

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
FEBRUARY 18, 2014**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Tuesday, February 18, 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 Furgieuele was also present. Staff members present were Town Manager Greg Young, Deputy Town Clerk Christine Pope, 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, Planning Inspector Todd Miller 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.

TENTATIVE AGENDA ADOPTION

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

1. Additional Information for Item 5.A. – Discussion of Sustainability Committee.
2. Additional Information for Item 5.G. – Approval of Contract – Schnabel Engineering.
3. Additional Information for Item 5.J. – Approval of Budget Amendments.
4. Addition of Item 5.K. – Discussion of Appalachian Theatre Design Options. (For Action)
To be heard at the beginning of “Council Matters” before Item 5.A.
5. Addition of Item 5.L. – Discussion of Development Application Fees. (For Action)
6. Amend Thursday night agenda to hear the Water & Sewer Requests in the following order:
 - A. Jeffrey Wakeman/The Standard of Boone, LLC (For Action) – Request for water and sewer service for property located on Blowing Rock Road.
 - B. Poteat Hospitality Associates, LLC (For Action) – Request for water and sewer service for property located on US Highway 421.
 - C. Riverstone Townhomes Owners Association, Inc. (For Action) – Request for water and sewer service for property located on Azor Court.

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

VOTE: Aye – All
 Nay – None

PUBLIC COMMENT

Frank “Ham” Wilson of Kuester Real Estate Services requested that Council amend the agenda to schedule a special public hearing regarding a conditional district zoning order for the use of the Boone Point property at the corner of US Highway 421 and NC 105 Extension. Town Attorney Sam Furgieuele noted that Council could choose to hear this matter during the special public hearing which is to be scheduled at Thursday night’s meeting. Mayor Ball advised Mr. Wilson that they would move forward with Mr. Furgieuele’s recommendation to hear the matter at the special public hearing, which will be scheduled Thursday night.

Nina Rhoades of 904 Summit Hall, ASU, spoke regarding Ignite NC, an organization for social justice in North Carolina that focuses on sex trafficking, and indicated she would like to hold a program in Boone for anyone interested to learn more about this issue. Mayor Ball suggested that Ms. Rhoades first speak with Police Chief Crawford regarding what could be done at that level.

PRESENTATION OF APPALACHIAN THEATRE DESIGN OPTIONS

John Cooper and Frank Mohler of Appalachian Theatre of the High Country, Inc. and Steve Schuster, architect, presented a design option for the renovation of the Appalachian Theatre. Mr. Cooper requested a donation of land from the Town to create a stage assembly area to the side of the main stage, indicating it would require the space of approximately three to four of the Town staff's parking spaces behind Town Hall. Discussion ensued regarding the various layout options for the organization. Town Manager Greg Young advised that if these spaces were taken for this use, those employees could park in the adjacent paid parking lot, but it would impact revenue from use of those spaces. He added that this plan may also impact the ability for employees parking above the location to back out of their spaces.

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to direct the town manager and appropriate staff to work with the architect on refining the proposal for Council's consideration, including review of any legal implications related to the deed restrictions and possible transfer of property.

VOTE: Aye – All
 Nay – None

DISCUSSION OF SUSTAINABILITY COMMITTEE

Discussion ensued regarding the possibility of recreating the sustainable development task force on either the same level or a more focused level than the previous task force. Council Member David suggested focusing on internal issues of the Town and external issues of the community with this group. It was the consensus of the Council to further discuss this topic at the annual retreat held March 4, 2014.

DISCUSSION OF TOWN CODE AMENDMENT – CHAPTER 73: TOWING

Town Attorney Sam Furguele requested that Council defer consideration of this item until Thursday night. He indicated that after discussing the topic with the police department, he submitted a copy of the drafted amendment to the district attorney's office for input, but has not heard from them yet.

Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to defer discussion of Item 5.B - Town Code Amendment – Chapter 73: Towing until Thursday night's meeting.

VOTE: Aye – All
 Nay – None

P & I MONTHLY REPORT

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

CRAB RECOMMENDATION – EXTENSION OF SAHA LICENSE AGREEMENT

Cultural Resources Director Pilar Fotta updated Council on recent actions taken by the Southern Appalachian Historical Association (SAHA) regarding applying for a contractor's license, and reviewed the conditions of the current license agreement between the Town and SAHA. She added that SAHA appeared before the Watauga County Board of Commissioners earlier that evening and received funding for repairs and demolition pending determination of hazardous materials on the property. Ms. Fotta requested that Council table this discussion until she has an opportunity to get more information regarding this. Lengthy discussion ensued regarding the conditions of the current license and previous lease agreements between the Town and SAHA, the conditions of the buildings on the property used, and what needs to be completed to move forward.

Council Member Brantz, seconded by Council Member Mason, moved to extend the existing SAHA license agreement for 45 days, to expire on April 11, 2014, with the following information to be submitted to the cultural resources director by Feb. 24, 2014, in order to allow the Cultural Resources Advisory Board to review the information at their March 3, 2014, meeting and make a recommendation to Council at their next regular meeting held March 18, 2014:

1. Complete the process to cure all illegal and improper electrical work.
2. Updated information concerning SAHA's plan for 2014 operation at the venue.
3. A timeline for proposed repairs.
4. Estimated total and individual costs for all repairs.
5. Plans and drawing for proposed repairs.
6. Proof of financial means to pay for proposed repairs.

