

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
FEBRUARY 19, 2013**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Tuesday, February 19, 2013, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Jamie Leigh, Lynne Mason, Rennie Brantz, Andy Ball, and Allan Scherlen. Town Attorney Sam Furgieuele was also present. Staff members present were Town Manager Greg Young, Town Clerk Kimberly Brown, Finance Director Amy Davis, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Public Utilities Director Rick Miller, Public Works Superintendent Eric Gustaveson, Planning Director Bill Bailey, Human Resources Director Peri Moretz, Cultural Resources Director Pilar Fotta, Planner Jane Shook, and Urban Design Specialist Brian Johnson.

ANNOUNCEMENTS

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

Police Chief Dana Crawford presented Detective David Osborne with the North Carolina Department of Justice Award. Chief Crawford stated that this prestigious award is designed to recognize candidates who have completed appropriate training in order to better prepare themselves for the rigors and challenges of law enforcement criminal investigations. He further explained that this training consists of a minimum of 500 hours of criminal investigations training in the areas of forensic science, death investigation, sexual assaults, fraud, property crimes, burglary, and robbery.

Mayor Clawson announced the recipients of certificates of appreciation for service on the Boone Area Planning Commission: Bunk Spann and Jay Vincent.

TENTATIVE AGENDA ADOPTION

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

1. Addition of Item 6.T. – Approval of Budget Amendments.
2. Addition of Item 6.U. – Consideration of Draft of Downtown Master Tree Plan.
3. Addition of Item 6.V. – Adoption of Resolution – Support of Action to Reduce Gun Violence.
4. Addition of Item 6.W. – Approval of Lease – American Legion for Junaluska Park.

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

VOTE: Aye – All
 Nay – None

CONSENT AGENDA ADOPTION

Minutes: January 15/17, 2013– Regular Meeting.

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to adopt the consent agenda.

VOTE: Aye – All
 Nay – None

PUBLIC COMMENT

Liz Riddick read into record her request for the Council to not pass the proposed supplementary standards. **(Copy of comments on file at Boone Town Hall.)**

Anne Marie Yates voiced her concern about the proposed recommendations that it will create a student housing shortage forcing students into single-family neighborhoods. She urged the Council to wait until the affordable housing study is completed.

Jon Tate, owner of Lot Management Solutions, voiced his concern that problems in the commercial lots will also affect residential lots. He also stated his concern with the 10 ft. setback from road for signage as he feels that this is virtually impossible in a couple of the lots. Additionally, he asked the Council to consider a 15-minute response time. Mr. Tate indicated that cars used by his company cannot have window tinting that is more than the factory tinting.

PRESENTATION OF FY2011/2012 AUDIT

Mr. Billy Combs of Combs, Tennant and Carpenter, P.C. presented audit report for fiscal year 2011/2012. He stated that the town is in good financial condition with a healthy fund balance. **(Copy permanently on file in the Finance Department.)**

CONSIDERATION OF CODE AMENDMENT – CHAPTER 73: TOWING

Council Member Mason proposed the following recommendation for changes to Chapter 73 of the Town Code based upon previous discussion of the Council:

1. Keep (A)(1)(a)(i) regarding sign locations.
2. Eliminate the signage at individual spaces (A)(1)(a)(ii).
3. Keep (A)(1)(a)(iii).
4. Modify (A)(1)(a)(iv) to include alternative suggestion, but require 2 signs at each entrance within 10 feet of entrance and require the sign to either list every business or reference a directory for the premise (ex. New Market Shopping Center.)
5. In addition, require that signage be color coded: green border for public parking and blue border with red text for private lots.

Lengthy discussion ensued including a recommendation to extend the response time to 15 minutes, and no multiple boots per vehicle. Council also agreed to not address window-tinting since it has no control over factory-tinting of vehicles. After discussion concluded, Council Member Brantz moved to adopt the amendment to Chapter 73 of the UDO, to reflect the discussion of the council within the document, to direct the town attorney to work with staff regarding necessary changes to the UDO regarding signage for this issue and with an effective date of April 1, 2013. Council Member Ball seconded the motion.

