "or any one alcohol violation in the prior one or two years"; in the final section "Supervision and Conduct of Youth Activities" third bullet add "possession". Ms. Meade noted that she had concern with the final revision, since it is legal to possess alcohol and tobacco. Council Member Ashcraft agreed with the tobacco portion of the restriction, but stated that he believed that a person who is in charge of children should not have alcohol in their possession during the time when they are supervising children. Mayor Brantz expressed that the 100 children involved in this program are very special and talented, and that he supported a policy to protect them. Ms. Meade noted that Council Member Furgiuele had critiques with the lack of precision in the language of the policy. Council Member Furgiuele stated that the word "may" in the first sentence left room for discretion. He continued to express concern with the inclusion of restrictions on people convicted of felonies within the previous fifteen years, but noted that some felonies would pose less of a risk to youth such as tax evasion. Ms. Meade stated that language could be added to include people convicted of felonies directly related to the welfare of children without a time limitation. Council Member Furgiuele offered that a ten year period may be more appropriate. Mr. Story assured Council that the Town is still covered by its insurance, even if they decided not to approve the youth protection policy. Council Member Furgiuele continued on to say that he felt that the conviction of a misdemeanor over the previous five years was restrictive not only in the short period of time stated, but also that many traffic offenses are misdemeanors, including speeding tickets if one is traveling fast enough, which would prevent many people from teaching in this setting. Council Member Furgiuele stated that he believed that ten years would be a more appropriate amount of time. Council Member Ashcraft voiced his opinion that leaving the word "may" in the policy would allow the Town to rely on its own discretion. Council Member Furgiuele also expressed concerns with the usage of the words "aberrant" and "troubling" in the policy, as well as the lack of precision of the language in the fifth bullet point regarding confidential information and the need to bring this part of the policy into compliance with state law. He voiced concern with ambiguities in the last bullet point regarding the relation of children to those in a supervisory position. Ms. Meade suggested that the Human Resources Director be in charge of the appeal process. Discussion ensued regarding liability issues. It was agreed by consensus that staff would research and work with Ms. Meade to present a revised policy at a later meeting.

CONSIDERATION OF APPROVAL OF AMENDMENTS TO PERSONNEL POLICY

Safety and Risk Officer Terry Story presented a request to clarify portions of Article X of the Personnel Policy to allow for consistency throughout the policy. Upon a motion by Council Member Furgiuele, seconded by Council Member Clawson, Council moved to approve the proposed amendments to the Personnel Policy as presented.

ARTICLE X. ALCOHOL AND CONTROLLED SUBSTANCE TESTING

Section 1. Purpose.

The Town of Boone seeks to protect its employees and the public and to provide employees with a drug-free, healthy, safe, and secure work environment. The Town is committed to developing and administering a fair and consistent policy to promote and maintain a drug-free work environment. Employees who abuse alcohol and/or controlled substances are encouraged and may be required to use the Town's Employee Assistance Program. Conscientious efforts to seek and use such help will not jeopardize an employee's job. However, failure to seek and use such help may subject the employee to disciplinary procedure including, but ~~to~~not limited to, termination.

Section 2. Definitions.

a. **Reasonable Suspicion** means an expressible belief based on specific objective facts and rational inferences drawn from those facts that an employee has consumed or is ~~under the influence of~~impaired by alcohol or ~~improper use of drugs~~a controlled substance while at work. Circumstances which constitute a basis for determining reasonable suspicion may include, but are not limited to:

1. Direct observation of ~~drug~~ use ~~or~~of alcohol ~~use~~or controlled substance and/or the physical symptoms of being ~~under the influence of~~impaired by a ~~drug~~controlled substance or alcohol;

2. A pattern of absenteeism, tardiness, or deterioration of work performance and abnormal conduct or erratic behavior while at work;

3. A pattern of accidents and/or information that an employee has caused or contributed to an accident at work while ~~under the influence of drugs~~impaired by controlled substances or alcohol;

4. Evidence that an employee is involved in the unauthorized possession, sale, solicitation, or transfer of ~~drugs~~a controlled substance at any time;

5. Evidence that an employee is ~~under the influence of alcohol~~impaired by l or consumes alcohol or controlled substances while working or while operating a Town vehicle, machinery or equipment.

c. **Approved Laboratory** means a laboratory approved and certified to conduct employee and applicant drug testing by the North Carolina Department of Human Resources or the National Institute on Drug Abuse, the College of American Pathology, the American Association for Clinical Chemistry or the equivalent.

d. **Controlled Substance** means any substance regulated by state or federal law which has been determined to have a potential for abuse and that may lead to physical or psychological dependence. This includes all forms of marijuana (THC metabolite), cocaine, amphetamines, opiates (including heroin), phencyclidine (PCP), barbiturates and benzodiazepine. As indicated by context, the term "drug" may be used herein to refer to controlled substances and/or alcohol.

e. **Positive Drug Test** means a chemical test on one's urine or blood sample performed by a certified laboratory which confirms the presence of a controlled substance. A test shall be declared positive after two tests confirm the presence of drugs in the sample.

f. **Positive Alcohol Test** means a Breathalyzer or blood test which confirms the presence of alcohol at a level of 0.01 or greater. To ensure maximum validity, the test shall be conducted under the generally accepted test procedures accepted under the Department of Transportation (Federal Highway Administration) and North Carolina General Statutes.

g. **Safety-sensitive employees** means those employees whose positions have been identified as safety-sensitive per a list maintained by the Town's Safety/Risk Management Officer.

Section 3. ~~Workplace~~ Use of ~~Prescription or~~Legal Ability-altering Drugs.

The employee is responsible for ascertaining from a health care professional the effects of any prescribed drug or over-the-counter medication. Any employee with knowledge that the use of a prescribed or over-the-counter medication could alter the employee's ability to perform the duties of the position must notify the appropriate supervisor before undertaking his or her job duties. Failure to obtain or communicate such information may result in disciplinary action.

Section 4. Employee Testing.

Employees shall be tested in the following circumstances:

(i) when there is reasonable suspicion of ~~improper use of~~prohibited alcohol and/or a controlled substance~~,~~ use as defined at Section 2 of this Article;

(ii) in the case of CDL drivers, as required by US DOT regulations AND as may be required per subsection (iii) below; and ~~after accidents involving~~

(iii)in any case in which an employee, while working for the Town, is operating a motor vehicle or heavy equipment that is involved in an accident resulting in a fatality, bodily injury and/or property damage~~.~~ of more than $1000.00 and in which accident the employee is determined to be potentially at fault for causing or not avoiding the accident, as determined by the Town's Safety/Risk Management Officer.

Testing following a motor vehicle or heavy equipment accident shall be administered as soon as reasonably possible, but in no event no later than eight hours from the time of the accident for alcohol testing and no later than 32 hours from the time of the accident for controlled substance testing.

Employees are also required to submit to random drug testing on the following basis: fifty percent (50%) of all CDL employees and twenty five percent (25%) of all safety-sensitive employees shall be randomly tested annually for illegal controlled substances. Twenty-five percent (25%) of all CDL employees and ten percent (10%) of all safety-sensitive employees shall be tested annually for alcohol.

