

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
February 18, 2021**

CALL TO ORDER

A regular meeting of the Boone Town Council was held electronically on Thursday, February 18, 2021 at 6:00 p.m. Mayor Rennie Brantz presided. Council members present included Mayor Pro-Tem Connie Ulmer, Sam Furgiuele, Dustin Hicks, Nancy LaPlaca and Virginia Roseman. Staff present included Town Manager John Ward, Town Clerk Nicole Harmon, Public Works Director Rick Miller, Finance Director Amy Davis, Human Resources Director Dale Presnell, Fire Chief Jimmy Isaacs, Planning Director Jane Shook, Sustainability and Special Projects Manager George Santucci, Police Chief Andy Le Beau, Deputy Public Works Director Todd Moody, Cultural Resources Director Mark Freed and Senior Planner Christy Turner. Town Attorney Allison Meade was also in attendance.

TENTATIVE AGENDA ADOPTION

Upon a motion by Ms. LaPlaca, seconded by Ms. Roseman, Council voted unanimously to approve the agenda as presented.

PUBLIC COMMENT

Diane Blanks of Boone spoke regarding the proposals for the Lovill House Inn, and noted that she felt the Planning Commission at its subsequent meeting skipped over some things pertaining to quality of life for those in the neighborhood. She noted that Green Street was in a Neighborhood Conservation District zoned R1 A, and pointed out that it was one of Boone's oldest neighborhoods. Ms. Blanks further indicated that the neighborhood was home to three properties which had third generation Boone residents living in them. She stated that neighborhood residents have had no issues to date with the bed and breakfast since the former owners ran a tight ship, but suggested that Council place a few restrictions on the rezoning for potential future owners. Ms. Blanks felt that Mr. Olsen's plans were vague, especially regarding trees being cut in the buffer zone around the property. She expressed concern that there could be undisclosed plans to clear out the trees and build a student apartment building on the property now or in the future. Ms. Blanks was also worried about the ambiguity as to events at the inn, and stated that she did not believe there to be room for the proposed increase in event guests from 50 to 75. She felt that Mr. Olsen had the best possible intentions, but was worried that he may grow tired of the inn in the future and sell it, along with the change in zoning and any conditions that went along with the property. Ms. Blanks indicated that residents wanted to see the tree buffer preserved as a condition of the rezoning, as well as a limit to the number of attendees to events. She stated that she personally would like to see a prohibition to the leasing of the boardinghouse rooms to undergraduate ASU students, though residents would not take issue with visiting professors or with graduate students renting the house.

ADOPTION OF ITEMS ON CONSENT AGENDA

Upon a motion by Mr. Furgiuele, seconded by Mayor Pro-Tem Ulmer, Council voted unanimously to approve the following items on the Consent Agenda:

1. Amendments to Town Code Chapter 40 - System Development Fees
2. Budget Amendments:
 1. Reencumbrances from FY 2019/2020 to FY 2020/2021
 - a. Granicus \$793.80
 - b. Decibullz \$2,835
 - c. Read's Uniforms \$3,875
 - d. Lawmen's \$3,091.69
 - e. Craig's Supply \$639.28
 - f. Lawmen's \$5,815.22
 - g. Cintas \$8,550
 - h. NAFECO \$16,348.86
 - i. G&C Supply Co., Inc. \$3,465
 2. (To) Capital Outlay - Vehicles (Police Department) \$91,067
Capital Outlay - Hardware (Communications) \$52,819

(From) Loan Proceeds \$205,924
Misc. Revenue \$102,962

(From) Sale of Surplus Property	\$1,057,132
Bonds Payable (Bid Deposits)	\$59,540

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EXHIBIT A**§ 50.113 SYSTEM DEVELOPMENT FEES.**

(A) (1) System development fees shall be charged with respect to new development to fund costs of capital improvements necessitated by and attributable to such new development, to recoup costs of existing facilities which serve such new development, or a combination of those costs. System development fees shall be charged consistent with the requirements of G. S. Ch. 162A, Art. 8, as such may be amended from time to time. Terms used in this section shall have the same meanings as set forth at G.S. Ch. 162A, Art. 8.

(2) For purposes of this section, NEW DEVELOPMENT includes any of the following occurring after August 23, 2017 (the date the town began the written analysis process required by G.S. § 162A-205) that increases the water and/or sewer capacity necessary to serve that development:

- (a) The subdivision of land;
- (b) The construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure which increases the number of service units; or
- (c) Any use or extension of the use of land which increases the number of service units.

(B) Beginning on the effective date of this section, system development fees shall apply to all new development except for fire line connections.

(C) System development fees shall not include and separate charges may be assessed for:

(1) A charge or fee to pay administrative, plan review, or inspection costs associated with permits required for development.

(2) Tap or hookup charges for the purpose of reimbursing the town for the actual costs of connecting the service unit to the system.

(3) Availability charges.

(4) Dedication of capital improvements onsite, adjacent, or ancillary to a development absent a written agreement providing credit or reimbursement to the developer pursuant to G.S. §§ 160A-320, 160A-499 or G.S. Ch. 160A, Art. 19, Part 3D as the same may be amended from time to time.

(5) Reimbursement to the town for its expenses in constructing or providing for water or sewer utility capital improvements adjacent or ancillary to the development if the owner or developer has agreed to be financially responsible for such expenses; however, such reimbursement shall be credited to any system development fee charged per section (J) below, as required per G.S. § 162-207(c).

(D) System development fees will not be charged on buildings or other improvements constructed to replace like buildings provided that the replacement will not result in any increased capacity requirements over that required to serve the replaced building. System development fees are transferable between locations on different parcels of property as long as the parcels are contiguous or separated only by a street or alley and part of a single or multi-phased project shown on an approved site plan at the time of issuance of a building permit.