A friendly amendment was added to the motion by Council Member David to direct Town staff and SAHA to also provide the cultural resources director by Feb. 24 a status and availability report on the structures indicated in the original P&I report with immediate concerns that need to be repaired or demolished and their intent on those items, and for the town manager to contact the Watauga County manager regarding any role the county may play in the process. Council members Brantz and Mason approved the friendly amendment to their motion.

VOTE: Aye – All
 Nay – None

CRAB RECOMMENDATION – REAPPOINTMENT OF STRATEGIC PLANNING SUBCOMMITTEE

Cultural Resources Director Pilar Fotta presented a request from the Cultural Resources Advisory Board to re-establish the strategic planning subcommittee for one year and to appoint four board members to the subcommittee so as not to have a board quorum.

Council Member Brantz nominated Frank Mohler, Kim Wangler, Neva Specht and Wayne Williams to serve on the Strategic Planning Subcommittee.

VOTE: Aye – All
 Nay – None

REQUEST PERMISSION TO APPLY FOR GRANT – NC CRIME COMMISSION NON-COMPETING BLOCK GRANT

Police Chief Dana Crawford indicated that this non-competing block grant would provide much-needed equipment for the police department with only a 25% match from the Town.

Upon a motion by Council Member Mason, seconded by Council Member David, Council moved to allow the Boone Police Department to submit a grant application to the NC Governor’s Crime Commission for funding of equipment.

VOTE: Aye – All
 Nay – None

APPROVAL OF CONTRACT – SCHNABEL ENGINEERING

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve a contract with Schnabel Engineering for the Winkler’s Creek Dam Emergency Action Plan in the amount of \$23,000. **(Contract permanently on file at Boone Town Hall.)**

VOTE: Aye – All
 Nay – None

SCHEDULING OF SPECIAL MEETING – WATER USE COMMITTEE

Upon a motion by Council Member Peña, seconded by Council Member Brantz, Council moved to schedule a special meeting of the Water Use Committee and Boone Town Council for Wednesday, March 26, 2014, at 5:30 p.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE: Aye – All
 Nay – None

MONTHLY WATER USE STATUS REPORT

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

APPROVAL OF BUDGET AMENDMENTS

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

Description	Account#	To:	From:
CAPITAL OUTLAY – OTHER (POLICE DEPT)	010-500-300-574000	\$8,000	
CANINE UNIT (POLICE DEPT)	010-500-300-519902	\$3,000	
CONTRIBUTIONS/DONATIONS (GENERAL FUND)	010-000-000-482200		(\$11,000)
STREET LIGHT MAINTENANCE (STREET DEPT)	010-600-401-525210	\$2,325	
MISCELLANEOUS REVENUE (GENERAL FUND)	010-000-000-489900		(\$2,325)
MAINTENANCE & REPAIR – VEHICLES (WATER OPS)	030-700-802-525301	\$6,767	
MISCELLANEOUS REVENUE (WATER/SEWER)	030-000-000-489900		(\$6,767)
TRAVEL & TRAINING (POLICE DEPT)	010-500-300-521101	\$1,500	
MISCELLANEOUS SUPPLIES (POLICE DEPT)	010-500-300-519900	\$6,500	
SALE OF SURPLUS PROPERTY (GENERAL FUND)	010-000-000-481200		(\$8,000)

VOTE: Aye – All
 Nay – None

DISCUSSION OF DEVELOPMENT APPLICATION FEES

Planning Director Bill Bailey presented options for a revised fee schedule for planning and inspections department applications and permits. Mayor Ball requested the information be sent to Council via e-mail for review.

Upon a motion by Council Member Mason, seconded by Council Member Peña, Council moved to continue discussion of development application fees during the annual retreat held March 4, 2014.

VOTE: Aye – All
 Nay – None

RECESS MEETING

Upon a motion by Council Member Mason, seconded by Council Member Hay, Council moved to recess the meeting at 8:58 p.m. until Thursday, Feb. 20, 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 of the Boone Town Council was called to order at 6:30 p.m., Thursday, February 20, 2014, 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 present. Staff members present were Town Manager Greg Young, Town Clerk Kimberly Brown, Assistant to the Manager Jim Byrne, 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, 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 public comment would need to sign the public comment sign-up sheet.

TENTATIVE AGENDA ADOPTION

Town Manager Greg Young announced there are no changes to the agenda. Upon a motion by Council Member Brantz, seconded by Council Member David, Council moved to adopt the agenda as presented.

VOTE: Aye – All
 Nay - None

PUBLIC COMMENT

There was no one signed up to speak.

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Ball announced that a position on the ABC Board is set to expire on March 31, 2014.

BOARD APPOINTMENTS

Affordable Housing Task Force

Council Member Brantz nominated Maria Owens to serve on the Affordable Housing Task Force as a Neighborhood Advocate position. With no other nominations, Mayor Ball called for a vote.

VOTE: Aye – All
 Nay – None

Board of Adjustment

Council Member Mason nominated Tom Jamison to serve as a resident position on the Board of Adjustment. With no other nominations, Mayor Ball called for a vote:

VOTE: Aye – 4 (David, Peña, Mason, Brantz)
 Nay – 1 (Hay)

Mr. Jamison's term expires June 30, 2014.