Section 5. Retesting of Employees who have Tested Positive.

If an employee is allowed to continue employment after testing positive for drugs, he/she will be subject to unannounced and random testing. An employee who tests positive for alcohol at a level of 0.04 or greater will be tested a minimum of four times for the first year. After this period, the Substance Abuse Professional will determine when follow-up testing should end.

Section 6. Consent.

Before a test is administered, an employee will be asked to sign a consent form, authorizing the test and permitting the release of test results to those Town officials with a need to know as defined by North Carolina Gen. Stat. § 160A-168. The consent form shall provide space for employees to indicate current or recent use of prescription or over-the-counter medication. Consent forms shall also set forth the following information:

a. The procedure for confirming an initial positive test result;

b. The consequences of a positive test result;

c. The right of an employee to explain a positive test result and to be heard at a pre-disciplinary conference"; and

d. The consequences of refusing to undergo a test.

Section 7. Refusal to Consent.

Refusal to consent to testing will subject an employee to immediate dismissal. In addition, failing to appear for a scheduled the test will be considered to have refused to consent to the test. An employee who requests a delay of a test scheduled under the provisions of this section will be considered to have violated expected work behavior.

Section 8. The Drug Test.

Normally, a urine test will be used to determine the presence of drugs. Guidance and instructions in administering the drug test will be provided by an approved laboratory to ensure that proper steps are followed in collecting and evaluating samples. A strict chain of custody will be maintained by the approved testing laboratory. If the result is positive, the employee shall be notified in writing by the Director of Human Resources. A letter of notification shall identify the particular substance found. Within 72 hours of notification of a positive drug-test result, an employee or applicant may request that the original sample be sent to an approved laboratory for another test at the employee's own expense.

Section 9. Consequences of a Positive Drug Test.

An employee who has a positive drug test will be subject to disciplinary action up to and including dismissal. The employee may request continued employment and assistance under the Employee Assistance Program. When making recommendations for disciplinary action, supervisors and department heads shall consider factors which include the following: (1) the employee's work history; (2) the job assignment; (3) the length of employment; (4) the current job performance; (5) the existence of past disciplinary action; and (6) the danger or potential danger to other employees and the public at large due to employee's job duties.

Pursuant to N.C. Gen. Stat. § 20-37.19(c), the Town will notify the North Carolina Division of Motor Vehicles in writing within five business days following the positive drug test of an employee who operates commercial motor vehicles for the Town and who is required as a condition of his or her job to have, hold or maintain a commercial driver's license. The Town shall provide the Department of Motor Vehicles with the employee's name, address, driver's license number, social security number and the results of the drug test.

Section 10. The Alcohol Test.

Normally, an evidential breath-testing device will be used to determine the presence of alcohol. The test will be administered by a Breath Alcohol Technician (BAT) following procedures accepted by the Department of Transportation.

Section 11. Consequences of a Positive Alcohol Test.

a. **0.01 or greater, but less than 0.04** - An employee testing positive in this range may be subject to disciplinary action up to and including dismissal. Arrangements for safe transportation to the employee's home shall be made. If the employee refuses transportation, this shall be documented.

b. **0.04 or greater** - An employee testing positive in this range will be subject to disciplinary action up to and including dismissal. Arrangements for safe transportation to the employee's home shall be made. If the employee refuses transportation, this shall be documented and the Town of Boone Police Department notified.

Pursuant to N.C. Gen. Stat. § 20-37.19(c), the Town will notify the North Carolina Division of Motor Vehicles in writing within five business days following the positive alcohol test of an employee who operates commercial motor vehicles for the Town and who is required as a condition of his or her job to have, hold or maintain a commercial driver's license. The Town shall provide the Department of Motor Vehicles with the employee's name, address, driver's license number, social security number and the results of the alcohol test.

Section 12. Mandatory Participation in Employee Assistance Program.

An employee permitted to continue employment after a positive alcohol or drug test or after voluntarily identifying himself/herself as a drug user or alcohol abuser will be required to participate and cooperate fully with the provisions of a recommended rehabilitation program as prescribed by the Employee Assistance Program, or comply with any long-term treatment programs which are recommended either through the Employee Assistance Program or another counseling program. Disciplinary action is not automatically suspended by an employee's participation in the Program and may be taken against employees for performance issues or conduct violations, but the employee's participation in the Program will be considered in any decision regarding disciplinary action.

Those employees participating in the Program will be subject during that participation to unannounced and random alcohol and drugs tests. Upon a positive test result, the employee will be subject to dismissal. Those employees who satisfactorily complete the rehabilitation program prescribed by the Employee Assistance Program will be subject to unannounced and random drug and alcohol tests for a period of two years after completion. Satisfactory completion of the rehabilitation program shall be determined by the Town with the guidance of staff of the program. Failure to enter or complete the prescribed program shall be considered by the Town as voluntary termination of employment by the employee.

The Town will pay for the first visit of an employee to the Employee Assistance Program during the calendar year. **The cost of all other visits, be they voluntary or mandatory, will be the responsibility of the employee.**

Section 13. Use of Results in Criminal Action.

No test results of the Town's drug testing program may be used as evidence in a criminal action against an employee except by order of a court of competent jurisdiction.

Section 14. Notification of Charge.

An employee charged with or convicted of an alcohol-related crime or charged with or convicted of a drug-related crime shall notify his/her department head no later than twenty-four hours after such charge or conviction. Failure to notify one's department head of such charge or conviction shall be grounds for dismissal.

~~**Section 15. Accident Involving Town Vehicles.**~~

~~Alcohol tests following a traffic accident involving a Town vehicle shall be administered no later than eight hours from the time of the accident. Drug tests following a traffic accident involving a Town vehicle shall be administered no later than thirty-two hours from the time of the accident.~~

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

RESOLUTION NAMING THE NEW RIVER BRIDGE ON THE BOONE GREENWAY TRAIL

Town Manager John Ward presented a draft resolution naming the New River Bridge on the Boone Greenway Trail after Assistant Town Manager Jim Byrne. Photos of potential sites were also presented, with Mr. Ward recommending the New River Bridge be named after Mr. Byrne. Council expressed their appreciation to Mr. Byrne for the dedication and hard work that he has put into the Greenway Project. Upon a motion by Council Member Furgiuele, seconded by Council Member Clawson, Council moved to adopt the proposed resolution naming the New River Bridge on the Greenway Trail after assistant Town Manager James F. Byrne, Jr.

RESOLUTION NAMING THE NEW RIVER BRIDGE ON THE BOONE GREENWAY TRAIL

WHEREAS, the Boone Greenway Trail consists of paved and gravel trails, picnic shelters, wetlands and benches amongst a magnificent view of our mountains; and,

WHEREAS, the Boone Greenway Trail provides a recreational space that showcases the beauty of our community and which improves the quality of life for Town residents; and,

WHEREAS, Assistant Town Manager Jim Byrne has been employed by the Town of Boone since 1988; and,

WHEREAS, Mr. Byrne has aided in the funding of the Boone Greenway Trail by devoting endless hours to grant work; and,

WHEREAS, Mr. Byrne has devoted countless amounts of time, resources and effort into the creation and improvement of the Boone Greenway Trail; and,

NOW, THEREFORE, BE IT RESOLVED that the New River Bridge on the Boone Greenway Trail shall be named the "James F. Byrne, Jr. Bridge" in honor of Assistant Town Manager Jim Byrne and for the tremendous service he has provided to our community.