(E) No system development fee shall be charged or assessed with respect to any new development for which a system development fee under this Article has been collected at the time of plat recordation involving the subdivision of land and the amount of capacity associated with that payment of the system development fee has not increased at the time of application for the building permit. If the amount of capacity is increased at the time of application for a building permit, then a system development fee may be charged for the difference in the amount of the increased capacity minus the system development fee previously paid under this section.

(E) (1) For new development involving the subdivision of land, the system development fee shall be collected at the later of the time of ~~plat recordation~~application for a building permit, or when water or sewer service is committed by the town.

(2) For all other new development, system development fees are due at the earlier of the time of application for connection of the individual unit of development to the service or facilities, or when water or sewer service is committed by the town.

(3) For purposes of this section, water and/or sewer service shall be deemed committed by the town at such time as the Public Works Department has approved the connection ~~and building permit(s) for the development are issued~~. Fees shall be assessed based on the schedule of fees in effect at the time the fees are collected.

(F) System development fees for connections for uses not listed in 15A NCAC 2T.0114 shall be established by the Town Manager after consultation with town staff based upon the considerations set forth at division (I)(2) below. System development fees established in this manner may be appealed to the Town Council.

(G) Additions, alterations to or replacements or change in use of existing buildings shall be required to pay a system development fee based on the rates applicable at the time of connection or at the time such addition, alteration, replacement or change in use is placed into service. When a change in use occurs, the new use will pay the difference calculated between the existing use and the proposed use.

(H) Buildings that contain more than one use shall have the system development fee calculated from the sum of each use in the building.

COUNCIL MATTERS

TOWN MANAGER UPDATE

Mr. Ward updated members on the following topics:

1. Covid-19 update: Mr. Ward stated that there were currently 117 active cases in Watauga County, with 48 of those associated with ASU. He announced that the vaccine clinic scheduled for this Saturday has been cancelled and rescheduled for next week.
2. Mr. Ward indicated that Sustainability Coordinator and Special Projects Manager George Santucci was working with the GIS Coordinator to create an inventory of Town-owned properties and facilities to attempt to monitor the total energy consumed by the Town on New River Light and Power, as well as Blue Ridge Electric. He added that so far, staff had also identified 169 acres of Town-owned woodlands which were capable of offsetting more than 400 tons of carbon dioxide per year. Mr. Ward noted that one of the big topics at the last Sustainability Committee meeting was the desire to expand electric vehicle chargers throughout Town.
3. Cultural Resources Update: Mr. Ward indicated that staff continued to hold concerts, jam sessions, and music lessons.
4. Mr. Ward announced that Republic Services had canceled garbage collection that was originally scheduled for Thursday, and rescheduled for tomorrow with a two hour delay due to severe weather.
5. CDBG-I - Deck Hill Water Storage Tank Replacement: Staff along with the project engineer and HCCOG are continuing to work through the site development and environmental review process.
6. Easements: Mr. Ward indicated that appraisals regarding the Highway 194 sidewalk easements were expected in by the end of March. Staff will also be reaching out to property owners to seek those easements for LED streetlight conversions.
7. Mr. Ward stated that Town lobbyists were able to secure a sizable amount of money from Volkswagen settlement funds to help fund AppalCART's first electric bus for use in the town. Mr. Ward indicated that there was still roughly \$23,000 designated in the Sustainability fund, and asked whether members supported the idea of contributing \$20,000 towards the installation of the charger system that would help power the bus at the AppalCART location. He added that the cost for the charger could be anywhere from 20-25,000 and suggested that the remainder of the amount needed could come from Watauga County or other revenue sources. It was the consensus of Council to move forward in this direction. Mr. Ward further noted that he and staff planned to apply for additional grant-funded electric car chargers, and to use additional Volkswagen settlement funds to expand the charger infrastructure.
8. Mr. Ward announced that he was working with staff to gather numbers for an upgraded website, and noted that interviews for the new communications position would begin within the next two weeks.

TOWN ATTORNEY UPDATE

At Mr. Furgiuele's request, Ms. Meade updated Council with respect to action taken by the NCDOT involving billboards. NCDOT was engaged in rule-making with respect to a statute adopted several years ago in which the state legislature authorized billboard companies to repair or reconstruct non-conforming billboards and prohibited local regulation of that process. NCDOT had proposed regulations providing that any action taken beyond repair and reconstruction was subject to local regulations and that "repair and reconstruction" did not include changing a billboard from static to digital or increasing the height or increasing the size of the billboard. She indicated that there was a delay in approval by the state in the Rules Commission in the face of strenuous objections by the industry, but that the Commission did ultimately approve the NCDOT regulations.

In regards to the issues surrounding Tuesday's appointment to Town Council, Ms. Meade stated that she had spent a fair amount of time looking at both the issue of the minimum and residency for qualifications for office. She added that in light of the uncertainty and the time that was spent on that discussion, it would for Council to consider charging her with coming back with a proposed change to the Town Code that specifically set forth the required qualifications for appointment. Mr. Furgiuele asked whether the standards for elected office were embodied within the North Carolina constitution. Ms. Meade answered that they were. Mr. Furgiuele asked whether there was not some risk if Council chose to deviate from those in terms of the age and the residency requirements that a court might find Council's enactment unconstitutional. Ms. Meade answered that Council would not be deviating from the Constitutional requirements but rather reiterating and clarifying those requirements in the ordinance she proposed. Mr. Hicks suggested a community poll be initiated the next time someone is to be appointed to Council to help inform Council's decision in future appointments. Mr. Ward was concerned with potential manipulation of the poll, as well as the cost associated with the poll. Ms. Meade noted that a Council might have reasons other than popular opinion to choose a person to fill a vacancy, such as a past experience and familiarity with the post. It was the consensus of Council for Ms. Meade to come back with a proposed amendment to the Town Code to clarify the qualifications for applicants for vacant Town Council seats and to set out the specific procedure to be followed when a vacancy was being filled.