Council Member Brantz nominated Nikolai Hay to serve as an alternate resident position on the Board of Adjustment. With no other nominations, Mayor Ball called for a vote:

VOTE: Aye – 2 (David, Brantz)
 Nay – 2 (Peña, Mason)
 Abstain – 1 (Hay)

Mr. Hay's term will expire on June 30, 2014.

Community Appearance Commission

Council Member Peña nominated Christopher Jackson-Jordan to serve on the Community Appearance Commission. With no other nominations, Mayor Ball called for a vote:

VOTE: Aye – All
 Nay – None

Mr. Jackson-Jordan's term will expire on June 30, 2017.

Historic Preservation Commission

Council Member Mason nominated Cliff Baldwin to serve on the Historic Preservation Commission. With no other nominations, Mayor Ball called for a vote:

VOTE: Aye – All
 Nay – None

Mr. Baldwin's term will expire on June 30, 2014.

Outside Agency Funding Review Committee

Council Member Mason nominated Cliff Baldwin to serve on the Outside Agency Funding Committee. With no other nominations, Mayor Ball called for a vote:

VOTE: Aye – All
 Nay – None

Mr. Baldwin’s term will expire on July 31, 2017.

Tree Board

Council Member Mason nominated Loretta Clawson to serve on the Tree Board. With no other nominations, Mayor Ball called for a vote:

VOTE: Aye – All
 Nay – None

Ms. Clawson’s term will expire on October 31, 2014.

Water Study Committee

Council Member Brantz nominated Amy Adams to serve on the Water Study Committee. With no other nominations, Mayor Ball called for a vote:

VOTE: Aye – All
 Nay – None

SCHEDULING OF SPECIAL MEETING

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to hold a special joint public hearing with the Planning Commission on Monday, March 10, 2014, at 5 p.m. in the Council Chambers, 1500 Blowing Rock Road, to hear the Boone Point case and the Jeffrey Wakeman case.

VOTE: Aye – All
 Nay - None

Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to cancel the March 3, 2014 special public hearing.

VOTE: Aye – All
 Nay – None

DISCUSSION OF TOWN CODE AMENDMENT – CHAPTER 73: TOWING

Town Attorney Sam Furgiuele presented the draft changes to Chapter 73: Towing of the Town Code. Upon a motion by Council Member Mason, seconded by Council Member Hay, Council moved to adopt the following code amendments to Chapter 73: Towing of the Town of Boone Town Code:

CHAPTER 73: TOWING

Section

- 73.01 Definitions
- 73.02 Limitations of chapter
- 73.03 Towing Authorized
- 73.04 Towing of vehicles from parking lots
- 73.05 Towing of vehicles from parking spaces
- 73.06 Towing charges
- 73.07 Use of parking control devices or methods in parking lots and spaces
- 73.08 Time limits for releasing non-consensually towed vehicles

- 73.99 Penalty

§ 73.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PARKING-CONTROL DEVICE OR METHOD. For purposes of this chapter, a ***PARKING-CONTROL DEVICE OR METHOD*** shall include, but not be limited to, the use of any mechanical device, such as a "boot" or other device or instrument intended to disable a vehicle or prevent a vehicle from being removed from a private parking lot or space, or the imposition of a private charge for the removal of a vehicle from a private parking lot or space, or any other non-consensual means by which a vehicle is prevented from being removed from a parking lot or space.

PARKING LOT. Any privately-owned area created, designated or used for the parking of two or more vehicles, not including driveways, garages or other parking areas of a single-family residence or a single-family residence with an accessory dwelling unit, unless the parking area or any portion thereof is leased or rented to persons not residing in the residence or accessory dwelling unit.

PARKING SPACE. Any privately-owned area created, designated or used for the parking of vehicles, which does not constitute a parking lot, not including driveways, garages or other parking areas of a single-family residence or a single-family residence with an accessory dwelling unit, unless the parking area or any portion thereof is leased or rented to persons not residing in the residence or accessory dwelling unit. One or more parking spaces may, if designated in compliance with this chapter, exist within a parking lot.

TOWING COMPANY. Any person, business or other entity engaged in the towing of vehicles for compensation, including any officer, employee, agent, contractor or other person acting on behalf of, pursuant to the authority of, or under the supervision or control of the Towing Company.

VEHICLE. Any motorized contrivance fitted with wheels or runners, whether or not it is required to be registered or licensed or is registered or licensed, by the state, designed for the transportation of one or more persons, as well as any non-motorized contrivance fitted with wheels or runners, designed for the transporting of anything and designed to be pulled by an automobile, truck or other motorized vehicle.

(Prior Code, § 75.01) (Ord. 03-02, passed 4-24-2002; Ord. passed 10-21-2004)

§ 73.02 LIMITATIONS OF CHAPTER.

This chapter shall not limit or, in any way, modify the authority or abrogate the procedures, created by § 70.08, §§ 91.070 *et seq.*, nor of any towing powers or procedures conferred or created by state general statute or the code of ordinances upon Police, Fire Department or other emergency personnel. This chapter does not in any way amend the provisions of § 153.01 with respect to the number, posting, placement, permitting, dimensions or other characteristics or requirements of signs within the town. This chapter shall not apply to the towing of vehicles encroaching into areas clearly designated as fire lanes and shall not limit the right to tow vehicles which are blocking clearly designated areas of ingress and/or egress or encroaching into areas clearly designated and marked for access to dumpster(s) so long as signage reasonably calculated to be seen warns that encroachment into dumpster access areas will result in towing of the vehicle.