Adopted by unanimous vote of the Town Council on the 18th day of January, 2018.

_____
Mayor Rennie Brantz

ATTEST:

_____(SEAL)
Nicole Worley, Clerk

RESOLUTION TO BE TYPED IN BOOK 3 PAGE 335

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

CONSIDERATION OF POSSIBLE CODE AMENDMENT TO ALLOW FOR WATER METER EQUITY

Council Member Furgiuele presented a request for consideration of a possible code amendment to allow for water meter equity. Council Member Furgiuele noted that the Sustainability, Economics and Environment Committee has been pushing the idea for having single water meters for multi-family projects in Town and that according to Town policy, each customer is required to have his/her own water meter. Public Works Director Rick Miller agreed with Mr. Furgiuele's statement, and noted that the Town had eleven exceptions to this rule throughout the Town and that although two different issues, some apartment complexes in Town have a single meter point. Council Member Furgiuele voiced his belief that in addition to a loss of funds coming in to the Town, that single meters for multi-family projects would result in inequalities to individuals in multi-family projects who practice conservation with water. He added that he would like to see a higher minimum charge on a single water meter for a multi-family building. Mr. Miller brought new Council Members up to speed on the fact that the Town is currently under contract with Raftelis Financial Consultants for a Water and Sewer Rate and Fee Study, and that this topic will be addressed in the study. Council Member Furgiuele stated that according to Town of Boone ordinance, it is a misdemeanor for citizens to re-sell Town of Boone water, but that landlords might see shared meters as an opportunity to make a profit. Council Member Furgiuele proposed that the water and sewer code be amended to state that in situations where there is an existing single water meter serving multiple customers, that the reselling of water for profit would be considered a misdemeanor. Council Member Ashcraft asked how water usage would be monitored on a single water meter serving multiple customers, to which Council Member Furgiuele replied that enforcement would be like any other misdemeanor and would have to be enforced by the tenant. Council Member Ashcraft followed up by asking how one could determine that the landlord was charging more than the amount being charged by the Town to which Council Member Furgiuele offered that one would have to compare the collective amount charged to the tenants with the amount charged by the Town. Discussion ensued, with Council Member Furgiuele asking Mr. Miller whether the Town had specific use figures from apartment complexes which are currently separately metered by apartment to compare what they would be charged at a minimum under a single meter system with what they were paying before. Mr. Miller stated that he would collect that information. Mr. Miller asking Council to consider holding off on taking action in this matter until the results of the Raftelis report are complete. Council Member Furgiuele agreed to table this request until the results of the Raftelis report are complete.

RESULT:	**TABLED [UNANIMOUS]**
MOVER:	Sam Furgiuele, Council Member
AYES:	Furgiuele, Ulmer, Ashcraft, Mason, Clawson

CREATION OF NEW DOWNTOWN REVITALIZATION PLAN

Council Member Furgiuele presented a request for the creation of a Downtown Revitalization Plan. Council Member Furgiuele explained that previous Council Member Jamie Leigh often voiced her concern with the fact that improvements within the Municipal Service District always seemed to take place on the two main blocks on King Street. Council Member Furgiuele disclosed that he too was an MSD taxpayer, and that he often failed to see improvements made to area in front of the building he owns on Water Street. He stated that a new, revitalized, ten-year plan should be created to outline how and when improvements are to be made within the MSD. He continued to include that if improvements cannot be made throughout the entire MSD, that the affected property owners should be removed from the MSD. Council Member Furgiuele expressed concern that although Daniel Boone Condos received benefits such as sidewalk maintenance directly in front of their buildings, they do not pay MSD taxes. Council Member Mason commented that she shared the same frustrations about the inequity of the distribution of MSD funds, but that the promotion of activities is also a part of the benefit of being a taxpayer within the MSD. Upon a motion by Council Member Furgiuele, seconded by Council Member Mason, Council moved to direct staff to present at the March meeting a proposed plan of how to distribute MSD improvements and services over a ten-year period of time with the goal of distributing the improvements equitable throughout the district.

RESULT:	**TABLED [UNANIMOUS]**	**Next: 3/15/2018 6:00 PM**
MOVER:	Sam Furgiuele, Council Member	
SECONDER:	Lynne Mason, Council Member	
AYES:	Furgiuele, Ulmer, Ashcraft, Mason, Clawson	

CREATION OF NEW MUNICIPAL SERVICE DISTRICT

Council Member Furgiuele presented a request for the creation of a new Municipal Service District in the corridor of Boone on Blowing Rock Road between the Holmes Convocation Center and Walgreens where property owners have built in flood zones over the years and have created a flood problem for the area that needs to be addressed. Council Member Furgiuele further stated that he believed it would not be fair to asses a tax to all citizens of Boone to address the flooding problem that occurs mainly within the previously mentioned area of Blowing Rock Road. He stated that the funding received from the potential new MSD tax would go toward the specific purpose of addressing stormwater and flood control issues in that area. Council Member Furgiuele noted that private easements should be acquired if necessary. Mayor Brantz stated the he was under the impression that once the Town reached a population of 20,000, that the State would require stormwater control issues to be revisited. Town Manager John Ward noted that the most recent population estimate came in at 19,028. Council Member Furgiuele offered his opinion that the cause of much of the flooding and stormwater issues in Town are as a result of the enormous amount of impervious surface utilized throughout the flood-prone areas. He stated that an engineer should be hired to review stormwater and flooding issues and that a phased-in stormwater control system may be needed for the whole town, but that it should be phased in, with the proposed municipal service district constituting the first phase, to be paid for with the taxes from the new MSD. Mr. Ward suggested that staff gather quotes from engineers before moving forward. Discussion ensued regarding the possibility of assessing the tax to all Town residents based on the amount of impervious surface on their property as well as the hardship this may cause to citizens on a fixed income. Mr. Ward questioned whether the area could be labeled as something other than MSD in order to reduce the possibility of confusion, to which Council Member Furgiuele stated that the Town could have more than one Municipal Service District.

Mayor Brantz declared a break at 11:57 p.m. Council reconvened at 12:04 a.m.