BOARD LIAISON REPORT

Ms. Ulmer indicated that when the AppalCART board had last met, they had discussed electric buses and charging stations.

CONSIDERATION OF CASE HEARD AT THE JANUARY 25, 2021 PUBLIC HEARING

Case PL044401-120920 Lovill House Conditional District Zoning Map Amendment

Ms. Turner outlined the Planning Commission's recommendations on the case, along with their eight proposed conditions. Mr. Furgiuele asked whether the staff suggestions in red in the packet were captured in the Planning Commission's conditions. He also asked whether the micro hydroelectric plant could be done by right by the property owner. Ms. Turner responded that the staff suggestions in red were included in the Planning Commission's conditions. Ms. Shook clarified that depending on at what point the applicant triggered certain requirements, they would be required. For example in number eight, Ms. Shook explained that staff would require the applicant to bring the site into compliance with whatever it had triggered at that time. She further noted that staff had contacted the Army Corps of Engineers and NCDEQ and both had said for the micro hydro installation, that permitting was required and potentially, depending on if any structures were in the trout buffer, would require a variance from them. Ms. Meade suggested that the language could be strengthened to make it absolutely clear that the conditions and approval was not in any way intended to waive any requirement of the UDO and that all requirements of the UDO would have to be met, whatever those were, and that this approval would not create any exceptions or variances. Mr. Furgiuele read the following statement into the record:

"This has been a very difficult decision for me. I was and **am** concerned that a large portion of this parcel is unzoned, leaving the surrounding neighborhoods unprotected, but despite that, I cannot support this application and I'd like to explain why.

First and foremost, this property is subject to transitional zone analysis, which directs that particular types of applications, including this one, which propose uses and development within a certain distance from low density zoning districts, must provide a plan as to how the applicant will mitigate the predictable negative impacts of the development on the low density district, and not just a single property next to it.

The UDO itself provides in §6.02.02 - the land within a transitional zone may only be used pursuant to the

standards of that section.

§6.02.02b says that the purpose of the transitional zone is to create “**special protections for residents of protected districts from the potential adverse impacts of certain potentially incompatible nearby development, based upon the legislative finding that the general requirements of this ordinance have not been sufficient to protect the residents of such protected districts from the adverse consequences of such developments and that the variety of circumstances which may need to be ameliorated in the face of such development are not amenable to a ‘one size fits all approach.’**”

§Section 6.02.02f says that “in addition to the other requirements of the ordinance which pertain to the proposed development . . . The applicant **must** produce substantial competent and credible evidence demonstrating that the planned development will effectively and **to the greatest degree reasonably possible** mitigate the impacts of the proposed development upon the protected district, including but not limited to noise impacts, light impacts **and any** other predictable negative effect, including but not limited to negative traffic effects.

§Section 6.02.02g says that the applicant must tailor the mitigation measures to specifically address the characteristics of the particular location in relation to the protected district and **that only** if the applicant can demonstrate by **clear and convincing evidence** that the normal requirements of the ordinance are themselves sufficient to protect the district may the application be approved without additional measures incorporated into the site specific plan.

This is a heavy burden and I do not believe the applicant has met it.

In particular the applicant said that the noise impacts would be mitigated by the trees which surround the development on the subject property and the adjacent property, but then refused to accept as a condition the preservation of those same trees, his representative rejecting on his behalf this proposed condition with what I would characterize as a belligerent tone.

The applicant argued that the bowl shape of the land around the development mitigated potential noise impacts, but anyone who has attended an outdoor performance in a bowl-shaped amphitheater knows that a bowl **projects** the sound outward rather than dampening it.

Neighbors pointed out that the intersection of Pinnacle Drive and Green Street is an unusually dangerous one because of its strange configuration, and I agree. But the applicant offered nothing to address that concern, nor to adequately address traffic and parking concerns raised by neighbors, except for signs on the property and directions given to guests, basically just saying we should trust him to be considerate of the neighborhood.

The applicant’s written report, addressing transitional zone requirements cited the positive behavior of the current owners vis’ a vis’ the neighborhood as showing there would be no problem with its proposal. I agree that the present owners of the property have done a remarkable job in showing respect and consideration for their neighbors, and for that matter they have done an admirable job maintaining this property and making it a jewel in Boone, but I do not believe that meets the burden for the new application. In fact, I actually think that this assertion is an argument for leaving things as they are, as they have worked well.

The applicant here said that he had been working for I believe about five months on this proposal

Despite that his verbal presentation, which may be the longest one I have witnessed, significantly diverged from the written application. I found the applicant’s answers generally evasive and unsatisfying, and as I said at the end of the public hearing, I wasn’t even sure by that point what was being proposed and what the property will actually be used for. I found it disconcerting that after all the preliminary work with his consultants to prepare his proposal, that this departure occurred. Eventually he said that we should consider the written application

the one for which approval was being pursued rather than his verbal presentation. That was less than satisfying.

The application dangled the proposed micro-hydro-electric plant as a selling point for the development, but as Jane has confirmed, this might not even be possible, and the fact that when I asked about permitting of that, the applicant pooh-poohed my concern by saying that he had installed them elsewhere, was unsatisfactory to me, and I thought it showed a lack of investigation and concern for stream protection requirements.

Right now the property is authorized to operate as a bed and breakfast and per the town attorney, authorized to sponsor "events" which relate to or are accessory to the operation of the bed and breakfast, such as small weddings.