(Prior Code, § 75.02) (Ord. 03-02, passed 4-24-2003)

§ 73.03 TOWING AUTHORIZED.

(A) Towing by Towing Companies is hereby authorized within the Town of Boone.

(B) No Towing Company may tow a vehicle from a parking lot or parking space within the corporate limits of the town unless it first obtains and has in effect a current privilege license issued by the town in accordance with §112.35.

(C) No Towing Company may attach a towing vehicle to an occupied vehicle, tow a vehicle which is occupied, nor demand payment pursuant to this Chapter in connection with an occupied vehicle. This Chapter does not authorize a Towing Company to attempt to impede or block an occupied vehicle from being removed from a parking space or lot.

§ 73.04 TOWING OF VEHICLES FROM PARKING LOTS.

(A) It shall be unlawful for any person to authorize, direct or contract for the non-consensual towing of a vehicle from any parking lot in the town unless and except if the person uses one of two available methods of notification to the operator or owner of the vehicle, described herein:

(1) It is clearly and conspicuously posted on the premises, in a location(s) designed to be easily seen by an unauthorized person utilizing the parking lot, on a sign or combination of signs each no smaller than two square feet and no larger than four square feet, the following information:

(a) The parking lot is a private parking lot and unauthorized vehicles will be towed, e.g., "Private Parking Lot - Towing Enforced"; and

(b) The name and telephone number of the towing company and location where any towed vehicle is taken; or

(2) The person authorizing, directing or contracting for the non-consensual towing places a written notice, in a form designed to be weather resistant, on the windshield, under a windshield wiper of the vehicle to be towed or other secure place on the vehicle, designed to be easily discovered by the operator or owner of the vehicle, at least four hours prior to the non-consensual towing of the vehicle if the parking lot is located within the Municipal Service District and at least 24 hours prior to the non-consensual towing if the parking lot is located outside the Municipal Service District, which contains the following information:

(a) The parking lot is a private parking lot and unauthorized vehicles will be towed;

(b) The name and telephone number of the towing company and location where any towed vehicle is taken;

(c) The towing charges imposed by the towing company; and

(d) The existence and amount of any storage charges related to the storage by the towing company of the vehicle and the terms and conditions for the imposition of storage charges.

(B) Once an owner or operator of a vehicle has been notified pursuant to division (A)(2) above, it shall be unnecessary for the person authorizing, directing or contracting for the non-consensual notice to give any further notification should there be any future transgressions with the same vehicle or by the same owner or operator.

(Prior Code, § 75.03) (Ord. 03-02, passed 4-24-2003)

§ 73.05 TOWING OF VEHICLES FROM PARKING SPACES.

(A) It shall be unlawful for any person to authorize, direct or contract for the non-consensual towing of a vehicle from any parking space in the town unless and except if the person uses one of two available methods of notification to the operator or owner of the vehicle, described herein:

(1) The parking space is posted with a conspicuous sign, no smaller than 120 square inches, identifying the space as private property and warning that unauthorized vehicles will be towed, e.g. "Private Parking - Towing Enforced" and listing the name and telephone number of the towing company or a telephone number where the name and location of the towing company can be ascertained; or

(2) The person authorizing, directing or contracting for the non-consensual towing places a written notice, in a form as is designed to be weather resistant, on the windshield under a windshield wiper of the vehicle to be towed or other secure place on the vehicle, designed to be easily discovered by the operator of the vehicle, at least four hours prior to the non-consensual towing of the vehicle if the parking lot is located within the Municipal Service District and 24 hours prior to the non-consensual towing if the parking lot is located outside the Municipal Service District, which informs the owner or operator of the vehicle that the parking space is private property and the vehicle will be towed at the owner's expense if it is not removed and states the name and address of the towing company to be used. Unless the parking space in question is also located in a parking lot, before having a car towed pursuant to this procedure, the person authorizing, directing or contracting for the non-consensual towing shall first inform the Police Department that he or she is undertaking to have an unauthorized vehicle towed.

(B) Once an owner or operator of a vehicle has been notified pursuant to division (A)(2) above, it shall be unnecessary for the person authorizing, directing or contracting for the non-consensual notice to give any further notification should there be any future transgressions with the same vehicle or by the same owner or operator.

(Prior Code, § 75.04) (Ord. 03-02, passed 4-24-2003)

§ 73.06 TOWING CHARGES.

(A) Limits on towing charges.

(1) No towing company shall charge for the non-consensual towing of a vehicle more than 175% of its normal towing charge for consensual towing of a vehicle. For example, if a

normal consensual towing fee is \$35, the maximum non-consensual towing fee is \$61.25. If a normal consensual towing fee is \$45, the maximum non-consensual fee is \$78.75.

(2) Whenever a towing company is attempting to non-consensually tow a vehicle and has already connected the vehicle to its tow truck, but the vehicle has not yet been removed from the parking lot or parking space and the owner or driver of the vehicle appears and states a desire that the vehicle not be towed, the towing company shall release the vehicle to the owner or driver upon the payment of 50% of the non-consensual towing charge. If the vehicle has not yet been connected to the tow truck at the time the owner or driver appears, but the towing company has begun the process of preparing the vehicle for towing, and the owner or driver states a desire that the vehicle not be towed, the towing company shall release the vehicle to the owner or driver so long as the owner or driver immediately removes the vehicle from the premises and pays a fee of 25% of the non-consensual towing charge.