VOTE: Aye – All
 Nay - None

REQUEST MODIFICATION OF APRIL 16, 2013 MEETING DATE

Council Member Mason requested modification of the April 16, 2013 meeting so that she might be able to attend a special performance by Garrison Keillor being presented by the ASU Performing Arts Series. Council Member Scherlen voiced concern about setting precedents about missing meetings for such reasons. Council Member Ball stated he would like to explore

the possibility of going back to a one-night meeting a month. Council Member Mason moved to change the April 16, 2013 regular meeting to begin at 5:30 p.m. and to dismiss by 7:30 p.m. Council Member Brantz seconded the motion.

VOTE: Aye – 2 (Mason, Brantz)
 Nay – 3 (Scherlen, Leigh, Ball)

The motion fails.

SCHEDULE SPECIAL MEETING – ANNUAL PLANNING RETREAT

It was the consensus of the Council to schedule the Planning Retreat sometime in September 2013. Council directed the clerk to place this matter on the June 2013 meeting agenda.

SCHEDULE SPECIAL MEETING – WATAUGA INTERGOVERNMENTAL RETREAT

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to schedule a meeting for the Watauga Intergovernmental Retreat on Monday, March 4, 2013, from 5-7 p.m.

VOTE: Aye – 4 (Scherlen, Mason, Ball, Brantz)
 Nay – 1 (Leigh)

DISCUSSION OF BUDGET RETREAT MEETINGS – RESCHEDULING OF BUDGET RETREAT AND SCHEDULING OF FOLLOW-UP MEETING

Council Member Leigh requested the rescheduling of the Budget Retreat meeting scheduled for March 1, 2013, due to a business conflict. Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to schedule the Budget Retreat for Monday, March 11, 2013, from 8:30 a.m. until 4:30 p.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE: Aye – All
 Nay – None

CONSIDERATION OF UDO TEXT AND MAP AMENDMENTS

- **Case 20120726 Watauga Medical Center General Use Map Amendment** – Watauga Medical Center has filed a zoning map amendment petition for General Use District to rezone 140, 176, and 180 Mary Street, approximately .85 acres, from R-2, Town-Family Residential to O/I, Office/Institutional.

Planner Jane Shook presented the case. She stated that the Planning Commission unanimously approved recommendation of the amendment.

Vote#1

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved that proposed amendment to the Town's zoning map is consistent with the Town's Comprehensive plan and other applicable adopted plans of the Town which relate to this application because the rezoning would be consistent with the current uses in the area; the property is located in the Boone Comprehensive Plan primary growth area and the Boone 2030 Land Use Master Plan regional center. Furthermore, Council Member Mason cited Comprehensive Plan policy 2.1.2.B – *Commercial and Office Development shall be encouraged to locate in planned shopping centers, office parks and mixed use developments to stop the proliferation of strip development* and Policy 2.1.2.I – *Office and institutional development may*

be encouraged as a transitional land use between residential areas and higher intensity commercial activities.

VOTE: Aye – All
 Nay – None

Vote#2

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve the proposed amendment to the Town’s zoning map and believe approval is reasonable and in the public interest because the rezoning use is consistent with the adjacent area and town policies and plans.

VOTE: Aye – All
 Nay - None

- **Case 2013001 Town of Boone** – Text amendment to amend Unified Development Ordinance Article 2 Basic Definitions and Interpretations Section 15 Definitions of Basic Terms to include a “townhouse” definition and to create UDO Section 175 *Supplementary Standards for Multi-Family Housing Development*.

Planner Jane Shook presented the case. She stated that the Planning Commission recommended approval of the amendment by a 5-4 vote. Council Member Mason shared a brief overview of the history of this issue. She stated the goal of the Affordable Housing Task Force is to increase the stock of fairly-priced housing and promote economic development. She stated that further recommendations will be forthcoming once the housing study is finished. Council Member Scherlen stated he feels the Council should delay action on the issue until the housing study is completed, and the Council can make a fully-informed decision on the matter. Town Attorney Sam Furguele presented the following three options regarding “new multi-family project”:

1. **[b]** For purposes of this section, a “new multi-family project” shall include multi-family units constructed as part of a mixed-use building constructed pursuant to and in accordance with the requirements of Section 179, nor to multi-family units constructed as part of a mixed-use project,, as defined in Section 179, on lots of ten acres or larger for which the development is approved through a conditional district zoning.
2. **[b]** For purposes of this section, a “new multi-family project” shall not include multi-family units constructed as part of a mixed-use building constructed pursuant to and in accordance with the requirements of Section 179, if it meets the following conditions:
 - [1]** The development is approved through a conditional B-3 district rezoning process; and
 - [2]** No phasing of construction is proposed or approved unless:
 - [A]** The commercial portions of the development will be constructed as part of the initial phase; or
 - [B]** All phases approved prior to the construction of the phase in which the commercial portions of the development are completed, together allow the construction of no more than one-third the number of multi-family units which are approved for the development as a whole; or
 - [C]** The applicant provides adequate assurances in the form of financial commitments which will guarantee that all commercial portions of the development will be completed within the approved vesting period, not longer than five years from the date of approval. For purposes of this alternative, by example only and not by way of exclusion, an irrevocable letter of credit from an appropriate financial institution in favor of the

Town in a sufficient amount to cover 125% of the projected costs of construction, said projection sealed by a North Carolina licensed engineer, is considered such a guarantee.

3. **[b]** For purposes of this section, a “new multi-family project” shall not include multi-family units constructed as part of a mixed-use building constructed pursuant to and in accordance with the requirements of Section 179, not to multi-family units constructed as part of a mixed-use project, as defined in Section 179, if it meets the following conditions:

[1] The development is approved through a conditional B-3 district rezoning process; and

[2] No phasing of construction is proposed or approved unless:

[A] The commercial portions of the development will be constructed as part of the initial phase; or

[B] The applicant provides adequate assurances in the form of financial commitments which will guarantee that all commercial portions of the development will be completed within the approved vesting period, not longer than five years from the date of approval. For purposes of this alternative, by example only and not by way of exclusion, an irrevocable letter of credit from an appropriate financial institution in favor of the Town in a sufficient amount to cover 125% of the projected costs of construction, said projection sealed by a North Carolina licensed engineer, is considered such a guarantee.

Upon a motion by Council Member Mason, seconded by Council Member Leigh, Council moved to expand Section B in the proposal to include option #2 as presented by Town Attorney Sam Furgiuele.

VOTE: Aye – 4 (Leigh, Mason, Ball, Brantz)
 Nay – 1 (Scherlen)

Vote#1

Upon a motion by Council Member Mason, seconded by Council Member Leigh, Council moved that the proposed amendment to the Town’s zoning ordinance is consistent with the Town’s Comprehensive plan and other applicable adopted plans of the Town which relate to this application because the amendment is consistent with Comprehensive plan policy 2.3.3.F. *The affordable housing needs of area residents, particularly elderly and low to moderate income residents, shall be recognized in Town policies and actions regarding residential development*, and that work-force housing has been a critical need identified by the community for over ten years, and is also supported by the Boone 2030 plan that was adopted in 2009.

VOTE: Aye – 4 (Leigh, Mason, Ball, Brantz)
 Nay – 1 (Scherlen)

Vote#2

Upon a motion by Council Member Mason, seconded by Council Member Leigh, Council moved to approve the proposed amendment, as modified, to the Town’s zoning ordinance and believe approval is reasonable and in the public interest because the amendment addresses a critical housing need by creating standards for a diverse supply of housing to meet the needs of all sectors of the community, provides a mechanism for alternative project to be considered, and will work toward meeting the work force housing need in our community.

(This zoning amendment can be found in the Zoning Text Amendment Book #1)

VOTE: Aye – 4 (Leigh, Mason, Ball, Brantz)
 Nay – 1 (Scherlen)

- **Case 20130023 Town of Boone** – Text amendment to modify text in the Unified Development Ordinance in regard to “qualified persons” for membership of the Tree Board.

Planner Jane Shook presented the case. She stated that the Planning Commission unanimously approved recommendation of the amendment.

Vote#1

Upon a motion by Council Member Mason, seconded by Council Member Brantz, that the proposed amendment to the Town’s zoning ordinance is consistent with the Town’s Comprehensive plan and other applicable adopted plans of the Town which relate to this application because it allows the Tree Board to continue with such initiatives as Tree City USA and an Urban Forest Master Plan.