What will be authorized by the conditional district zoning, if approved, will be the operation of the barn and/or original house as not only a bed and breakfast, but as a boarding house. Events which are **unrelated** to the operation of the bed and breakfast will be allowed. Although the applicant identified the type of boarders he wanted to recruit, such as visiting professors and ministers, I found that unconvincing and in any event not binding in any way on the applicant or any successors in interest if this is approved.

At the public hearing the applicant agreed to limit the number of people allowed to attend its events on the property to 50, but at the planning commission meeting he retracted that before agreeing to accept a limit to 75 participants. That compares to the present owners' practice of limiting attendance to 25.

I believe that is too many people as when it came to parking and traffic for the events, he again essentially asked that we simply trust him and those who will actually be operating the facility to be respectful of the neighbors and thoughtful in dealing with these matters. He said he would arrange for satellite parking, but provided no real detail on how that would happen.

Ultimately, I believe this is another issue of neighborhood protection, a keystone of our comprehensive plan, and I do not believe the applicant has done enough to satisfy the requirements of the UDO or assure us that if approved, the protected adjacent neighborhood will be protected. So I will vote against this proposal."

Ms. Roseman was concerned about the difference between the definition of a boardinghouse versus a bed and breakfast and the activities which were allowed to take place in each. Ms. Meade clarified that all requirements in the UDO would be imposed if the request were approved, and noted that the conditions were separate in that they imposed greater conditions than the UDO in some instances. She indicated that the applicant had requested three different principal uses, which was permitted under the UDO and that many developments had done so in the past, such as shopping malls with restaurants located within them. Ms. Turner noted that the applicant was requesting a bed and breakfast category two use. Ms. Shook clarified that the applicant had proposed to construct another structure in the same footprint as the existing barn or to renovate the existing barn. She believed that the applicant was asking for flexibility in terms of whether the structure would be used as a boarding house, but that they were asking to have 11 rooms for either use, but that no more than nine could be used for the boarding house at any given time.

Ms. Turner further clarified that there would be no limitation to the floor area according to UDO section 15.20.02. That's just for bed and breakfast category one for the 50% limitation. Mr. Hicks believed parking and the micro hydro issues were being overblown, since he believed micro hydro to be a very good option, not disruptive and minimally invasive. He disagreed with the ageism that often arose where students were often assumed to be a problem, which was not always the case. Ms. LaPlaca felt that this was a great project and thanked Mr. Olsen for bringing it forward. Mr. Furguele noted that his concern was not about the parking for the people that were staying at a bed and breakfast, or necessarily even at a boarding house, but that his issue

was the devastating impact of drive through traffic associated with events, or the parking that would take place on the streets since there was plainly not enough parking on the premises for the proposed number of guests if each guest drove separately. He added that if this property were not in a transitional zone he may not have any concerns, but believed there to be a heightened responsibility in this case. Mr. Furgiuele added that the neighbors who did speak at the public hearing, told of how threatened their neighborhood was by the developments on either end of the neighborhood, and he believed it to be his own personal responsibility to the extent possible to try to protect the threatened neighborhoods from inconsistent development. He added that he was very disturbed by the fact that trees were used in the narrative report over and over again, as a mitigation factor for transitional zones, but the applicant refused to agree to protect them. Mr. Furgiuele stated that he agreed with what people had said about the possible merits of some aspects of this project, but as presented, believed it fell very short of what was required by the UDO. Ms. Ulmer was concerned with the conditions not being written clearly enough. Mr. Hicks asked whether conditions regarding trees could be applied. Ms. Meade responded that Council was free to reopen negotiations with the applicant to see if they would reconsider that condition, but that thus far, the applicant had not agreed to do so. Mr. Hicks proposed that as an option, along with the limitations on the event size. He also stated that he never witnessed people coming in and parking far away on the side of the street on Green Street when he lived in the area. Mr. Furgiuele felt that if there had not been a problem with people parking along Green Street, it was because the current owners at the Lovill House had taken upon themselves to limit dramatically the size of events. He added that he went along with planning staff, and staff from public works, to tour that neighborhood, to advise them about the concept of neighborhood conservation districts and that planning staff had to follow up because there were a lot of cars parked all along the streets through that neighborhood conservation district that were associated with some of the rental properties there already. Mr. Furgiuele noted that he had nothing against students and that most of his neighbors, who were very good, were students. Mr. Furgiuele then made a motion that the proposed amendment to the town zoning map is not consistent with the town's comprehensive plan and other adopted plans of the town that are applicable, because it does not comply with section 2.3.3 A of the of the comprehensive plan that the protection and rehabilitation of viable neighborhoods shall be encouraged to ensure their continued existence as a major housing source and as a reflection of the area's image as an attractive highly livable community. And 2.3.3 C proposed residential development which would expose residents to harmful effects of incompatible development or to environmental hazards will be prohibited. Ms. Roseman seconded the motion. Mr. Furgiuele restated his motion to make sure all members understood.

