

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
JANUARY 21, 2014**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Tuesday, January 21, 2014, in the Council Chambers, 1500 Blowing Rock Road. Mayor Andy Ball presided. Council members present were Mayor Pro-Tem Rennie Brantz, Lynne Mason, Quint David, Jennifer Peña, and Fred Hay. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Town Clerk Kimberly Brown, Finance Director Amy Davis, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Public Utilities Director Rick Miller, Interim Public Works Director Eric Gustaveson, Planning Director Bill Bailey, Human Resources Director Peri Moretz, and Cultural Resources Director Pilar Fotta.

ANNOUNCEMENTS

Mayor Ball called the meeting to order and welcomed all in attendance. He noted that anyone wanting to sign up to speak during the public comment session would need to sign the public comment sign-up sheet.

Interim Public Works Director Eric Gustaveson recognized Kenneth Brown, Fleet Maintenance Superintendent, who is retiring after 30 years of service. Mayor Ball and the members of the Council expressed appreciation for Mr. Brown's dedication and service.

TENTATIVE AGENDA ADOPTION

Town Manager Greg Young presented the following changes to the agenda:

1. Scheduling of Item 13.B. – McGill Engineering – Report on Stormwater and Flooding Issues to the Tuesday, January 21, 2014 meeting agenda after Item 6.A. – Presentation of Audit Report.
2. Request to Hear Item 6.F. – Scheduling of Annual Planning Retreat before Item 6.E. - Scheduling of Annual Council Retreat.

Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to adopt the agenda, as amended.

VOTE: Aye – All
 Nay – None

CONSENT AGENDA ADOPTION

Minutes: December 3, 2013 – Special Meeting.
 December 3, 2013 – Special Meeting.
 December 11, 2013 – Special Meeting.
 December 11, 2013 – Special Meeting.
 December 16, 2013 – Special Meeting.
 December 17, 2013 – Regular Meeting.

Approval of Audit Contract – Combs, Tennant & Carpenter, P.C. **(Permanently on file at Boone Town Hall.)**

Upon a motion by Council Member Mason, seconded by Council Member Peña, Council moved to adopt the consent agenda, as presented.

VOTE: Aye – All
 Nay – None

PUBLIC COMMENT

There was no one signed up to speak during this time.

PRESENTATION OF ANNUAL AUDIT REPORT

Mr. Jason Carpenter of Combs, Tennant and Carpenter appeared before Council to present the audit report for fiscal year 2012/2013. Mr. Carpenter said Town staff does an excellent job in managing the Town's funds and that no issues need to be reported. He presented the following financial highlights:

- The assets and deferred outflows of resources of the Town exceeded its liabilities and deferred inflows of resources at the close of the fiscal year by \$63,293,519 (*net position*.)
- The government's total net position increased by \$2,983,061 primarily due to increases in both the governmental and business type activities' net position.
- As of the close of the current fiscal year, the Town's governmental funds reported combined ending fund balances of \$14,808,232 with a net decrease of \$1,171,373 in fund balance. Approximately 18.2% of this total amount or \$2,694,917 is restricted, committed, or assigned.
- At the end of the current fiscal year, unassigned fund balance for the General Fund was \$12,113,315, or 75.11% of total General Fund expenditures for the fiscal year.

- The Town's total debt increased by \$357,777 (8.75%) during the current fiscal year. This decrease was a result of repayment of various debts, additional debt was issued for the purchase of a fire truck in this fiscal year.
- The Town no longer has a current bond rating as the Town has no outstanding bonded debt. The last ratings held by the town were an "A" bond rating from Standard & Poor's and "a2" from Moody's Investor Services.

Mr. Carpenter reported that the tax collection rate is 98.47%. **(Audit report is permanently on file at Boone Town Hall.)**

MCGILL ENGINEERING – REPORT ON STORMWATER AND FLOODING ISSUES

Keith Webb of McGill Associates presented a powerpoint on stormwater planning and management for the Town of Boone. His presentation included information regarding the following:

- History
- Past studies
- NPDES Phase II
- Ordinances: Design Criteria
- How can the Town of Boone pay for improvements.

(Copy of powerpoint presentation permanently on file in the January 2014 Council meeting information file.) After discussion of the presentation, it was the consensus of the Council to place this item on the Annual Retreat agenda for further consideration.