(3) A towing company may charge a daily fee for the storage of a vehicle which has been non-consensually towed to the property of the towing company. No storage fee may be charged for days when the towing company is not open during the full normal business hours of at least 9:00 a.m to 4:00 p.m. for the recovery of a non-consensually towed and stored vehicle.

(a) Waiting period before storage fees may be charged. A towing company which is not open for the recovery of a towed vehicle at the time of the non-consensual towing shall not charge a storage fee for the storage of the towed vehicle until at least one full business day (no less than 24 hours) has elapsed from the time the towing company is next open for the recovery of a towed vehicle after the towing. If the towing company is open for recovery of a towed vehicle at the time a vehicle is non-consensually towed, the towing company may begin to charge a daily storage fee 24 hours after the vehicle is detached from the tow truck onto the property where the vehicle will be stored.

(b) Imposition of storage fees if towing company is closed when waiting period elapses. If the 24-hour waiting period for the charging of storage fees elapses at a time when the towing company is not open for the recovery of a vehicle which has been non-consensually towed, a storage fee cannot be charged until at least two hours after the beginning of the next business day thereafter.

(c) Amount of storage fees. Any storage fee charged by the towing company shall be reasonably related to the cost of storing the vehicle. A daily storage charge not exceeding \$10 per day shall be presumed to be reasonably related to the cost of storing a vehicle.

(d) A towing company which has failed to comply with the provisions of § 73.08 is prohibited from charging any storage fee whatsoever and is subject to such civil and other penalties authorized herein.

(B) Posting of fees. Each towing company operating within the jurisdictional limits of the town shall post, in a conspicuous location at its place(s) of business, a schedule of fees designed to be easily seen, which states, at a minimum, its consensual towing fee(s), its non-consensual towing fee, its daily storage fee and its hours of operation. The schedule of fees shall at all times be available for inspection and shall be placed or posted in a location(s) so that a person may obtain the information at times when the towing company is not open for business. Posting of the schedule on the entrance of the towing company, if the entrance of the towing company is approachable without a person having to pass through any barrier when the towing company is closed, shall comply with the requirements of this section with regard to the required place of posting.

(Prior Code, § 75.05) (Ord. 03-02, passed 4-24-2003)

§ 73.07 USE OF PARKING CONTROL DEVICES OR METHODS IN PARKING LOTS AND SPACES.

(A)(1) It shall be unlawful for any person to authorize, direct, contract for, implement or apply a parking control device or method to a vehicle in any parking lot or space serving or utilized for any non-residential structure(s) or combination of non-residential and residential structures or units in the town, unless and except if it complies with the following:

(a) Signs must be displayed on the property in accordance with the following:

(i) All signs must be placed in clear and conspicuous locations, using print that can easily be read by a person of ordinary vision.

(ii) Signs must be displayed, with no less than one sign must be placed for every three parking spaces where the devices or methods are to be applied as to those spaces in groups of three or fewer informing the public that unauthorized vehicles will be subjected to the use of a parking control device or method, and identifying, using arrows or other means, all parking spaces where the devices or methods may be used.

(iii) A sign must be posted at each entrance to each parking lot, which discloses all of the following:

(A) that the parking lot is private;

(B) that unauthorized vehicles will be immobilized using a parking control device or method, the type of which must be identified; and

(C) the amount of any charge imposed to remove the parking control device or method from the vehicle.

(iv) If a parking lot is in a location where confusion might arise as to which premises are served by the parking lot, each sign positioned at an entrance to the parking lot must disclose the premises and establishments for which parking is authorized.

(v) If the practice of a particular parking lot owner is to allow the application of a parking control device or method to a vehicle when the user of the vehicle utilizes the parking lot to visit both authorized premises and/or establishments and unauthorized premises and/or establishments, the sign must so state.

(2) It shall be unlawful for any person to authorize, direct, contract for, implement or apply a parking control device or method to a vehicle in any parking lot serving or utilized for a wholly residential structure or structures in the town, such as an apartment complex, unless and except it is clearly and conspicuously posted on the premises, in location(s) which can be easily seen by an unauthorized person of ordinary vision entering the parking lot by motor vehicle, on a sign or combination of signs, in print that can easily be read by a person of ordinary vision entering the parking lot by motor vehicle, that the parking lot is a private parking lot, and that unauthorized vehicles will be subjected to the use of a parking control device or method. The sign or combination of signs must disclose the amount of any charge imposed to remove the parking control device from the vehicle. The sign must disclose the specific type of parking control device or method used, e.g., "Private Parking Lot - Unauthorized Vehicles will be Booted, \$50.00 charge for removal."

(B) It shall be unlawful for any person to authorize, direct, contract for, implement or apply a parking control device or method to a vehicle in any parking lot or space in the town, unless and except that person:

(1) Has conspicuously displayed contact information for telephone contact by the owner or operator of the vehicle with a person who has the ability to remove the parking control device or method (the “contact person”); and

(2) Has arranged for the contact person to respond within a time period no greater than fifteen minutes and in every instance the contact person actually makes a reasonable effort to respond within a fifteen-minute period.