VOTE: Aye: Furgiuele, Roseman, Ulmer

Nay: Hicks, LaPlaca

Mr. Furgiuele then made a second motion that the Town Council denies the proposed amendment of the Town's zoning map and believes that denial is reasonable and in the public interest, because the applicant has not satisfactorily met the burden that is required for transitional development in the UDO because adequate detail has not been provided to protect one of the Town's preserved and protected neighborhoods through this application. Without a second, the motion failed. Ms. LaPlaca made a motion that the request is consistent with the Town's plan and that it did warrant approval. Ms. LaPlaca clarified that her motions should include the conditions put forth by the Planning Commission. She added that she thought the applicant did a great job and was embarrassed that Council was running him through the wringer. Mr. Hicks seconded the motion. Mr. Furgiuele was concerned whether the motion was permitted since his prior motion to the opposite effect had been adopted, and objected. Ms. Meade stated that Mr. Furgiuele was correct and stated that if the application was approved, a third vote needed to be taken to amend the plans to the extent of the inconsistency and the motion would need to be restated. Ms. LaPlaca then moved that the application should be approved because it was a good plan. Ms. Meade restated the motion at the request of Ms. LaPlaca: the Town Council approves the proposed amendment to the Town's zoning map and believes approval is reasonable and in the public interest because it fulfills the requirements of the UDO, is consistent with the Town's plans, is a good project, respects

the property, the property owner is willing to abide by the conditions that have been set, and because the Planning Commission recommended approval. Mr. Hicks seconded the motion. Mr. Furgiuele asked whether the Comprehensive Plan no longer protected neighborhoods, and whether the amendment then became a negation of those two elements of a comprehensive plan. Ms. Meade answered that it was implied that the plan was considered amended to the extent that there were any inconsistency. She further noted that with the changes in 160D to zoning plans, the consistency statements previously required were no longer required. Ms. LaPlaca clarified that she intended to include the conditions in her most recent motion.

VOTE: Aye: Ulmer, LaPlaca, Hicks
Nay: Roseman, Furgiuele

Mayor Pro-Tem Ulmer then asked what the Council had been voting on. Mr. Furgiuele noted that he was as embarrassed by this vote as much as Ms. LaPlaca was embarrassed by the first because according to her Council gave somebody who was from out of town a hard time by asking questions to protect Town neighborhoods. He believed this to be a slap in the face of neighborhood protection, and noted that any member who ran for office on the platform of protecting neighborhoods should be ashamed. Mr. Furgiuele then made a motion to reconsider since Mayor Pro-Tem expressed confusion on the vote taken. As a point of order, Ms. Meade said any such motion to reconsider would have to be made by someone who had voted for the motion, and that Mr. Furgiuele was ineligible to make this motion. Mayor Pro-Tem then made the motion to reconsider, and Mr. Furgiuele seconded the motion.

VOTE: Aye: Furgiuele, Roseman, Hicks, Ulmer
Nay: LaPlaca

Ms. LaPlaca made a motion that the request was in the best interest of the Town because it was approved by the Planning Commission, the applicant has secured extra parking, and has agreed to do what Council has asked. Mayor Pro-Tem Ulmer expressed confusion about the restrictions, which were then explained to her. Mr. Furgiuele stated that the restrictions were not a part of Ms. LaPlaca's motion, and that if approved, the project would be approved without the Planning Commissions recommended restrictions. At the suggestion of Ms. Meade, Ms. LaPlaca restated her motion to incorporate the conditions included by the Planning Commission, and the ones that were discussed at the night's meeting, as well as a condition that the applicant would need to sign to approve the conditions. Mr. Furgiuele called a point of order and asked whether a member could add conditions to a motion without specifying what those were and without the agreement of the applicant. Ms. LaPlaca then said that the motions were complex and that Mr. Furgiuele had the advantage in making such motions of having served as the town attorney. She asked for a break so that she could work with the Town attorney to craft an appropriate motion. Mayor Brantz called for ten-minute break at 8:38 p.m. Council reconvened at 8:49 p.m. Upon a motion by Ms. LaPlaca, seconded by Mr. Hicks, Council voted to allow public comment to be reopened and that speakers be limited to three minutes each. Mr. Furgiuele was concerned with reopening public comment on the fly since the public hearing was already advertised and held before the Planning Commission. He felt it was unfair to reopn the public hearing without giving advance notice to others who might want to be heard on the case and noted that the UDO disfavored reopening public hearings after the joint Planning Commission/Town Council public hearing.

VOTE: Aye: LaPlaca, Hicks, Ulmer
Nay: Furgiuele, Roseman

Ann Peecook, former owner of the Lovill House, stated that she and her husband had great passion for the bed

and breakfast and that in meetings held with Mr. Olsen, she and her husband believed that he also had the passion. She stated that Mr. Olsen had already discussed tree protections with them and did not believe he had any interest in destroying them. Ms. Peacock believed that Mr. Olsen's intentions were genuine and asked that Council give him a chance. Ms. Blanks asked what kind of events would be permitted if the project were approved. Ms. Turner indicated that according to the UDO the facility would provide space for meetings and gatherings such as reunions, weddings, conventions, anniversaries, or other similar ceremonies, which take place between 6am and 10pm.

Mr. Olsen spoke and noted that one of the things he liked about the property were the trees, and noted that his hesitation with the requirement to accept limitations on property that was in the county. He indicated that he intended to keep the property as nice as the Peacocks have, and believed that by denying the ability for the property use in much like the same way they have, Council would be dooming them to not be able to sell it at all, except for single family usage. Ms. LaPlaca then made a motion to approve the proposed amendment and believes that approval is reasonable and in the public interest because it takes into consideration public health and safety, transportation issues, types of events, the numbers of people, the character of the area, the age of the property, the relationship of uses, the different types of uses that Mr. Olsen planned to use for the property, as well as the approval of the conditions that were put forth by the Planning Commission, and it is balanced both benefits and detriments; The motion is conditioned on the eight conditions that were set forth by the Planning Commission and in the packet on page 49; And the applicants written requests for the eight conditions; And tree protections. Ms. Meade suggested clarification on the written approval aspect of Ms. LaPlaca's motion. Ms. LaPlaca clarified that the applicants should provide written approval of the eight conditions. Mr. Olsen expressed concern that at some point one of the trees could fall on the structures or create rot in the wood of the structure. He indicated that he intended to continue the tree canopy that had existed and planned to continue the tree treatments had cost several thousand dollars a year to keep the hemlocks in place, but that he did not want to defer to the Town any time that he needed to remove a tree branch that had fallen on the roof. Mr. Olsen stated that for that reason, he was hesitant to agree to additional restrictions beyond the five conditions, and felt that they should be sufficient to address any concerns. Ms. Shook indicated that a landscaping buffer was required along all property lines and the maintenance of existing trees would be part of that. In response to a question raised by Mr. Furguele, Ms. Shook stated that regarding the transitional zones, the UDO indicated that only if an applicant could demonstrate by clear and convincing evidence that the normal requirements of the ordinance were themselves sufficient to protect the protected district, may the application be approved without additional measures being incorporated into the site specific development plan. She further indicated that a majority of the parcel would be subject to view shed requirements, but the rest of the parcel would not be subject to the view shed requirements. Mr. Furguele was logged out of the meeting at 9:16 p.m. He logged back in at 9:17 p.m. After brief discussion regarding the zoning of the property, Ms. Meade restated Ms. LaPlaca's motion at Ms. LaPlaca's request. Mr. Hicks seconded the motion, and everyone expressed understanding of the motion.