APPROVAL OF COUNCIL ASSIGNMENTS AND LIAISONS

Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to approve the following:

2013-2015 COUNCIL ASSIGNMENTS AND LIAISONS

Andy Ball Region D Council of Governments*; High Country COG RPO*

Rennie Brantz Cultural Resources Advisory Board; Historic Preservation Commission; Outside Agency Funding Review Committee; SAHA; Vehicle Committee; Water Use Committee;

Quint David Affordable Housing Task Force; AppalCART*; Cultural Resources Advisory Board; Watauga County Economic Development Commission*; Transportation Committee; Water Use Committee

Fred Hay Greenway, Parks and Gardens Committee; Watauga County Parks and Recreation Commission*; Vehicle Committee; Water Use Committee

Lynne Mason Affordable Housing Task Force; Alternative Transportation Subcommittee; Downtown Boone Development Association; Tourism Development Authority*; Transportation Committee; Water Use Committee

Jennifer Peña Downtown Boone Development Association; Greenway, Parks and Gardens Committee; Historic Preservation Commission; Outside Agency Funding Review Committee; Water Use Committee

Alternate Council Liaisons:

AppalCART* - Rennie Brantz

High Country COG RPO* - Quint David

Region D Council of Governments* - Rennie Brantz

Tourism Development Authority* - Fred Hay

Watauga Economic Development Commission* - Lynne Mason

Watauga Parks and Recreation Commission* - Jennifer Pena

* Requires Council member to serve

VOTE: Aye – All
 Nay – None

DISCUSSION OF TOWN CODE AMENDMENT – CHAPTER 73: TOWING

Town Attorney Sam Furgiuele informed the Council of a recent situation involving non-consensual towing. He explained that a local towing company threatened to tow a car which was occupied. Mr. Furgiuele recommended that Council consider amendments to this section to put a prohibition for towing a car that is occupied. Additionally, he recommended a redraft of the penalty section to create misdemeanor penalties for other issues and to strengthen the ordinance regarding the prevention of predatory-type practices. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to authorize the Town Attorney to make modifications to the towing ordinance in regard to penalties, prohibition of towing cars which are occupied, and to strengthen the ordinance to prevent predatory-type practices.

VOTE: Aye – All
 Nay – None

APPROVAL OF CONTRACT – CAPITAL CITY STRATEGIES LLC

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to approve the following contract:

LEGISLATIVE AND REGULATORY SERVICES
FOR TOWN OF BOONE, NORTH CAROLINA

This document for Legislative and Regulatory Services (“Services”) sets forth the general terms and conditions of the consulting and lobbying agreement between Capital City Strategies, LLC (“CCS”) and the Town of Boone, North Carolina (“Boone”).

Section 1. Term. In consideration for CCS services, Boone agrees to retain CCS beginning on January 1, 2014, continuing on a month-to-month basis until terminated in accordance with the provisions of this Agreement. Either CCS or Boone will be able to terminate the Agreement for any reason upon thirty (30) days written notice, with no further obligation, other than to pay such fees and expenses that have accrued up to and through the 30-day notice period. Should CCS terminate the Agreement, it will continue to provide the described services through the notice period on such matters as Boone may request. Should Boone terminate the Agreement, CCS will continue to provide services on such matters as have been previously requested unless Boone expressly requests discontinuation of a particular activity, but CCS shall not initiate services on any new matters unless expressly requested by Boone.

Section 2. Scope of Services. CCS will provide government relations, consulting, lobbying, monitoring and communicating in matters of interest to Boone in the North Carolina General Assembly, Raleigh, North Carolina. In addition, CCS will provide assistance in working with North Carolina state agencies and seek funding and engage in associated activities in support of such funding from federal agencies located in North Carolina.