(C) Should the Town Manager receive three or more unrelated and credible complaints within any three-month period asserting the failure of the contact person for the person authorizing, directing, contracting for, implementing or applying parking control devices or other methods to vehicles in the town to respond within fifteen minutes to telephone contact by the owners or operators of vehicles which have been booted or immobilized, it shall be presumptively concluded that the person authorizing, directing, contracting for, implementing or applying a parking control device or method to a vehicle in any parking lot or space in the town does not have the capacity to respond within fifteen minutes. Thereafter, a duly licensed person must be on duty and present in the parking lot or space at all times when any vehicle is subjected to a parking control device or method, and the person must remain on the property until the owner or operator of the vehicle returns, with the ability to remove the parking control device or method upon payment of the posted charges.

(D) No person may implement or apply a parking control device or method to a vehicle and no person may demand or accept payment for the non-application or removal of any parking control device or method to or from a vehicle unless that person has obtained a privilege license from the town, in accordance with Ch. 112 of this code, defined therein as "parking lot attendant," and has on display on his or her person at all times during which the person is present on the parking lot or on duty, the picture identification issued by the town upon the payment of the tax. Such identification must be attached to the exterior clothing of the parking lot attendant to an area plainly visible to a person addressing the parking lot attendant, or it must be attached to a lanyard hanging around the neck of the attendant and plainly visible to a person addressing the parking lot attendant.

(E) No person implementing or applying a parking control device or method to a vehicle in any parking lot or space may, when present on the premises of the parking lot or when he is at a location from which he can observe any portion of the parking lot or its entrances or exits, hide or secret himself, but instead must remain in plain view so that his presence will act as a deterrent to unauthorized persons contemplating the use of the parking lot or space. Such person must:

(1) Either position himself in open air: or

(2) If he monitors the parking lot from a vehicle:

(a) The vehicle must itself be parked in the parking lot which is subject to the parking control device or method; and

(b) The vehicle in which such person positions himself:

(i) Must not have glass more deeply tinted than the degree of tinting provided by the manufacturer as part of its standard window tinting;

(ii) Must have had no tinting applied to an original window following original manufacture; and

(iii) Must have no other obstruction to the person being clearly seen.

(c) The person must remain in an upright position at all times while he is in the vehicle; and

(d) The vehicle must have insignia on both the driver's door and the front passenger door which:

(i) Identifies the company with which the attendant is employed by name, address and telephone number;

(ii) Includes in the name of the company a description of the parking control device or method utilized, e.g. "ABC Wheel-lock Company;" and

(iii) Can be easily seen in both day and night conditions by the operator of every vehicle entering the parking lot from every entrance, OR

(e) In lieu of these "insignia" requirements (subsections (73.07(E)(2)(d))), the vehicle in which the attendant is stationed may be parked in parking space next to the main entrance to the lot, have a light on or within its cab which is compliant with the requirements of North Carolina for a tow truck engaged in the towing of a vehicle, and must keep the light turned on and in actual use (rotating, flashing, etc., as the case may be) at all times during which the attendant is within the vehicle.

(F) Any time a parking control device is applied to a vehicle, when the vehicle operator pays the penalty, the vehicle must be immediately released, and the vehicle operator must be provided with a receipt which discloses the correct contact information and appeal process, if any, for challenging the action of the person applying the traffic control device.

(Prior Code, § 75.06) (Ord. passed 10-21-2004; Ord. passed 9-15-2005; Ord. passed 11-17-2005; Ord. passed 6-15-2006; Ord. passed 8-17-2006) Penalty, see § 73.99

(G) After a parking control device or method is applied to a vehicle in any parking lot or space, it shall be unlawful for any person to authorize, direct or contract for the non-consensual towing of the vehicle from the parking lot or space for a period of at least eight hours following such application.

(H) Except as authorized by 73.07(G), after one parking control device or method is applied to a vehicle in any parking lot or space, it shall be unlawful for any person to authorize, direct or contract for a second parking control device or method to be applied to the vehicle and then to charge or attempt to charge an additional fee beyond the fee for removal of a single parking control device or method, or to refuse to remove all parking control devices or methods once the fee for removal of the initial parking control device is paid.

(I) A parking control device may not be applied to a vehicle which is occupied.

(Prior Code, § 75.06) (Ord. passed 10-21-2004; Ord. passed 9-15-2005; Ord. passed 11-17-2005; Ord. passed 6-15-2006; Ord. passed 8-17-2006) Penalty, see § 73.99

§ 73.08 TIME LIMITS FOR RELEASING NON-CONSENSUALLY TOWED VEHICLES.

(A) Any time a towing company engages in the non-consensual towing of a vehicle, during the next six hours and during the next business day following the towing, an agent or employee of the towing company must respond to a telephone call at the contact number provided by the towing company within one-half hour. During that response, upon the request of the driver or owner of the towed vehicle, the towing company must make arrangements for the release of the vehicle upon the full payment of fees, in accordance with subparagraphs (B) and (C).

(B) The towing company must arrange for and allow the full payment of fees within one-half hour of the end of the conversation described in subparagraph (A). If the towing company is located more than three miles from the location from which the vehicle was towed, the company must travel to the location of the driver or owner of the towed vehicle to allow the full payment of fees to be made, if the owner or driver has requested the opportunity to pay the fees.