VOTE: Aye: Hicks, LaPlaca, Ulmer
 Nay: Furguele, Roseman

FOLLOW-UP REPORT AS TO POSSIBLE ANTI-DISCRIMINATION ORDINANCE

Ms. Meade explained that this matter was arising because a state law had expired, which previously had prohibited municipalities from regulating private employment discrimination and public accommodations. As a result, she explained that there had been efforts across the state to have cities consider non-discrimination ordinances. Ms. Meade indicated that the Town already had full equal employment opportunities in place that covered both LGBTQ types of concerns, as well as race, religion, national origin and disability concerns and did not believe there was a need for improvement in that area of the Town's own employment policy. She noted that the Town's policies with regard to contracting with vendors likely could be strengthened, and that the Town could consider an aspirational-type policy like the examples from Raleigh and Mecklenburg County included in the packet. Ms. Meade also addressed the possibility of Council adopting ordinances to prohibit discrimination in private employment and public accommodations. She recommended that Council engage in a fact-

finding/public hearing effort to gain information about discrimination actually being faced by community members and what action might be needed to address those issues. Mr. Furgiuele stated that he was generally satisfied with the personnel policy, but that he would like to incorporate some of the same protections into the Town's contractor and vendor policies. He further noted that he preferred the Raleigh ordinance example as well, although it was largely symbolic, and would like to immediately go forward and ask Ms. Meade to prepare an ordinance which essentially mimicked what Raleigh had done, but also including the broad language that was already in the Town's personnel policy. Mr. Hicks suggested that a committee should be created to craft an appropriate ordinance that would prohibit discrimination throughout the town. Mr. Furgiuele suggested that once the draft language had been presented, Council should invite public input to ascertain the need for such an ordinance and to support the Town's use of the police power if one were to be adopted. He added that he was not necessarily against having a committee, but believed before a committee was formed, he believed a public hearing should be held. Mr. Furgiuele noted that it would be important to allow participants to protect their identities if they wished. Mr. Hicks and Mayor Pro-Tem Ulmer agreed, with Mayor Pro-Tem Ulmer also suggesting a poll be distributed asking citizens to describe types of discrimination that had witnessed. Mr. Furgiuele suggested that a questionnaire be designed to target concrete examples of discrimination without having participants divulge their life stories. Mr. Hicks stated that he was in favor of a special committee similar to the water committee that would be called on only when needed to address a specific issue. He noted that he preferred the other ordinance offered since it had more teeth. Mr. Furgiuele clarified that he believed Council should move forward with the low hanging fruit first by adopting the language in the Raleigh ordinance initially. Mr. Furgiuele then made a motion that Council expand the Town's current contractual language to reflect what was shown in the personnel policy, and that if Ms. Meade believed that there were areas that were not adequately addressed through the personnel policy that also be expanded for consideration at the next Council meeting; and that Council also task Ms. Meade with presenting Council at the next meeting an ordinance in the same format as what Raleigh had adopted. Mr. Hicks seconded the motion, which carried unanimously. Mr. Furgiuele made a second motion that Mr. Ward present Council with a proposal at its next meeting for mechanisms to elicit public input along the lines that had been discussed, and to reach out to members individually so that they could give individual feedback as to what mechanisms for public input as they favored. Ms. Roseman offered a friendly amendment that the poll go out to not only residences, but also to those who work within the Town of Boone. Mr. Furgiuele accepted this amendment. Mr. Hicks seconded the motion which carried unanimously.

REQUEST FOR APPROVAL OF FAIR HOUSING PLAN & EQUAL HOUSING OPPORTUNITY RESOLUTION

Mr. Miller presented a Fair Housing Plan and Equal Housing Opportunity Resolution both of which were required as part of the CDBG funding for the 2 million gallon water tank on Deck Hill. Upon a motion by Mr. Furgiuele, seconded by Ms. Ulmer, Council voted unanimously to approve the resolution as submitted.

REQUEST TO RELEASE FUNDING FOR PURCHASE OF ADDITIONAL SALT

Mr. Miller presented a request for additional funds for the purchase of additional salt, and stated that currently, this year, the Town had consumed 1,050 tons of salt with 450 tons remaining. Mr. Hicks asked for an update on salt alternatives. Mr. Moody stated that beet juice was used primarily as a precautionary tool and was mixed with salt brine. Upon a motion by Ms. LaPlaca, seconded by Mayor Pro-Tem Ulmer, the request was approved unanimously.