VOTE: Aye – All
 Nay - None

Vote#2

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve the proposed amendment to the Town’s zoning ordinance and believe approval is reasonable and in the public interest because of the importance of trees to environment and the ecology of area and for the continued efforts to be recognized as a Tree City USA and development of an Urban Forestry Master Plan.

(This zoning amendment can be found in the Zoning Text Amendment Book #1)

VOTE: Aye – All
 Nay – None

Mayor Clawson declared a break at 9:05 p.m. Council reconvened at 9:17 p.m.

HISTORIC PRESERVATION COMMISSION REQUEST – “TEA & OLD TIMES” PROGRAM

Council Member Brantz presented a request from the Historic Preservation Commission to sponsor an event called “Tea and Old Times” on April 21, 2013, from 2-5 p.m. at the Jones House. He explains that the commission hopes to draw people in order to share their memories of Boone, particularly focusing on the 1930’s. Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to approve the request and to schedule that event as a special meeting of the council so that all members can attend.

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 2013 Town Council packet.)**

APPROVAL OF CONTRACTS – DAVIS-MARTIN-POWELL ASSOCIATES AND DAVID R. JONES ARCHITECTURE

Public Works Superintendent Eric Gustaveson presented a request for approval of contracts for engineering and architectural services from Davis-Martin-Powell Associates and David R. Jones Architecture. He stated that the limit on service is \$30,000 and that the contracts will be for a two-year period with the possibility of renewal. Mr. Gustaveson stated that the contract from Davis-Martin-Powell Associates has been reviewed by the town attorney. Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to approve the contract from Davis-Martin-Powell Associates and the contract from David R. Jones Architecture, subject to review by the town attorney and with possible minor changes. **(Contracts permanently on file at Boone Town Hall.)**

VOTE: Aye – All
 Nay – None

CULTURAL RESOURCES ADVISORY BOARD REQUEST – EXTENSION OF RIVERS PARK SUB-COMMITTEE

Cultural Resources Director Pilar Fotta presented a request from the Cultural Resources Advisory Board to extend the Rivers Park Sub-Committee for an additional six-month period. Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to approve the extension of the Rivers Park Sub-Committee for an additional six-month period.

VOTE: Aye – All
 Nay – None

CULTURAL RESOURCES ADVICORY BOARD REQUEST – DISPOSAL OF WHITE HOUSE ON MORETZ STREET

Cultural Resources Director Pilar Fotta presented a request from the Cultural Resources Advisory Board to proceed with the disposal of the white house located on Moretz Street with one of the following options:

1. Offer the house for sale to be relocated from the current location to a new location at the buyer's expense.
2. After the removal of any historic or valuable inventory, offer the house to the Boone PD and Boone Fire Department to be used as a training facility with the eventual burning of the building after any potential hazards are assessed and removed.
3. Demolish the building as soon as possible, clean the site, and seed with grass.
4. Allow the building to deteriorate to the point that it collapses, and then clean up and seed the site with grass.

She stated that the last option was not a very popular choice among the board members. Upon a motion by Council Member Leigh, seconded by Council Member Brantz, Council moved to approve option #1to solicit offers to be received by June 1, 2013, and if no offers are received, then demolish the structure.

VOTE: Aye – All
 Nay – None

CULTURAL RESOURCES ADVISORY BOARD REQUEST – HAZARDOUS TREES REMOVAL ON RIVERS PROPERTY

Cultural Resources Director Pilar Fotta presented a request for the removal of dead trees located on the Rivers Park property. Upon a motion by Council Member Brantz, seconded by Council

Member Mason, Council moved to allow the removal of dead trees on the Rivers Park property by the Public Works staff.