CONSIDERATION OF PARKING TICKET REBATE PROGRAM

RESULT:	**TABLED [UNANIMOUS]**	**Next: 2/15/2018 6:00 PM**
MOVER:	Sam Furgiuele, Council Member	
AYES:	Furgiuele, Ulmer, Ashcraft, Mason, Clawson	

CREATION OF TOWN OF BOONE WATER ADVISORY COMMITTEE

At their regular meeting on December 21, 2017, Council directed staff to develop a proposed charge to reestablish the recently dissolved Water Committee. Public Works Director Rick Miller expressed concern with the proposed duties of the Water Committee, specifically that the Committee would be charged with approving capital improvements for water and sewer facilities. Mr. Miller stated that these issues should be handled at a staff level and that all capital projects would come before Council at budget time. Council Member Furgiuele added that in the last portion of the "Duties" section, the review of existing policies should be added, as well as the statement "and other duties as assigned from time to time". He also suggested that the committee meet quarterly, so that members would be up to date on information. Town Attorney Allison Meade added that meetings should take place at least quarterly or as needed. Town Manager John Ward suggested that meetings not be scheduled on a set date, but that meetings take place at least quarterly. Council Members Clawson and Furgiuele stated that concerned citizens should be represented on the board, with Council Member Furgiuele adding that members should be Town residents. Upon a motion by Council Member Furgiuele, seconded by Council Member Clawson, Council moved to reconstitute the Town of Boone Water Committee with the modifications listed, with the understanding that the committee meet no less than quarterly with membership being comprised of Town residents.

TOWN OF BOONE WATER ADVISORY COMMITTEE
CHARGE

Membership (16)
Mayor & Town Council (6) Town Attorney (1) Staff (3) Town Manager, Public Works Director, Planning & Inspections Director, Town Council Appointments (6-Town residents)
Appointment #1 - 3 year term
Appointment #2 - 3 year term
Appointment #3 - 2 year term
Appointment #4 - 2 year term
Appointment #5 - 1 year term
Appointment #6 - 1 year term.
*All appointments after the initial appointment of a full roster on the committee will be for a full 3-year term.

Duties:
To review and make recommendations on the following: proposed changes in the method for determining water and sewer charges; review of existing policies as well as proposed changes in policy for extending water and sewer services; other duties as assigned from time to time.

Meetings
Scheduled no less than quarterly and as needed upon the direction of the Mayor and/or Town Council.

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

APPROVAL OF UPDATED COUNCIL LIAISON LIST

Upon a motion by Council Member Furgiuele, seconded by Council Member Clawson, Council moved to approve the proposed list of Council liaison appointments.

Boone Town Council Committee Appointments

(Effective December 2017 to December 2019)

Mayor Rennie Brantz -- Region D Council of Governments*; High Country Cog RPO*; Historic Preservation Commission; Watauga Co. Parks & Recreation; Community Appearance Commission; Rural Transportation Advisory Committee; Outside Agency Funding Review Committee

Loretta Clawson -- Historic Preservation Commission; Downtown Boone Development Association; Cultural Resources Advisory Board

Lynne Mason -- Downtown Boone Development Association; Tourism Development Authority*; Transportation Committee; Affordable Housing Task Force

Sam Furgiuele -- Sustainability, Economics and Environment Committee; Transportation Committee; Outside Agency Funding Review Committee; Community Appearance Commission

Connie Ulmer -- Cultural Resources Advisory Board; Affordable Housing Task Force; AppalCART Board

Marshall Ashcraft -- Sustainability, Economics and Environment Committee; Watauga County Economic Development Commission*; AppalCART Board*

Alternate Council Liasons

AppalCART -- Brantz
High Country COG RPO -- Ashcraft
Region D Council of Governments --Clawson
Tourism Development Authority -- Ulmer
Watauga Economic Development Commission -- Mason
Watauga County Parks and Recreation Commission -- Furgiuele

*Requires Council Member to serve

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

TOWN MANAGER UPDATE

-Glendale sanitary sewer update
-Staff repaired water main breaks during the recent cold snap
-Outlined salt and brine usage to date. Staff put in 905 man-hours for snow and ice removal, with 637 just on sidewalks and steps
-Water intake update
-New emergency notification bar added to Town website
-CodeRed sign-up notices went out in this month's water bill
-Clean Eatz open house
-OrthoCarolina open house
-Refresh Your Space ribbon cutting
-2018 Grizzlies tickets on sale

CONSIDERATION OF POSSIBLE AMENDMENT TO TOWN CODE CHAPTER 97

RESULT:	**TABLED [UNANIMOUS]**	**Next: 2/15/2018 6:00 PM**
MOVER:	Sam Furgiuele, Council Member	
AYES:	Furgiuele, Ulmer, Ashcraft, Mason, Clawson	

CREATION OF SOLAR PANEL REBATE PROGRAM

RESULT:	**TABLED [UNANIMOUS]**	**Next: 2/15/2018 6:00 PM**
MOVER:	Sam Furgiuele, Council Member	
AYES:	Furgiuele, Ulmer, Ashcraft, Mason, Clawson	

CONSIDERATION OF CHANGING THE TIME OF PUBLIC HEARING/PLANNING COMMISSION MEETINGS

Town Manager John Ward asked that Council consider changing the regular time of the Public Hearing/Planning Commission meetings on the fourth Monday of each month to be consistent with the change made to Town Council meeting times. Upon a motion by Council Member Furgiuele, seconded by Council Member Ashcraft, Council moved to change the meeting time of the Public Hearing/Planning Commission meetings from 5:30 p.m. to 6:00 p.m. beginning with the February 19, 2018 meeting.

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

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Rennie Brantz announced that Suzanne Thompson has resigned from the Cultural Resources Advisory Board, leaving her position vacant. This position will expire on June 30, 2018. The following vacancies were also announced:

AFFORDABLE HOUSING TASK FORCE
One position.

BOARD OF ADJUSTMENT
Three positions.

COMMUNITY APPEARANCE COMMISSION
Three positions.

CULTURAL RESOURCES ADVISORY BOARD
One position.

HISTORIC PRESERVATION COMMISSION
Three positions.

OUTSIDE AGENCY FUNDING REVIEW COMMITTEE
One position.

PLANNING COMMISISON
One position.

SUSTAINABILITY, ECONOMICS AND ENVIRONMENT COMMITTEE
One position.

TOURISM DEVELOPMENT AUTHORITY
One position for member of BACC

APPOINTMENT TO SUSTAINABILITY, ECONOMICS AND ENVIRONMENT COMMITTEE

Mayor Rennie Brantz announced that there is one vacant position on the Sustainability, Economics and Environment Committee and that two applications were received. Council Member Furgiuele stated that at their last meeting, SEEC members nominated Quint David to be the Chair of the committee, although he was no longer a member of the committee, due to the fact that his position expired when his Council term expired. Council Member Furgiuele suggested that the committee charge be amended to expand the number of committee members to seven. Upon a motion by Council Member Furgiuele, seconded by Council Member, Council moved to amend the Sustainability, Economics and Environment Committee charge to include an additional position for a total of seven members, with the newest position serving a one-year term. Council Member Furgiuele nominated Quint David to fill the two-year term and Nicholas Stover to fill the one-year term on the Sustainability, Economics and Environment Committee. With no further nominations, Mayor Brantz called for a vote:

VOTE: Aye -- All
Nay -- None

Mr. David's term will expire on June 30, 2020. Mr. Stover's term will expire on January 18, 2019.

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

APPROVAL OF AUDIT CONTRACT - COMBS, TENNANT & CARPENTER, P.C.