AMENDMENTS TO TOWN CODE CHAPTER 50 - WATER/SEWER EXTENSIONS

Ms. Meade presented proposed amendments to Town Code Chapter 50-Water/Sewer Extensions which arose when a property owner in the former ETJ asked to be allowed to connect to public sewer since many of his neighbors were already connected. She noted a reference and choice as to what district they were treated as

being zoned, because depending on how they were zoned requirements could be different. Ms. Shook suggested that RA zoned properties be added to the text. Mr. Furgiuele agreed, but was unsure about the allowance for connections to an accessory dwelling text unless there was a clear purpose for doing so. Ms. Meade responded that she believed it to be fairly common for Planning to receive plans for a single family home and also accessory dwellings such a detached garage. She believed that striking this text would not change the use at all, so it was the consensus of Council to do so. Mr. Furgiuele then made a motion to approve the text as amended. Mayor Pro-Tem Ulmer seconded the motion which carried unanimously.

EXHIBIT A

Amendments to Section 50.290 of the Boone Code of Ordinances

Note: additions are underlined in blue, deletions struck through ~~in red~~, and moved text is shown in green.

§ 50.290 HARDSHIP CONNECTIONS OUTSIDE OF THE TOWN LIMITS FOR CERTAIN SINGLE-FAMILY AND DUPLEX RESIDENTIAL DWELLINGS AND UNDEVELOPED LOTS.

(A) No Obligation to Provide or Continue to Provide Service

~~(A) Hardship Connections Outside Of The Town Limits For Single Family And Duplex Residential Dwellings Existing As Of January 1, 2018.~~

- (1) ~~—(A) (1)—~~ The town has no responsibility to provide water or sewer service to property located outside the corporate limits, nor any continuing obligation to provide water or sewer service after having voluntarily provided such service. Notwithstanding any other provision of this chapter, any grant of water or sewer service to a property outside the town limits creates no property rights for the property owner or such owner's assignees or transferees, and may be revoked at any time by the town for any or no reason.
- (2) ~~—(2)—~~ The town may allow new connections for hardship cases outside the town limits as follows in this section.

(B) Hardship Connections Outside Of The Town Limits For Single-Family And Duplex Residential Dwellings Existing As Of January 1, 2018.

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

- (1) ~~—(1)—~~ As to a request for a water connection, when the applicant has been approved for a hardship sewer connection per division (B)(2) below, or when the applicant has shown a hardship as follows:
 - a. ~~—(a)—~~ The applicant has established, through clear and convincing evidence, the current contamination of a residential well by toxins in amounts determined by the North Carolina Department of Natural Resources or the United States Environmental Protection Agency as harmful to human life or health; or
 - b. ~~—(b)—~~ The applicant has established, through clear and convincing evidence, that an existing well cannot supply an adequate amount of water; and that:
 - i. ~~—1.—~~ The lack of adequate water could not have been reasonably predicted and was not reasonably foreseeable at the time the well was installed or development of the property served was last undertaken;

- ii. ~~2.~~ No reasonable alternative exists for the provision of the water to the property, including that no alternative well can be established that will adequately provide water; and
 - iii. ~~3.~~ The amount of water requested is limited to that needed for the current use of the property served.
- (2) ~~(2)~~ As to a request for a sewer connection, when the applicant has been approved for a water connection hardship per division (B)(1) above, or when the applicant has shown a hardship by establishing through clear and convincing evidence that:
- a. ~~(a)~~ An existing septic or other wastewater system has or will soon fail;
 - b. ~~(b)~~ Due to lot size or other feature of the property outside the control of the applicant, not caused by the applicant and unknown to the applicant at the time of the acquisition of the property, the system cannot be repaired or an alternative wastewater system installed (e.g., if the unsuitable lot size has been caused by the applicant or an entity related to the applicant having subdivided the property originally served by the septic system, the applicant shall not be entitled to claim a connection hardship);
 - c. ~~(c)~~ The lack of an adequate septic system or other wastewater system could not have been reasonably predicted and was not reasonably foreseeable at the time the current wastewater system was installed or development of the property served was last undertaken;
 - d. ~~(d)~~ No other reasonable alternative exists for the provision of a private wastewater system to the property; and
 - e. ~~(e)~~ No change in use of the property is planned or anticipated.

(C) ~~(3)~~ Hardship Connections for Vacant Lots and Existing Single-Family Dwellings Located in Single-Family Neighborhoods Previously Connected to Town Service

A vacant (undeveloped) lot or single-family dwelling located outside the Town limits may be approved for connection to an existing water or sewer main in the following circumstances:

- (1) The vacant lot or dwelling is located in a neighborhood of at least ten (10) single-family lots and as of January 1, 2018 (i) at least of one-half of the lots in the neighborhood are already developed with single-family dwellings and (ii) at least one-half of existing dwellings in the neighborhood are already connected to an existing water or sewer main;
- (2) The vacant lot or dwelling is subject to deed restrictions and/or conditions, covenants and restrictions as of title record that limit the use of the lot to one single-family home.
- (3) The property owner voluntarily agrees to develop the vacant lot in compliance with the Town's current development regulations relating to (i) soil erosion and sediment control, (ii) stormwater control, (iii) viewshed protection, and (iv) steep slope development. For these purposes, a lot will be deemed subject to regulations just as it would be if it was within the corporate limits of the town and zoned in the R-A district. The Director of the Town's Planning Department shall make all determinations with respect to the applicability and requirements of the town's development regulations, in the Director's sole discretion, and no appeal shall lie from any such determination.

(4) As used in this subsection (C), the term "neighborhood" shall mean a defined area of lots laid out on a recorded plat and sharing the same access road(s).

(D) Conditions of Approval

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

(1) ~~—(a)—~~ The property owner shall agree to the conditions set forth in this subsection (D) and any other conditions provided in this section, in writing in whatever form and at whatever date such agreement is requested by the Town. The agreement may be recorded as of record with the County Register of Deeds as the town deems advisable in its sole discretion.