(C) Following the full payment of fees, the towing company must arrange for the release of the towed vehicle within one hour of payment. If the vehicle which has been towed is more than three miles from the location from which the vehicle was towed, the company must return the vehicle to the owner or driver at the nearest public street to the location from which the vehicle was towed within one hour of payment.

§ 73.99 PENALTY.

(A) Civil penalties. Whoever violates any provision of this chapter shall be subject to the penalty provisions of § 10.99.

(B) Criminal penalties. Any person who violates this chapter shall be guilty of a class 3 misdemeanor, pursuant to G.S. § 14-4(a), and is subject to a fine of up to \$500.

(C) No person convicted of a misdemeanor as the result of violating this chapter may thereafter engage in towing or in the application of parking control devices or methods in the town.

(Prior Code, § 75.99) (Ord. 03-02, passed 4-24-2003; Ord. passed 10-21-2004; Ord. passed 8-17-2006)

VOTE: Aye – All
 Nay – None

REQUESTED APPEARANCES – SHERIFF LEN HAGAMAN

Sheriff Len Hagaman and Watauga County Manager Deron Geouque appeared before the Council to request a formal commitment from the Town regarding the Watauga County Law Enforcement Memorial which is to be located on the campus of the Watauga County Sheriff's Office and Detention Center on Hodges Gap Road. He explained that the request is for the Town to approve in-kind service to pour and finish the concrete pad for the memorial. Sheriff Hagaman stated that the memorial will consist of three flagpoles and a monument listing the names of law enforcement officers within the county who have died in the line of duty and who died while serving. Town Manager Greg Young suggested that the Town have a mutual aid agreement in place for this work. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to approve the request to provide town services to pour and finish the concrete pad for the law enforcement memorial and to direct the Town Manager to execute a mutual aid agreement for the work.

VOTE: Aye – All
 Nay – None

REQUESTED APPEARANCES – EMILY GREER

Emily Greer appeared before the Council to request approval of the 2nd Annual Hunters Heroes Special Event Permit scheduled for Saturday, June 7, 2014, from 8:45-9:15 a.m. She stated that the route is the same as the previous year. Proceeds will go to the Ryan Scott David Scholarship, to help with the cost of medical expenses for Katie Watson, and 10% of the proceeds will go to the scholarship fund for Hunter Mast. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve the 2nd Annual Hunters Heroes Special Event Permit scheduled for Saturday, June 7, 2014, from 8:45-9:15 a.m. and to waive the event fee.

VOTE: Aye – All
 Nay – None

REQUESTED APPEARANCES – BEN LOOMIS

Ben Loomis explained the request for approval of the Howard Street Exchange Pedestrian Fair and partial waiver of fees. He stated that the event is scheduled for Sunday, April 13, 2014, from 12-5 p.m. Mr. Loomis stated that event organizers are charging fees to the vendors to fund the next event. He offered to have event staff erect the street barricades in an effort to curb costs incurred by the Town. Interim Public Works Director Eric Gustaveson stated that the cost to his department for staffing this event is \$499 which includes overtime and callback pay. He stated that the Town could face some liability issues if the street is not properly closed off. Chief Crawford stated that he would bring in two officers for the event to work overtime from 12-5 p.m. Town Manager Greg Young stated that the Town usually does not delegate closing of town streets to outside entities. Town Attorney Sam Furgiuele stated that the town does not have the authority to allow another entity to close a town street and could face potential liability issues if someone other than town staff closes a town street. Upon a motion by Council Member Peña, seconded by Council Member David, Council moved to approve the Howard Street Exchange Pedestrian Fair scheduled for Sunday, April 13, 2014, from 12-5 p.m. and to waive the entire fee for the event. Council Member Peña stated that waiver of the fee for this event can help the applicant to cover the cost of the next event. Council Member Mason stated that she would like to see the event become a self-sustaining event. Council Member Brantz stated that a modest fee would be appropriate so that the Town does not set a precedent for waiving fees for events.

VOTE: Aye – 4 (David, Peña, Mason, Hay)
 Nay – 1 (Brantz)

Before deliberating on the quasi-judicial requests, Town Attorney Sam Furgiuele questioned the members of Council on whether or not they had contact with any of the applicants regarding the requests. All Council members stated that they had not had any significant contact with any of the applicants for any of the requests.

WATER & SEWER REQUEST – JEFFREY WAKEMAN/THE STANDARD OF BOONE LLC

Town Attorney Sam Furgiuele opened a public hearing at 7:24 p.m. to hear sworn testimony for water and sewer service to property located on Blowing Rock Road. Jeffrey Wakeman, being duly sworn, stated that this project includes the property that contains the condemned Scottish Inn and the Red Carpet Inn, as well as other structures and that some of the structures contain asbestos. He stated that the project will include mixed use retail and student housing. He explained that the back wall of the Scottish Inn is a retaining wall for the Boone Creek which is located on the property and is one of the reasons why this structure has not yet been demolished. He stated that the creek cannot be altered without approval from several governmental entities.