Council Member Furgiuele asked that the audit contract presented be moved from the Consent Agenda to Council Matters due to the fact that the Town has used the same auditor since 2006. He asked that the contract be placed out to bid at the next available opportunity. Upon a motion by Council Member Furgiuele, seconded by Council Member Ashcraft, Council moved to approve the audit contract between the Town of Boone and Combs, Tennant and Carpenter, P.C., with the stipulation that at the next available opportunity, the contract be placed out to bid.

CONTRACT TO AUDIT ACCOUNTS

Of Town of Boone, Primary Government Unit

Discretely Presented Component Unit (DPCU) if applicable

1. The Auditor shall audit all statements and disclosures required by accounting principles generally accepted in the United States of America (GAAP) and additional required legal statements and disclosures of all funds and/or
divisions of the Governmental Unit (s) for the period beginning July 1 2017 and ending June 30 2018 . The non-major combining, and individual fund statements and schedules shall be subjected to the auditing procedures applied in the audit of the basic financial statements and an opinion shall be rendered in relation to (as applicable) the governmental

activities, the business-type activities, the aggregate DPCUs, each major governmental and enterprise fund, and the aggregate remaining fund information (non-major government and enterprise funds, the internal service fund type, and the fiduciary fund types).

2. At a minimum, the Auditor shall conduct his/her audit and render his/her report in accordance with auditing standards generally accepted in the United States of America. The Auditor shall perform the audit in accordance with *Government Auditing Standards* if required by the State Single Audit Implementation Act, as codified in G.S. 159-34. If required by OMB *Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards,* (Uniform Guidance) and the State Single Audit Implementation Act, the Auditor shall perform a Single Audit. This audit and all associated audit documentation may be subject to review by Federal and State agencies in accordance with Federal and State laws, including the staffs of the Office of State Auditor (OSA) and the Local Government Commission (LGC). If the audit and Auditor communication are

   found in this review to be substandard, the results of the review may be forwarded to the North Carolina State Board of CPA Examiners (NC State Board). County and Multi-County Health Departments: The Office of State Auditor

   (OSA) will require Auditors of these Governmental Units to perform agreed upon procedures (AUPs) on eligibility determination on certain programs. Both Auditor and Governmental Unit agree that Auditor shall complete and report on these AUPs on Eligibility Determination as required by OSA and in accordance with the instructions and timeline provided by OSA.
3. If an entity is determined to be a component of another government as defined by the group audit standards, the entity's Auditor shall make a good faith effort to comply in a timely manner with the requests of the group auditor in accordance with AU-6 §600.41 - §600.42.

4. This contract contemplates an unqualified opinion being rendered. If during the process of conducting the audit the Auditor determines that it will not be possible to render an unqualified opinion on the financial statements of the unit, the Auditor shall contact the SLGFD staff to discuss the circumstances leading to that conclusion as soon as is practical and before the final report is issued. The audit shall include such tests of the accounting records and such other auditing procedures as are considered by the Auditor to be necessary in the circumstances. Any limitations or restrictions in scope which would lead to a qualification should be fully explained in an attachment to this contract.

5. If this audit engagement is subject to the standards for audit as defined in *Government Auditing Standards,* 2011 revisions, issued by the Comptroller General of the United States, then by accepting this engagement, the Auditor warrants that he has met the requirements for a peer review and continuing education as specified in *Government Auditing Standards.* The Auditor agrees to provide a copy of their most recent peer review report regardless of the date of the prior peer review report to the Governmental Unit and the Secretary of the LGC prior to the execution of the audit contract. **If the audit firm received a peer review rating other than pass,** the Auditor shall not contract with the Governmental Unit without first contacting the Secretary of the LGC for a peer review analysis that may result in additional contractual requirements.

   If the audit engagement is not subject to Government Accounting Standards or if financial statements are not prepared in accordance with GAAP and fail to include all disclosures required by GAAP, the Auditor shall provide an explanation as to why in an attachment.
6. It is agreed that time is of the essence in this contract. All audits are to be performed and the report of audit submitted to the SLGFD within four months of fiscal year end.

   Audit report is due on October 31 , 2018 . If it becomes necessary to amend this due date or the audit fee, an amended contract along with a written explanation of the delay shall be submitted to the Secretary of the LGC for approval.
7. It is agreed that generally accepted auditing standards include a review of the Governmental Unit's systems of internal control and accounting as same relate to accountability of funds and adherence to budget and law requirements applicable thereto; that the Auditor shall make a written report, which may or may not be a part of the written report of audit, to the Governing Board setting forth his

findings, together with his recommendations for improvement. That written report shall include all matters defined as "significant deficiencies and material weaknesses" in AU-C 265 of the *AICPA Professional Standards (Clarified).* The Auditor shall file a copy of that report with the Secretary of the LGC.

8.All local government and public authority contracts for audit or audit-related work require the approval of the Secr finance-related investigations, or any other audit-related work in the State of North Carolina. **Invoices for services rendered under these contracts shall not be Paid by the Governmental Unit until the invoice has been approved by the Secretary of the LGC.** (This also includes any progress billings.) [G.S. 159-34 and 115C-447] All invoices for Audit work shall be submitted in PDF format to the Secretary of the LGC for approval. The invoices shall be sent via upload through the current portal address: htto://netteasurer,i,lealeapfile.not Subject line should read "Invoice - [Unit Name]. The PDF invoice marked `approved' with approval date shall be returned by email to the Auditor to present to the Governmental Unit for payment. Approval is not required on contracts and invoices for system improvements and similar services of a non-auditing nature.

9. In consideration of the satisfactory performance of the provisions of this contract, the Primary Government shall pay to the Auditor, upon approval by the Secretary of the LGC, the fee, which includes any cost the Auditor may incur from work paper or peer reviews or any other quality assurance program required by third parties (Federal and State grantor and oversight agencies or other organizations) as required under the Federal and State Single Audit Acts. **(Note: Fees listed on Fees nape.).** This does not include fees for any Pre-Issuance reviews that may be required by the NC Association of CPAs (NCACPA) Peer Review Committee or NC State Board of CPA Examiners (see Item #12).
10. If the Governmental Unit has outstanding revenue bonds, the Auditor shall submit to the SLGFD either in the notes to the audited financial statements or as a separate report, a calculation demonstrating compliance with the revenue bond rate covenant. Additionally, the Auditor shall submit to the SLGFD simultaneously with the Governmental Unit's audited financial statements any other bond compliance statements or additional reports required by the authorizing bond documents, unless otherwise specified in the bond documents.
11. After completing the audit, the Auditor shall submit to the Governing Board a written report of audit. This report shall include, but not be limited to, the following information: (a) Management's Discussion and Analysis, (b) the financial statements and notes of the Governmental Unit and all of its component units prepared in accordance with GAAP, (c) supplementary information requested by the Governmental Unit or required for full disclosure under the law, and (d) the Auditor's opinion on the material presented. The Auditor shall furnish the required number of copies of the report of audit to the Governing Board as soon as practical after the close of the fiscal year end.
12. If the audit firm is required by the NC State Board, the NCACPA Peer Review Committee, or the Secretary of the LGC to have a pre-issuance review of its audit work, there shall be a statement in the engagement letter indicating the pre-issuance review requirement. There also shall be a statement that the Governmental Unit shall not be billed for the pre-issuance review. The pre-issuance review shall be performed **prim•** to the completed audit being submitted to the SLGFD. The pre-issuance review report shall accompany the audit report upon submission to the SLGFD.
13. The Auditor shall electronically submit the report of audit to the SLGFD as a text-based **PDF** file when (or prior to) submitting the invoice for services rendered. The report of audit, as filed with the Secretary of the LGC, becomes a matter of public record for inspection, review and copy in the offices of the **SLGFD** by any interested parties. **Any subsequent revisions to these reports shall be sent to the Secretary of the LGC along with an Audit report Reissuance form.** These audited financial statements, excluding the Auditors' opinion, may be used in the preparation of official statements for debt offerings, by municipal bond rating services to fulfill secondary market disclosure requirements of the Securities and Exchange Commission and for other lawful purposes of the Governmental Unit without subsequent consent of the Auditor. If the SLGFD determines that corrections need to be made to the Governmental Unit's financial statements, those corrections shall be provided within three days of notification unless another