CCS Services include the following:

- a) **Consulting:** CCS will: Assist and provide advice on obtaining grants and low interest loans with state and federal agencies in areas of need and as requested by Boone; Monitor and provide advice regarding Boards and committees whose support and activities may provide enhancement of Boone; Attend meetings of the Boone Town Council and participate in meetings with the Town Manager or his designee(s) to inform officials about issues of concern before the General Assembly; Attend meetings and receptions as requested collectively by the Boone Town Council, or by Greg Young, Town Manager of Boone, or Jim Byrne, Special Assistant to the Town Manager.
- b) **Lobbying:** Maintain daily and weekly contact with as many members of the General Assembly as possible, as well as the staff of the General Assembly and regulatory

agencies; Schedule needed appointments with legislators, legislative staff, and administrative officials on an “as needed” basis; Develop goodwill through direct communication or activities, including the building of relationships with legislators, legislative staff and executive officials in North Carolina state government; Work for passage or defeat of specific legislation or executive actions, or alternatively, for amendments or alterations to legislation or executive actions of importance to Boone to enhance their positive effects and diminish or mitigate their negative effects, as agreed to by CCS and Boone. Arrange for and participate in meetings between the Town Manager, Jim Byrne, the Mayor and others designated by Boone (such as its engineers) and legislators/regulators.

- c) **State Monitoring:** Monitor activities of the North Carolina General Assembly (including Legislative Study Committees during periods when the General Assembly is not in Session) and Executive agencies through the review of bills and reports filed in the General Assembly; Attend hearings, committee meetings, and legislative sessions; Report items and activities that would affect Boone in a timely, relevant manner.
- d) **Federal Matters:** Work with United States Department of Agriculture Rural Development and other eligible federal agencies on completion of the Town of Boone Raw Water Intake Project or such other project(s) identified by Boone as one of similar importance to Boone, the parties acknowledging that a significant increase in the scope of duties for CCS might appropriately trigger a request for an increase in compensation by CCS.
- e) **Communicating:** Provide information of importance to local, state and federal groups affecting the operation and service of Boone; Discuss with state and federal agencies issues of concern to Boone, including the scope of legislation enacted or pending before the General Assembly.

Section 3. Compliance with N.C. Law. CCS agrees to comply with all applicable statutes and regulations of North Carolina, and in particular with those statutes and regulations relating to lobbying, including the preparation and filing of all appropriate lobbying and contribution forms and reports required by law.

Section 4. Fees and Expenses. Boone agrees to pay CCS in equal monthly installments of four thousand dollars (\$4,000.00) beginning January 1, 2014 and continuing through termination. Should termination be effective other than at the end of a calendar month, the final payment amount for the partial month shall be prorated based upon the number of days the Agreement is performed divided by the number of days in the month in question.

If Boone or CCS undertakes action that would require additional work beyond the original scope of services anticipated, the parties agree to adjust the fees for such additional services that are provided.

In addition to the fees set out above, Boone agrees to reimburse CCS for expenses incurred for reasonable and normal travel, entertainment and other expenses incurred in connection with the services described in Section 2. Mileage will be reimbursed at the rate of ____ per mile. Such expenses will be itemized and billed promptly at the end of each month as separate expenses to Boone. Boone agrees to reimburse CCS for all lobbying registration expenses, and Boone will pay the principal registration fees with the NC Secretary of State's Office. Fees which relate to multiple clients shall be prorated among them with Boone paying its proportionate share.

Section 5. Scope of Authority. With respect to CCS' services enumerated in Section 2 hereof, CCS may represent and make statements on behalf of Boone in the performance of the services; provided, however, that such statements are made pursuant to directions, either specific or general, from Greg Young and/or Jim Byrne.

Section 6. Confidentiality. During the term of this Agreement, CCS may have access to information of a confidential nature regarding Boone. CCS shall maintain such information in confidence during the term of this Agreement and for such time thereafter, as such information is not generally known to the public and shall not, without first obtaining approval from Boone, communicate in any fashion to anyone the substance or content of any confidential written materials or conversations, or use such information for any purpose other than the performance of consulting and lobbying duties under this Agreement. Except to the extent required by law, CCS agrees not to disclose the terms of this Agreement.

Section 7. Notices. All notices required or permitted under this agreement shall be in writing and shall be delivered in person (when appropriate), sent via tele-facsimile with confirmation or receipt, e-mailed, or mailed via overnight courier, postage prepaid, addressed as follows:

Company: Town of Boone
Attn: Greg Young
Town Manager
567 West King Street
Boone, NC 28607

CCS: Capital City Strategies, LLC
Attn: John J. Cooper
150 Fayetteville Street, Suite 1130
Raleigh, NC 27601
Federal Tax Id: 46-4290296

Section 8. Amendment and Termination. This agreement may be modified or amended, if the amendment is made in writing and is signed by both parties. This agreement may be terminated by either party upon thirty (30) days written notice to the other party, as set out with more particularity in Section 1, above.