VOTE: Aye – 4 (Scherlen, Mason, Ball, Brantz)
 Nay – 1 (Leigh)

UPDATE ON DESIGNATION FOR ROCK HOUSE – NATIONAL HISTORIC REGISTRY DESIGNATION

Cultural Resources Director Pilar Fotta shared information compiled by Eric Plaag of the Historic Preservation Commission on the procedure for National Historic Registry designation. **(Copy of information permanently on file at Boone Town Hall.)**

APPALACHIAN THEATER QUARTERLY REPORT

Cultural Resources Director Pilar Fotta presented the Appalachian Theater 2012 fourth quarter report. **(Permanently on file at Boone Town Hall.)**

DBDA QUARTERLY REPORT

Cultural Resources Director Pilar Fotta presented the DBDA 2012 fourth quarter report. **(Permanently on file at Boone Town Hall.)**

CULTURAL RESOURCES QUARTERLY REPORT

Cultural Resources Director Pilar Fotta presented the Cultural Resources Department 2012 fourth quarter report. **(Permanently on file at Boone Town Hall.)**

MONTHLY NOISE ORDINANCE REPORT

Police Chief Dana Crawford presented a noise report for October 2012. **(Copy of report permanently on file in the February 2013 Town Council packet.)** He also presented a nine-month report **(Copy of report permanently on file in the February 19, 2013 Supplemental Information packet.)** Council directed Chief Crawford to begin sending out noise ordinance reports on a quarterly basis.

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 2013 Town Council packet.)**

APPROVAL OF BUDGET AMENDMENTS

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

Description	Account#	To:	From:
SPECIAL PROJECTS (GENERAL FUND)	010-411-000-549130	\$34,352	
APPROPRIATED FUND BALANCE	010-000-000-499900		(\$34,352)
UNIFORM EQUIPMENT	010-500-300-511220	\$2,656	
BULLET PROOF VEST REIMBURSEMENT	010-000-000-461517		(\$2,656)
MISCELLANEOUS SUPPLIES-NARCOTICS	012-500-303-519900	\$4,275	

APPROPRIATED FUND BALANCE-NARCOTICS	012-500-303-499900		(\$4,275)
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VOTE: Aye – All
 Nay – None

CONSIDERATION OF DRAFT OF DOWNTOWN MASTER TREE PLAN

Urban Design Specialist Brian Johnson presented a draft proposal for a Downtown Master Tree Plan. It was the consensus of the Council to schedule consideration of the proposal at the March meeting so the members could further review the proposal. **(Copy of draft proposal permanently on file at Boone Town Hall.)**

ADOPTION OF RESOLUTION – IN SUPPORT OF ACTION TO REDUCE GUN VIOLENCE

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to approve the following resolution and direct that it then be forwarded to the proper authorities:

**RESOLUTION BY THE TOWN COUNCIL OF THE TOWN
OF BOONE, NORTH CAROLINA, IN SUPPORT OF
ACTION TO REDUCE GUN VIOLENCE**

WHEREAS, in the wake of the massacres of innocent children at Sandy Hook Elementary School, massacres in Aurora Colorado, Tucson Arizona, Virginia Tech and elsewhere, and the apparent increased frequency of gun violence and mass shootings across the United States of America, with more than seventeen hundred deaths due to shootings in the two months since the Sandy Hook massacre, it has become apparent that dramatic action is needed to curb gun violence; and

WHEREAS, the President of the United States and Members of Congress have proposed legislation that while respecting the Second Amendment rights of law-abiding citizens, will require every gun buyer to pass a criminal background check, get military-style assault weapons and high-capacity magazines off our streets, and make gun trafficking a federal crime; and

WHEREAS, background checks are the only systematic way to stop felons, domestic abusers, and dangerously mentally ill and other people with a propensity toward violence from buying firearms, but federal law currently only requires background checks for gun sales from licensed dealers; and

WHEREAS, in 2012, approximately 6.6 million guns were transferred without a background check; and

WHEREAS, criminals and other prohibited gun buyers know how to exploit this loophole, a national survey of inmates finding that nearly 80% of those who used a handgun in a crime acquired it in a private transfer; and

WHEREAS, the Internet has created a vast marketplace for guns where millions of buyers can easily find unlicensed sellers and buy guns in almost total anonymity; and

WHEREAS, closing this “private sale loophole” will reduce the number of guns that end up in dangerous hands, which is why ten national police organizations and more than 850 mayors are on record in support of the Fix Gun Checks Act, which would require background checks for all gun sales, with reasonable exceptions; and