deadline is agreed to by the SLGFD.

If the OSA designates certain programs to be audited as major programs, as discussed in item #2, a turnaround document and a representation letter addressed to the OSA shall be submitted to the SLGFD.

The SLGFD's process for submitting contracts, audit reports and invoices is subject to change. Auditors shall use the submission process in effect at the time of submission. The most current instructions will be found on our website: https://www.nctreasurer.com/slg/Pages/Audit-Forms-andResources.aspx

14. Should circumstances disclosed by the audit call for a more detailed investigation by the Auditor than necessary under ordinary circumstances, the Auditor shall inform the Governing Board in writing of the need for such additional investigation and the additional compensation required therefore. Upon approval by the Secretary of the LGC, this contract may be varied or changed to include the increased time, compensation, or both as may be agreed upon by the Governing Board and the Auditor.

15. If an approved contract needs to be amended for any reason, the change shall be made in writing, on the Amended LGC-205 contract form and pre-audited if the change includes a change in audit fee. This amended contract shall be completed in full, including a written explanation of the change, signed and dated by all original parties to the contract. It shall then be submitted through the audit contract portal to the Secretary of the LGC for approval. The portal address to upload the amended contract is http://nctreasurer.slgfd.leapfile.net No change to the audit contract shall be effective unless approved by the Secretary of the LGC, the Governing Board, and the Auditor.
16. Unit shall be attached to the contract, and by reference here becomes part of the contract. In case of conflict between the terms of the engagement letter and the terms of this contract, the terms of this contract shall take precedence. Engagement letter terms that conflict with the contract are deemed to be void unless the conflicting terms of this contract are specifically deleted in Item #23 of this contract. Engagement letters containing indemnification clauses shall not be accepted by the SLGFD. See attached engagement letter.
17. Special provisions should be limited. Please list any special provisions in an attachment.
18. A separate contract should not be made for each division to be audited or report to be submitted. If a DPCU is subject to the audit requirements detailed in the Local Government Budget and Fiscal Control Act and a separate audit report is issued, a separate audit contract is required. If a separate report is not to be issued and the DPCU is included in the primary government audit, the DPCU shall be named along with the parent government on this audit contract. DPCU Board approval date, signatures from the DPCU Board chairman and finance officer also shall be included on this contract.
19. The contract shall be executed, pre-audited, physically signed by all parties including Governmental Unit and the Auditor and then submitted in PDF format to the Secretary of the LGC. The current portal address to upload the contractual documents is http://nctreasurer.slgfd.leapfile.net. Electronic signatures are not accepted at this time. Included with this contract are instructions to submit contracts and invoices for approval as of November 2017.

    These instructions are subject to change. Please check the NC Treasurer's web site at https://www.nctreasurer.com/slg/Pages/Audit-Forms-andResources.aspx for the most recent instructions.
20. The contract is not valid until it is approved by the Secretary of the LGC. The staff of the LGC shall notify the Governmental Unit and Auditor of contract approval by email. The audit should not be started before the contract is approved.
21. There are no other agreements between the parties hereto and no other agreements relative hereto that shall be enforceable unless entered into in accordance with the procedure set out herein and approved by the Secretary of the LGC.
22. E-Verify. Auditor shall comply with the requirements of NCGS Chapter 64 Article 2. Further, if Auditor utilizes any subcontractor(s), Auditor shall require such subcontractor(s) to comply with the requirements of NCGS Chapter 64, Article 2.
23. All of the above paragraphs are understood and shall apply to this contract, except the

following numbered paragraphs shall be deleted: (See Item #I6 for clarification).

SIGNATURE PAGES FOLLOW FEES PAGE

FEES - PRIMARY GOVERNMENT

AUDIT: $ 37,000

WRITING FINANCIAL STATEMENTS: $ 8,000

ALL OTHER NON-ATTEST SERVICES: $ 0

For all non-attest services the Auditor shall adhere to the independence rules of the AICPA Professional Code of Conduct and Governmental Auditing Standards (as applicable). Bookkeeping assistance shall be limited to the extent that the Auditor is not

Prior to submission of the completed audited financial report, applicable compliance reports and amended contract (if required) the Auditor may submit invoices for approval for services rendered, not to exceed 75% of the total of the stated fees above. If the current contracted fee is not fixed in total, invoices for services rendered may be approved for up to 75% of the prior year audit fee.

The 75% cap for interim invoice approval for this audit contract is $ 33,750

** NA if there is to be no interim billing

FEES - DPCU (IF APPLICABLE)

AUDIT: $

WRITING FINANCIAL STATEMENTS: $

ALL OTHER NON-ATTEST SERVICES: $

For all non-attest services the Auditor shall adhere to the independence rules of the A1CPA Professional Code of Conduct and *Governmental Auditing Standards* (as applicable). Bookkeeping and other non-attest services necessary to perform the audit shall be included under this contract. However, bookkeeping assistance shall be limited to the extent that the Auditor is not auditing his or her own work or making management decisions. The Governmental Unit shall designate an individual with the suitable skills, knowledge, and/or experience necessary to oversee the services and accept responsibility for the results of the services. Financial statement preparation assistance shall be deemed a "significant threat" requiring the Auditor to apply safeguards sufficient to reduce the threat to an acceptable level. The Auditor shall maintain written documentation of his or her compliance with these standards in the audit work papers.

Prior to submission of the completed audited financial report, applicable compliance reports and amended contract (if required) the Auditor may submit invoices for approval for services rendered, not to exceed *75%* of the total of the stated fees above. If the current contracted fee is not fixed in total, invoices for services rendered may be approved for up to 75% of the prior year audit fee.

The 75% cap for interim invoice approval for this audit contract is $ _____

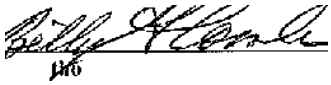
** NA if there is to be no interim billing

Communication regarding audit contract requests for modification or official approvals will be sent to the email addresses provided in the spaces below.