Section 9. Applicable Law. These services shall be constructed in accordance with North Carolina Law, notwithstanding any conflict of laws provision that may be used to apply the laws of another state of jurisdiction.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the effective date.

VOTE: Aye – All
 Nay – None

SCHEDULING OF ANNUAL PLANNING RETREAT

Upon a motion by Council Member Mason, seconded by Council Member Peña, Council moved to schedule the annual Planning Retreat for Tuesday, February 4, 2014, at 9 a.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE: Aye – All
 Nay – None

SCHEDULING OF ANNUAL COUNCIL RETREAT

Upon a motion by Council Member David, seconded by Council Member Peña, Council moved to schedule the annual Council Retreat for Tuesday, March 4, 2014, at 9 a.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE: Aye – All
 Nay – None

P & I MONTHLY REPORT

Planning Director Bill Bailey presented the P & I Monthly report. **(Permanently on file in the January 2014 Town Council packet.)**

CRAB RECOMMENDATION – DANIEL BOONE PARK

Cultural Resources Director Pilar Fotta presented the following recommendation from the Cultural Resources Advisory Board: “The master plan for the Daniel Boone Park, as developed

by Marquis Halback, represents a vision of how the park could be developed in such a way as to preserve existing cultural programs, while creating new and expanded opportunities. The Cultural Resources Advisory Board recommends to Boone Town Council the approval of the plan with the understanding that each part of the project will be subject to revision in light of logistical, economic, and other factors. Additionally, the Cultural Resources Advisory Board recommends that the first priority be the development of the amphitheater.” Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to endorse the above-mentioned recommendation of the Cultural Resources Advisory Board in regard to the Daniel Boone Park.

VOTE: Aye – All
 Nay – None

REQUEST PERMISSION TO APPLY FOR GRANT – NC CRIME COMMISSION EQUIPMENT GRANT

Chief Crawford presented a request for authorization to submit a grant application to the NC Governor’s Crime Commission for funding of an equipment grant. He explained that this particular grant would complete two projects that were initiated three years ago to replace antiquated departmental Tasers that are no longer supported by the corporation. Additionally, he stated that this project will also complete the replacement of several antiquated patrol long-firearms. Chief Crawford stated that the Town’s match for the grant is 30%, which is \$15,000. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve the submission of a grant application to the NC Governor’s Crime Commission for funding of an equipment grant.

VOTE: Aye – All
 Nay – None

QUARTERLY NOISE ORDINANCE REPORT

Police Chief Dana Crawford presented a noise report for the fourth quarter of 2013. **(Copy of report permanently on file in the January 2014 Town Council packet.)**

MONTHLY WATER USE STATUS REPORT

Public Utilities Director Rick Miller presented the monthly water status report. **(Copy of report permanently on file in the January 2014 Town Council packet.)**

APPROVAL OF BUDGET AMENDMENTS

Upon a motion by Council Member Brantz, seconded by Council Member David, Council moved to approve the following budget amendments:

Description	Account#	To:	From:
CAPITAL OUTLALY-FIRE STATION #3 (GENERAL FUND)	010-411-000-575023	\$170,000	
TRANSFER TO GENERAL FUND (RURAL FIRE)	051-451-000-598010	\$70,000	
TRANSFER TO GENERAL FUND (FIRE STATION CAPITAL RESERVE)	052-451-000-598010	\$100,000	
TRANSFER FROM RURAL FIRE (GENERAL FUND)	010-000-000-498051		(\$70,000)
TRANSFER FROM FIRE STATION CAPITAL RESERVE (GENERAL FUND)	010-000-000-498052		(\$100,000)
APPROPRIATED FUND BALANCE (RURAL FIRE)	051-451-000-499900		(\$70,000)
APPROPRIATED FUND BALANCE (FIRE STATION CAPITAL RESERVE)	052-451-000-499900		(\$100,000)
CONTRACTED SERVICES – PUBLIC UTILITIES	030-700-000-598030	\$50,000	
TRANSFER TO W/S FUND – W/S INFRASTRUCTURE CAP RESERVE	033-700-000-598030	\$50,000	
TRANSFER FROM W/S INFRASTRUCTURE CAP RSV FUND	030-000-000-498033		(\$50,000)
APPROPRIATED FUND BALANCE-W/S INFRA CAP RSV	033-700-000-499900		(\$50,000)