WHEREAS, military-style assault weapons and high-capacity ammunition magazines have no place on our streets, in that these weapons, originally designed for combat situations in order to kill large numbers of people in a short period of time, are used disproportionately in mass shootings, resulting in more victims and more fatalities; and

WHEREAS, such assault-style weapons often play a prominent role in mass shootings, but also are a common threat in everyday incidents of gun violence, the Department of Justice reporting that high-capacity magazines are used in 14 to 26 percent of all gun crimes and 31 to

41 percent of fatal police shootings; and

WHEREAS, as leaders of the community charged with taking action for the common good of Boone, the Boone Town Council considers it unconscionable to remain silent in the face of this crisis;

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Boone, North Carolina, hereby expresses its support for legislation seeking to curb gun violence while respecting the Second Amendment rights of citizens, and urges action to require universal background checks, a ban on high capacity ammunition magazines, and a renewed ban on assault-style weapons.

Adopted this 19th day of February, 2013.

Loretta Clawson, Mayor

Attested to:

Kimberly S. Brown
Clerk, Town of Boone, North Carolina

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 192)

VOTE: Aye – 4 (Scherlen, Mason, Ball, Brantz)
 Nay – 1 (Leigh)

APPROVAL OF LEASE AGREEMENT – AMERICAN LEGION FOR JUNALUSKA PARK

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

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF WATAUGA

THIS LEASE AGREEMENT, made and entered into this _____ day of _____, 2013, by and between American Legion, Watauga Post, Department of North Carolina, Post #130, a corporation organized and existing under and by virtue of the laws of the State of North Carolina, party of the first, hereinafter called Lessor, and the Town of Boone, a body politic, organized and existing under and by virtue of the laws of the State of North Carolina, party of the second part, hereinafter called Lessee;

W I T N E S S E T H :

1. **LEASED PREMISES.** The Lessor does hereby let, lease and demise unto the Lessees the following described real property, located in Boone Township, Watauga County, North Carolina:

TRACT ONE: BEGINNING on a stake, Ben Council's corner and runs thence North 80 deg. West 406 feet to a stake, corner to the .66 of an acre lot; thence with the line of said lot, South 13 deg. West 248 feet to a stake; thence South 75 deg. East 118 feet to a stake; thence South 06 deg. West 167 feet to a stake; thence South 36 deg. 30 min. East 594 feet to a stake, near the spring; then with the back line of lots 34, 35, 36, 37, 38 and 39 to Ben

Councill's line; then with his line North 24 deg. West 813 feet to the BEGINNING, containing 8-1/4 acres, more or less.

TRACT TWO: BEGINNING at a stake, a corner of June Horton's lot and runs thence with his line South 13 deg. West 248 feet to a stake; then South 80 deg. East 108 feet to a stake; corner of the 8-1/4 acre tract; thence North 13 deg. East 248 feet to a corner of Ben Councill's line; thence North 80 deg. West 108 feet to the BEGINNING, containing .66 acre more or less.

THERE IS EXCEPTED from the above described tracts one and two, the following:

- (a) The building located on the property, known as the American Legion Building or the legion hut;
- (b) A fifty (50) foot wide strip of land along the back of the building to extend parallel to said Hut, so as to include the southern portion of the above premises. The approximate boundaries of said area are shown in red on Exhibit "A" attached hereto and incorporated herein by reference. The Lessee shall provide the Lessor with a survey of said area. This area is retained as a buffer zone for said American Legion Hut.

The Lessor agrees that the Lessee shall and may peacefully and quietly have, hold and enjoy the premises for the term of this lease.