Audit Firm Signature:

COMBS, TENNANT & CARPENTER, P.C.
Name of Audit Firm

By BILLY G. COMBS, CPA
Authorized Audit firm representative name: Type or print



buddy@ctccpa.com <mailto:buddy@ctccpa.com>
Email Address of Audit Firm

PRE-AUDIT CERTIFICATE: Required by G.S. 159-28 (a)
This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act or by the School Budget and Fiscal Control Act.

By Amy Davis
Primary Government Unit Finance Officer:
Type or print name

Primary Government Finance Officer Signature Date

(Pre-audit Certificate must be dated.)

Governmental Unit Signatures:

Town. of Boone
Name of Primary Government
By _____
Mayor / Chairperson: Type or print name and title
Signature of Mayor/Chairperson of governing board
Date

B y N / A
Chair of Audit Committee - Type or print name **

Signature of Audit Committee Chairperson

Date N/A
** *If Governmental Unit has no audit committee, mark this section "N/A"*
Please provide us the most current email addresses available as we use this information to update our contact database

COMBS,

TENNANT & CARPENTER, P.C.

Certified Public Accountants

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Douglas M. Tennant, CPA
Jason D. Carpenter, CPA
Brady L. Combs CPA
Tanya L. Singleton, CPA
Harry B. Cardwell IV, CPA
Emily W. Reynolds, CPA

December 8, 2016

The Town of Boone
P.O. Box 47
Boone, NC 28607

We are pleased to confirm our understanding of the services we are to provide the Town of Boone for the year ended June 30, 2017, 2018 and 2019. We will audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major find, and the aggregate remaining fund information, including the related notes to the financial statements, which collectively comprise the basic financial statements of the Town of Boone as of and for the year ended June 30, 2017,.2018 and 2019. Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement the Town of Boone's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the

basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we wilt apply certain limited procedures to the Town of Boone's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RS1 is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

1. Management's Discussion and Analysis.
2. Law Enforcement Officers' Special Separation Allowance's Schedules of Funding Progress
3. Other Postemployment Benefits' Schedules of Funding Progress and Schedules of Employer Contributions
4. Local Government Employees' Retirement System's Schedules of the Proportionate Share of the Net Pension Asset and Contributions

Member: American Institute of CPAs N.C. Association of CPAs
Offices located in Boone and Newland

We have also been engaged to report on supplementary information other than RSI that accompanies the Town of Boone's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America and will provide an opinion on it in relation to the financial statements as a whole:

1. Schedule of expenditures of federal awards.

2. Combining and individual fund statements and schedules.

Audit Objectives

The objective of our audit is the expression of opinions as to whether your basic financial statements are fairly presented, hi all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. The objective also includes reporting on-

- Internal control over financial reporting and compliance with the provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards.*
- Internal control over compliance related to major programs and an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts or• grant agreements that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and Title 2 U.S. *Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance).

The *Government Auditing Standards* report on internal control over financial reporting and compliance and other matters will each include a paragraph that states (1) that the purpose of the report is solely to describe the scope of testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance, and (2) that the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. The Uniform Guidance report on internal control over compliance will include a paragraph that states that the purpose of the report on internal control over compliance is solely to describe the scope of testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Both reports will state that the report is not suitable for any other purpose.

Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America; the standards for financial audits contained in *Government Auditing Standards,* issued by the Comptroller

General of the United States; the Single Audit Act Amendments of 1996; and the provisions of the Uniform Guidance, and will include tests of accounting records, a determination of major program(s) in accordance with the Uniform Guidance, and other procedures we consider necessary to enable us to express such opinions. We will issue written reports upon completion of our Single Audit. Our reports will be addressed to the Town Council of the Town of Boone. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or issue reports, or may withdraw from this engagement.

Audit Procedures-General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well *as* evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the government or to acts by management or employees acting on behalf of the government. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards and *Government Auditing Standards.* In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or major programs. However, we will inform the appropriate level of management of any material errors, any fraudulent financial reporting, or misappropriation of assets that come to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential, and of any material abuse that comes to our attention. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about your responsibilities for the financial statements; schedule of expenditures of federal awards; federal award programs; compliance with laws regulations, contracts, and grant agreements; and other responsibilities required by generally accepted auditing standards.

Audit Procedures-Internal Control

Our audit will include obtaining an understanding of the government and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards.*

As required by the Uniform Guidance, we will perform tests of controls over compliance to evaluate the

effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to the Uniform Guidance

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards,* and the Uniform Guidance.

Audit Procedures-Compliance

As part of obtaining reasonable assurance about whether the financial statements are five of material misstatement, we will perform tests of the Town of Boone's compliance with provisions of applicable laws, regulations, contracts, and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards.*

The Uniform Guidance requires that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with applicable laws and regulations and the provisions of contracts and grant agreements applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the *OMB Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the Town of Boone's major programs. The purpose of these procedures will be to express an opinion on the Town of Boone's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to the Uniform Guidance.

Other Services

We will also assist in preparing the financial statements, schedule of expenditures of federal awards, and related notes of the Town of Boone in conformity with U.S. generally accepted accounting principles and the Uniform Guidance based on information provided by you. These non-audit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards.* We will perform the services in accordance with applicable professional standards. The other services are limited to the financial statements, schedule of expenditures of federal awards, and related notes services previously defined. We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

Management Responsibilities

Management is responsible for (1) establishing and maintaining effective internal controls, including internal controls over compliance, and for evaluating and monitoring ongoing activities, to help ensure that appropriate goals and objectives are met; (2) following laws and regulations; (3) ensuring that there is reasonable assurance that government programs are administered in compliance with compliance requirements; and (4) ensuring that management and financial information is reliable and properly reported. Management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements. You are also responsible for the selection and application of accounting principles; for the preparation and fair presentation of the financial statements, schedule of expenditures of federal awards, and all accompanying information in conformity with U.S. generally accepted accounting principles; and for compliance with applicable laws and regulations and the provisions of contracts and grant agreements.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fah• presentation of the financial statements, (2) additional information that we may request for the purpose of the audit, and (3) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence.

Your responsibilities also include identifying significant vendor relationships in which the vendor has

responsibility for program compliance and for the accuracy and completeness of that information. Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the government complies with applicable laws, regulations, contracts, agreements, and grants. Management is also responsible for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements, or abuse that we report. Additionally, as required by the Uniform Guidance, it is management's responsibility to evaluate and monitor noncompliance with federal statutes, regulations, and the terms and conditions of federal awards; take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; promptly follow up and take corrective action on reported audit findings; and prepare a summary schedule of prior audit findings and a separate corrective action plan.

You are responsible for identifying all federal awards received and understanding and complying with the compliance requirements and for the preparation of the schedule of expenditures of federal awards (including notes and noncash assistance received) in conformity with the Uniform Guidance. You agree to include our report on the schedule of expenditures of federal awards in any document that contains and indicates that we have reported on the schedule of expenditures of federal awards. You also agree to include the audited financial statements with any presentation of the schedule of expenditures of federal awards that includes our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the schedule of expenditures of federal awards in accordance with the Uniform Guidance; (2) you believe the schedule of expenditures of federal awards, including its form and content, is fairly presented in accordance with the Uniform Guidance; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the schedule of expenditures of federal awards.