Mr. Wakeman explained that the pipe that is supposed to handle the flow of Boone Creek on the property is no longer adequate and that Boone Creek is a designated trout stream. He stated that the Boone 2030 plan shows that Boone Creek is opened up and returned to its natural state. Additionally, he stated that underground storage tanks on the property that are leaking petroleum have to be addressed. After that is done, he stated they will be able to relocate Boone Creek to the back of the property bordering Faculty Street and that the stream needs 25-foot buffer on each side. Mr. Wakeman explained that the project will include commercial retail space on the first floor of the primary building, a leasing office, café, exercise facility, and a parking structure, not visible from Blowing Rock Road, with spaces for 500 cars. He stated that the request is for 103,942.80 gallons per day and asked if fees for the request can be adjusted. Jim Deal, attorney for the applicant, stated that the actual usage of the project is expected to be 40,000 gallons per day which is substantially less than what is calculated by the town. Public Utilities Director Rick Miller, being duly sworn, stated that it is possible for usage to come in lower than predicted. Planning Director Bill Bailey, being duly sworn, stated that the applicant has applied for eight variance requests for the project, but that he has no major concerns about the application. Mr. Deal requested that the Council continue consideration of this request until the March meeting. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to suspend the public hearing on the request for water and sewer service by Jeffrey Wakeman until the March regular meeting.

VOTE: Aye – All
 Nay – None

Mayor Ball declared a break at 8:15 p.m. Council reconvened at 8:28 p.m.

WATER & SEWER REQUEST – POTEAT HOSPITALITY ASSOCIATES LLC

Town Attorney Sam Furguele opened the public hearing at 8:28 p.m. to hear sworn testimony on a request for water and sewer service to property located on US Highway 421. Jim Deal, attorney representing the applicant, noted an objection to the calculation of gallons per day as figured by the staff. He explained that this is a hotel project for a Hampton Inn and Suites located on Highway 421 behind the Wilco gas station on the road to the high school. He indicated that the applicant developed the Courtyard by Marriott in Boone located on NC Highway 105. Mr. Deal stated that this property is within the primary growth area. He stated the hotel will include 88 rooms and 26 suites, which will not have cooking facilities which causes an increase in the water usage calculation. He stated that the request is for 8,271 gallons per day for the rooms, suites, an office, and an outdoor swimming pool. Mr. Deal indicated that the proposed entrance for the project will be off Highway 421. Rich Poteat, being duly sworn, stated this opportunity is good financially, and the community can support it. He stated that he anticipates the project to be under construction in June of 2014 and open by July 2015. Council Member Mason asked for confirmation of the usage calculation. Public Utilities Director Rick Miller confirmed the usage to be 8,271 gallons per day. With no other testimony, Mr. Furguele closed the public hearing at 8:43 p.m. Upon a motion by Council Member Mason, seconded by Council Member Hay, Council moved that the project is consistent with the Boone 2030 Plan and the 2006 Comprehensive Plan and approved 8,271 gallons per day.

VOTE: Aye – All
 Nay - None

WATER & SEWER REQUEST – RIVERSTONE TOWNHOMES OWNERS ASSOCIATION INC

Town Attorney Sam Furguele opened a public hearing at 8:46 p.m. to hear sworn testimony on a request for water and sewer service to property located on Azor Court. Mike Trew, project

engineer and being duly sworn, stated that the applicant is seeking sewer connection only at this time. He pointed out a discrepancy for gallons per day usage in the packet. He explained that a slope failure this past summer caused the septic field for over half of the development and has caused the residents to have to have the sewage pumped and hauled every six days. Mr. Trew stated that the applicant was previously granted water and sewer service but could not afford to proceed with the connections. He entered into evidence as **Exhibit A**, a letter from a state engineer which supports the applicant's request to connect to the town's system. He also entered into evidence as **Exhibit B**, a letter from the property management company that clarifies the request for sewer only. Mr. Trew stated that the cost of extending both water and sewer is estimated to be between \$150,000-200,000, whereas the cost of extending sewer only is estimated to be between \$50,000-80,000. Council Member Brantz asked if the applicant is considering connecting to the water system in the future. Mr. Trew answered that the applicant cannot afford to connect to water service at this time and will continue to use the wells. Stacy Bishop, homeowner and president of the HOA, was sworn in to speak. She stated that the situation has been a financial burden, costing approximately \$550 every six days to haul and pump the sewage. She stated that no other options are available to correct the situation. Public Utilities Director Rick Miller verified the amount of usage as 4,500 gallons per day for all units and bedrooms. With no other testimony, Mr. Furguele closed the public hearing at 9:05 p.m. Council Member David voiced concern about extending service to property outside of the town limits. Upon a motion by Council Member David, seconded by Council Member Brantz, Council moved to deny the request for water service and to approve the request for sewer service.

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 9:11 p.m. pursuant to NCGS 143-318.11(a)(1)(6) 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.

VOTE: Aye – All
 Nay – None

Upon a motion by Council Member David, seconded by Council Member Peña, Council moved to exit Closed Session at 10:10 p.m.

VOTE: Aye – All
 Nay – None

DISCUSSION AND POSSIBLE ACTION REGARDING THE PROCESS FOR HIRING A NEW TOWN MANAGER INCLUDING POSSIBLE APPROVAL OF A CONTRACT WITH SPRINGSTED INCORPORATED

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

- To include a 60-day recruitment period
- To allow flexibility in the timeline with the consultant.

(Copy of contract permanently on file at Boone Town Hall.)

VOTE: Aye – All
 Nay – None

ADJOURNMENT

Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to adjourn at 10:11 p.m.

VOTE: Aye – All
 Nay – None

Kimberly S. Brown, Town Clerk

Andy Ball, Mayor

Christine Pope, Deputy Clerk