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

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

a) ~~—1. If—~~ The property ~~is currently annexable, the~~ owner shall petition for annexation; if requested to do so by town staff. A complete petition shall be filed no more than 90 days after ~~the~~ hardship connection has been approved or, in the case of a vacant lot, prior to approval of the connection.

b) ~~—2. If in the event the property is town does not currently subject to request immediate filing of a petition for annexation,~~ the property owner shall execute such agreement to annex in the future as the town may require within 30 days of being approved for service or at such later time as the town may require or request.

c) ~~—(e)—~~ Whether or not an agreement to annex such as is contemplated in the immediately foregoing paragraph is executed, the property owner agrees to petition for annexation within 30 days of receiving a written request by the Town that the owner make such petition. The Town may make such a request at any time of its choosing, in its sole discretion, and may repeat such a request however many times it sees fit; provided, however, that a property owner shall not be responsible to pay more than one annexation petition fee.

(3)(4) Any connection is granted only as to the ~~dwelling~~ structures existing on the property as of January 1, 2018. In the event of a substantial change in a property that has not been annexed the date the connection is approved or, in the case of a vacant lot, for one single family home. Following the making of a connection, service automatically shall be terminated upon 90 days advance written notice; provided, that any such termination shall be stayed during the pendency of an appeal of the termination to the Town Council. In the event a substantial change is planned for or made to the property. For purposes of this provision, ~~SUBSTANTIAL CHANGE~~ "substantial change" shall mean any remodeling, redevelopment, change of use or other modification resulting in:

- a) ~~1.~~ An increase of more than 500 square feet of the footprint of the structure(s) on the property;
- b) ~~2.~~ An increase of more than 50% of the gross floor area of the structure(s) on the property; or
- c) ~~3.~~ A change in the use or occupancy of the dwelling resulting in a materially different or more intense use (e.g., from single-family to duplex, multi-family or commercial).

~~(4)(5)~~ ~~(d)~~ The owner shall sign a statement affirming the owner's understanding and agreement that the owner has no right to service, that the town is providing the service without any commitment to maintain the service in the future, and that the town may terminate service at any time should the owner fail to abide by any of the conditions set forth in this ~~division (B)(3)~~ section 290 or for any other reason considered good and sufficient by the Town Council in its sole discretion.

~~(6)~~ ~~(4)~~ The conditions and restrictions set forth in this section 290 and any additional covenants, conditions and restrictions set forth in any agreement between the owner and the Town regarding a water or sewer connection approved under this section run with the real property at issue, and are binding on the owner and the owner's successors and assigns and on all those claiming an interest in the real property by, through, or under such owner, in perpetuity.

(E) Procedures

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

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

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

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

- (4) (~~Ord. passed 6-21-2011; Ord. passed 2017; Ord. passed --; Ord. passed --; Ord. passed 1-15-2019~~)

REVIEW OF UPDATED POLICE DEPARTMENT PROPERTY APPRAISAL

Mr. Ward presented an updated appraisal for the surplus property located at 1500 Blowing Rock Road and asked for direction involving adjusting the listing price on the property. He noted concerns involving the next agenda item that took progress on the municipal complex from the conceptual design of the property to a more schematic design, but not all the way to construction documents. Mr. Ward noted that his biggest concern remained listing properties without having a location to move to. Mr. Furgiuele expressed concern at the drop in price between the two appraisals. He was also concerned that if the selling price was set too low, and the Town entered into a leaseback agreement, then the property may have essentially been given away. Mr. Furgiuele suggested that Council stick with the price listed with the hopes that the economy would improve by the end of August. Mr. Milner responded that there were differences between the site characteristics in the comparison properties included in the appraisal in that the 1500 Blowing Rock Road property had FEMA flood hazard characteristics, as well as ordinance and redevelopment concerns. He recommended a reduction in price to 3.3 million. Mr. Furgiuele asked whether the possibility that the property might be withdrawn from the market would create an incentive that would help market the property. Mr. Milner answered that he did not think it would, and believed the market was more motivated by seeing a more reasonable list price. In response to a question from Mayor Pro-Tem Ulmer, Mr. Milner stated that any price reduction would help in the marketability of the subject property. Mr. Furgiuele suggested that the sale price be set at 4.5 million and that closing be delayed as far as possible, potentially a year, to reduce the payback. He then made a motion to drop the listing price to 4.5 million and that closing would occur one year after contracts were signed, and that a leaseback be included. Ms. Roseman seconded the motion which carried unanimously. Mr. Milner asked whether Ms. Meade saw any legal issues with the delay on closing. Ms. Meade did not see any issue with the delay, in that she believed every aspect of the matter was negotiable.

REVIEW OF SCHEMATIC PLAN PROPOSAL FOR TOWN OF BOONE MUNICIPAL COMPLEX AT THE BOLICK FARM

Jason Bertoncino with WithersRavenel presented a schematic review plan for the Town of Boone Municipal Complex. A copy of the plan may be viewed at http://boonenc.iqm2.com/Citizens/Detail_Meeting.aspx?ID=2327. Mr. Ward noted that staff would be moving forward with partners to reforest the property and to potentially connect it to the Greenway system. Mr. Furgiuele asked that as the plan moved forward that attention be paid to the appearance of the property because people would be going down the river on rafts in an environmentally sensitive area. Mr. Bertoncino assured Council that the aesthetics of the building would be considered. Upon a motion by Mr. Furgiuele, seconded by Ms. LaPlaca, Council voted unanimously to approve the plan as presented.

ADJOURNMENT

Upon a motion by Ms. LaPlaca, seconded by Ms. Roseman, Council voted unanimously to adjourn the meeting at 11:05 p.m.

Nicole Harmon, Town Clerk

Rennie Brantz, Mayor