You are also responsible for the preparation of the other supplementary information, which we have been engaged to report on, in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains and indicates that we have reported on the supplementary information. You also agree to include the audited financial . statements with any presentation of the supplementary information that includes our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the supplementary information in accordance with GAAP; (2) you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for

providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

You agree to assume all management responsibilities relating to the financial statements, schedule of

expenditures of federal awards, related notes, and any other non-audit services we provide. You will be required to acknowledge in the management representation letter our assistance with preparation of the financial statements, schedule of expenditures of federal awards, and related notes and that you have reviewed and approved the financial statements, schedule of expenditures of federal awards, and related notes prior to their issuance and have accepted responsibility for them. Further, you agree to oversee the non-audit services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of those services; and accept responsibility for them.

Engagement Administration, Fees, and Other

We may from time to time, and depending on the circumstances, use third-party service providers in serving your account. We may share confidential information about you with these service providers, but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider. Furthermore, we will remain responsible for the work provided by any such third-party service providers.

We understand that your employees will prepare all cash, accounts receivable, or other confirmations we request and will locate any documents selected by us for testing.

At the conclusion of the engagement, we will complete the appropriate sections of the Data Collection Form that summarizes our audit findings. It is management's responsibility to submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditors' reports, and corrective action plan) along with the Data Collection Form to the federal audit clearinghouse. We will coordinate with you the electronic submission and certification. If applicable, we will provide copies of our report for you to include with the reporting package you will submit to pass-through entities. The Data Collection Form and the reporting package must be submitted within the earlier of 30 days after receipt of the auditors' reports or nine months after the end of the audit period.

We will provide copies of our reports to the Town of Boone; however, management is responsible for distribution of the reports and the financial statement. Unless restricted by law or regulation, on containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the property of COMBS, TENNANT & CARPENTER, P.C. and constitutes confidential information. However, pursuant to authority given by law or regulation, we may be requested to make certain audit documentation available to a Cognizant or Oversight Agency for Audit or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of COMBS, TENNANT & CARPENTER, P.C. personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of five years after the report release date or for any additional period requested by the Cognizant or Oversight Agency for Audit or its designee. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

We expect to begin our audit on approximately June 1, 2017, 2018 and 2019 and to issue our reports no later than October 31, 2017, 2018 and 2019. We estimate that our fee for these services will range from $44,000 to $48,000 and will be billed to you each month as the work progresses. This fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new

fee estimate before we incur the additional costs.
We appreciate the opportunity to be of service to the Town of Boone and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.
Very truly yours,

COMBS, TENNANT & CARPENTER, P.C.
RESPONSE:
This letter correctly sets forth the understanding of the Town of Boone.

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

APPROVAL OF ENCROACHMENT AGREEMENT - FOOTSLOGGERS

Council Member Furgiuele asked that the Footsloggers Encroachment Agreement be removed from the Consent Agenda and placed under Council Matters due to the fact that the agreement was not completed. Upon a motion by Council Member Furgiuele, seconded by Council Member Ulmer, Council moved to approve the proposed encroachment agreement, conditioned upon the agreement being fully completed by staff and that the sign be installed within one- year from the date of the agreement.

STATE OF NORTH CAROLINA ENCROACHMENT AGREEMENT
COUNTY OF WATAUGA
THIS ENCROACHMENT AGREEMENT is made and entered into this the _ day of _____

20__ , by and between the TOWN OF BOONE, party of the first part; and _____

party of the second part.

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

THAT WHEREAS, the party of the second part desires to encroach on public land designated as (CHOOSE ONE) a public sidewalk/public street/public park/public land (hereinafter referred to as the

"public land") located at:_____with the following:
(Hereinafter referred to as "the encroaching facility", see attached site plan for details); and

WHEREAS, it is to the material advantage of the party of the second part to effect this encroachment, and the patty of the first part, in the exercise of authority conferred upon it by statute and ordinance, is willing to permit the encroachment on public land, subject to the conditions of this agreement;

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

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

That the said party of the second part binds and obligates itself, its successors and assigns, to install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said public land, nor obstruct nor interfere with the proper maintenance thereof, to reimburse the party of the first part for the costs incurred for any repairs or maintenance to its roadways,

sidewalks and other structures resulting from the installation and existence of the encroaching facility of the party of the second part, and if at any time the patty of the first part shall require the removal of or changes in the location of the encroaching facility, that the said party of the second part binds itself, its successors and assigns, to promptly remove or alter the said encroaching facility in order to conform to the said requirements of the party of the first part, without any cost to the party of the first part.

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

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

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

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

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

The party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; silting or pollution to the rivers, streams, lakes, reservoirs, other water impoundments; ground surfaces or other property; or pollution of the air. The party of the second part shall comply with all applicable rules and regulations of the North Carolina Sedimentation Control Commission, the Town of Boone Unified

Development Ordinance and all other applicable laws and regulations relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover, the party of the second part agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the satisfaction of the party of the first part. The party of the second part shall comply with all pertinent ordinances, rule, regulations and laws, and failure to do so shall be a basis for revocation of this encroachment agreement by the party of the first part.

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

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

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

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

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

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

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

Town of Boone
By:
Mayor

ATTEST:

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

CLOSED SESSION

ENTERING CLOSED SESSION

Upon a motion by Council Member Clawson, seconded by Council Member Furgiuele, Council moved to enter closed session at 12:50 a.m.

1. 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 consider and give instructions to the attorney concerning the claim involving the Town of Boone and Zhiyuan Chen.

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 consider and give instructions to the attorney concerning the claim involving the Town of Boone and Damon Mallatere.

3. 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 consider and give instructions to the attorney concerning the claim involving the Town of Boone and LMSP, LLC.

4. 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 and N.C. Gen. Stat. § 143-318-11(a)(4) for discussing matters relating to the location or expansion of industries or businesses in the area.

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

EXITING CLOSED SESSION

Upon a motion by Council Member Mason, seconded by Council Member Clawson, Council moved to exit closed session at 2:43 a.m. on January 19, 2018.

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

POSSIBLE ACTION FOLLOWING CLOSED SESSION

Upon a motion by Council Member Mason, seconded by Council Member Ulmer, Council moved to table the following three closed session items until the February meeting:

1. 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 consider and give instructions to the attorney concerning the claim involving the Town of Boone and Zhiyuan Chen.

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 consider and give instructions to the attorney concerning the claim involving the Town of Boone and Damon Mallatere.

3. 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 consider and give instructions to the attorney concerning the claim involving the Town of Boone and LMSP, LLC.

VOTE: Aye: All
Nay: None

ADJOURNMENT

MOTION TO ADJOURN

Upon a motion by Council Member Furgiuele, seconded by Council Member Clawson, Council moved to adjourn the meeting at 2:45 a.m. on January 19, 2018.

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

MOTION TO ADJOURN

Upon a motion by Council Member Furgiuele, seconded by Council Member Clawson, Council moved to adjourn the meeting at 2:45 a.m. on January 19, 2018.

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

Nicole Worley, Town Clerk

Rennie Brantz, Mayor