VOTE: Aye – All
 Nay – None

RECESS MEETING

Upon a motion by Council Member Mason, seconded by Council Member Peña, Council moved to recess the meeting at 8:47 p.m. until Thursday, January 23, 2014, at 6:30 p.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE: Aye – All
 Nay – None

CALL TO RECONVENE

A recessed meeting from January 21, 2014, was called to order at 6:30 p.m., Thursday, January 17, in the Council Chambers, 1500 Blowing Rock Road. Mayor Andy Ball presided. Council members present were Mayor Pro-Tem Rennie Brantz, Lynne Mason, Jennifer Peña, Fred Hay and Quint David. Town Attorney Sam Furgiuele was also in attendance. Staff members present were Town Manager Greg Young, Town Clerk Kim Brown, Finance Director Amy Davis, Fire Chief Jimmy Isaacs, Police Chief Dana Crawford, Interim Public Works Director Eric Gustaveson, Public Utilities Director Rick Miller, Human Resources Director Peri Moretz, Planning Director Bill Bailey, and Cultural Resources Director Pilar Fotta.

CALL TO ORDER & ANNOUNCEMENTS

Mayor Ball called the meeting to order and welcomed all in attendance. He noted that anyone wanting to sign up to speak during the public comment session would need to sign the public comment sign-up sheet.

TENTATIVE AGENDA ADOPTION

Town Manager Greg Young stated that there are no changes to the agenda. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council adopted the agenda, as amended.

VOTE: Aye – All
 Nay – None

PUBLIC COMMENT

Greg Simmons spoke regarding the Boone Bike initiative and asked for Council's continued support of this initiative.

Tyler McKethan spoke in response to allegations about a towing incident that was discussed at the Tuesday night meeting, stating that the allegations were not true.

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Ball announced that Fred Hay has submitted his resignation from the Board of Adjustment. He also announced that a position is open on the Historic Preservation Commission.

BOARD APPOINTMENTS

Affordable Housing Task Force – There were no applications for this vacancy.

Board of Adjustment – Council delayed action on any appointments until the February regular meeting.

Community Appearance Commission – There were no applications for this vacancy. **Outside**

Agency Funding Committee – There were no applications for these vacancies. **Planning**

Commission – Council Member Brantz nominated Maxwell Wlodarczak to serve as the ASU representative to the Planning Commission. With no other nominations, Mayor Ball called for a vote:

VOTE: Aye – All
 Nay - None

Tree Board – There were no applications for this vacancy.

Water Use Committee – There no applications for this vacancy.

APPOINTMENT OF MEMBERS TO COMMITTEE – INTERGOVERNMENTAL RETREAT COMMITTEE

Council nominated Lynne Mason and Quint David to serve on a committee regarding the intergovernmental retreats.

VOTE: Aye – All
 Nay – None

DISCUSSION OF PROPOSED UDO AMENDMENTS & SCHEDULING OF PUBLIC HEARING

Town Attorney Sam Furguele advised tabling this item until after he meets with the County Attorney. Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to table discussion of this item until after the Town Attorney meets with the County Attorney to further discuss the issues.

VOTE: Aye – All
 Nay – None

REQUESTED APPEARANCE – REUBEN KLINE

Reuben Kline and Darrell Prillaman appeared before the Council to request approval of a Special Event permit for the Boone Gran Fondo. Mr. Kline explained that the event is a bicycling event scheduled for Sunday, August 3, 2014, from 6 a.m. until 6 p.m. He asked for a waiver of the \$1,500 application fee. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to approve the Boone Gran Fondo, scheduled for Sunday, August 3, 2014, from 6 a.m. until 6 p.m. and to waive the fee of \$1,500.

VOTE: Aye –All
 Nay – None

REQUESTED APPEARANCE – RANDY JONES

Randy Jones appeared before the Council to request approval of an encroachment agreement for the Boone ABC Store project. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve the following encroachment agreement:

STATE OF NORTH CAROLINA

ENCROACHMENT AGREEMENT

COUNTY OF WATAUGA

THIS ENCROACHMENT AGREEMENT is made and entered into this the ____ day of _____, 2014, by and between the TOWN OF BOONE, party of the first part; and The Town of Boone ABC Board, 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 a public street (hereinafter referred to as the “public land”) located at 2067 Blowing Rock Road in the right of way of Hodges Street with the following: Concrete curb and gutter, trees and shrubs, turf grass, and sidewalk, all in accordance with that certain plan dated January 7, 2014, prepared and sealed by David R. Jones, North Carolina Registered Architect, and presented to the Boone Town Council at its regular monthly meeting on January 23, 2014 (hereinafter collectively referred to as “the encroaching facility”); and

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

conditions of this agreement;

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

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

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

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

That to the extent permitted by law, the party of the second party shall be responsible for all liability associated with the encroachment and encroaching facility. In furtherance of such responsibility, the party of

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

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

It is clearly understood by the party of the second part that the party of the first part will

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

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

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

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

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

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

That in the case of noncompliance with the terms of this agreement by the party of the

second part, the party of the first part reserves the right to stop all work until the encroaching facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

That it is agreed by both parties that this agreement shall become void if actual construction of the work contemplated herein is not begun and completed within two 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.

VOTE: Aye – All
 Nay – None

REQUESTED APPEARANCE – RANDY JONES

Randy Jones presented a description of the plaque to be placed on the Downtown Boone Post Office. Council Member Brantz asked that the Boone Historic Preservation Commission members' names be included on the plaque. Upon a motion by Council Member Brantz, seconded by Council Member David, Council moved to add the names of the Historic Preservation Commission to the plaque.

VOTE: Aye – All
 Nay – None

REQUESTED APPEARANCE – STONEGATE DEVELOPERS

Local attorney Jim Deal, representing Stonegate Developers, appeared before the Council to request a special public hearing for the conditional zoning of 784 and 862 Blowing Rock Road and 325 and 339 Faculty Street. Upon a motion by Council Member Mason, seconded by Council Member Peña, Council moved to schedule a special public hearing for Monday, March 3, 2014, at 7 p.m. in the Council Chambers.

VOTE: Aye – All
 Nay – None

CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to enter Closed Session at 7:35 p.m. pursuant to NCGS 143-318-11a(1)(3)(6)(7) to hear the following items:

- A. Pursuant to NCGS §143-318.11(a)(1) and (a)(6), to prevent the disclosure of information that is privileged or confidential pursuant to NCGS §160A-168 and to consider the qualifications and conditions of initial employment of a prospective employee.
- B. Pursuant to NCGS §143-318.11(a)(1), (a)(3) and (a)(7), to prevent the disclosure of information that is not considered a public record within the meaning of Chapter 132 of the General Statutes and to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the public body, and consider and give instructions to an attorney concerning the handling of a claim against the Town, and to hear reports concerning investigations of alleged criminal misconduct.

VOTE: Aye – All
 Nay – None

Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to exit Closed Session at 9:50 p.m.

VOTE: Aye – All
 Nay – None

DISCUSSION AND POSSIBLE ACTION REGARDING THE PROCESS FOR HIRING A NEW TOWN MANAGER INCLUDING CONSIDERATION AND POSSIBLE SELECTION OF A CONSULTANT TO ASSIST WITH HIRING A NEW TOWN MANAGER

Council discussed the qualifications of the three consultants that submitted proposals: Developmental Associates LLC, The MAPS Group, and Springsted. **(Copies of proposals permanently of file at Boone Town Hall.)** Town Attorney Sam Furguele advised that when entering a contract, the scope of work needs to be clearly defined. It was the consensus of the Council to hold a special meeting on January 29, 2014 at 7 p.m. or February 3, 2014 at 4 p.m. in the Council Chambers, 1500 Blowing Rock Road, in order to meet with representatives from Springsted. Council discussed the process including focus groups consisting of the Mayor and Council Members, Department Heads, and to solicit ideas about public input. Council directed that the position be advertised through the ICMA and the National League of Cities.

Additionally, all members of the Council shall be involved in the process, and at least 3-5 candidates should be interviewed.

ADJOURNMENT

Upon a motion by Council Member Hay, seconded by Council Member Peña, Council moved to adjourn at 11:03 p.m.

VOTE: Aye – All
 Nay – None

Kimberly S. Brown, Town Clerk

Andy Ball, Mayor