- 2. **TERM.** The term of this Lease shall be fifteen (15) years, beginning on the 15th day of December 2012, and ending on the 14th day of December 2027.
- 3. **RENT.** The Lessees shall pay upfront the sum of Fourteen thousand and no/100 dollars (\$14,000.00), in addition to rent for the period of December 15, 2012, to December 14, 2013, in the amount of Six thousand and no/100 dollars (\$6,000.00), for a total of Twenty thousand and no/100 dollars (\$20,000.00), to be paid upon the execution of this lease, and then rent in the amount of \$6,000.00 to be paid annually, beginning on the 15th day of December 2013, and on the 15th day of December of each year thereafter for and during the term of this lease, to be paid in advance.
- 4. **UTILITIES.** The Lessees will pay for all utilities which shall include any night lights and telephone on the property, with the exception that the Lessors shall pay for their own utilities at the American Legion building.
- 5. **IMPROVEMENTS.** The Lessees shall be allowed to make any alterations, additions, changes and improvements on the demised premises without the prior consent of the Lessors, and all alterations, additions, changes and improvements made on the demised premises shall be made at the Lessee's expense. The Lessors specifically approves alterations and improvements to the demised premises for a town park for the use and enjoyment of the public-at-large.
- 6. **LEGION HUT.** The Lessees agree to be responsible for all reasonable maintenance of the surrounding grounds of the Hut, during the term of this lease, including but not limited to the mowing of the grass and maintenance of the parking area next to said Hut building. This shall include the necessary striping and marking of said parking area and the Lessees are to furnish water and sewer service to said American Legion Hut without cost to the Lessors for and during the term of this lease.
- 7. **ASSIGNMENT OR SUBLETTING.** The Lessee shall not transfer or assign the Lease nor sublet the premises to any person, partnership or corporation, without the Lessors' prior written consent. If the Lessor agrees to any transfer, assignment or subletting, this shall not relieve the Lessee from the Lessees' obligations, liabilities and duties created under this lease.

8. **TIMBER.** Any trees or timber removed from the premises are to be the property of the Lessors herein.
9. **INSURANCE.** The Lessee shall carry an insurance policy in the amount of \$1,000,000.00, which would cover any damages that may arise out of accidents that occur on the premises that involve any employees, agents or invitees of the Lessees.
10. **INDEMNITY.** The Lessee shall indemnify and hold harmless the Lessor from any and all claims, actions, damages and liability associated with personal injury and/or damages to property arising out of any occurrence in, upon or at the leased premises, or associated with any act or omission of the Lessee, its agents, employees or invitees. In the event that the Lessor is made a party to any litigation brought against the Lessee or by reason of the Lessees' use or occupancy of the leased premises, the Lessee shall protect and hold harmless the Lessor from any and all liability that may result therefrom, together with all attorney fees.
11. **VIOLATIONS.** The Lessors shall give the Lessee written notice of any violation of this Lease. The Lessee agrees to give the Lessor a written response within two (2) weeks after the receipt of said notice indicating the steps that have been taken to correct the violation or explaining why no violation exists.
12. **PARKING.** The Legion Hut parking lot will not be available to the public during any regular or special meeting of the American Legion. The Lessees will provide the Lessors with the necessary "No Parking" type of signs and shall enforce this provision with the Town of Boone Police Department.
13. **ACCESS.** The Lessee shall have access to the premises from Church Street and Bear Trail. The Lessee may build a road from Bear Trail to the main portion of the premises, said road to begin at the southern corner of the Legion parking area.
14. **INSPECTION OF PREMISES.** The Lessor may enter the premises at any reasonable time for the purpose of inspecting the premises.
15. **INVITEES.** The premises shall be available to all citizens of Watauga County, North Carolina, for use as a park.
16. **GOVERNING LAW.** This Lease shall be governed by and construed in accordance with the laws of the State of North Carolina.

IN WITNESS THEREOF, the said parties hereto have caused this instrument to be signed in their names, the day and year first above written.

VOTE: Aye – All
 Nay – None

RECESS MEETING

Upon a motion by Council Member Mason, seconded by Council Member Leigh, Council moved to recess the meeting at 10:42 p.m. until Thursday, February 21, 2013, 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 21, 2013, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Lynne Mason, Allan Scherlen, Rennie Brantz and Andy Ball. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Public Utilities Director Rick Miller, Public Works Facilities Maintenance Superintendent Eric Gustaveson, Planning Director Bill Bailey, Cultural Resources Director Pilar Fotta, Human Resources Director Peri Moretz and Deputy Town Clerk Christine Pope.

ANNOUNCEMENTS

Mayor Clawson called the meeting to order and welcomed all in attendance. She 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:

- A. Clarification of Item 12.B.6. – Board application submitted by Mr. Shaw A. Brown should be considered for Transportation Committee board appointment (Item 12.B.7.).
- B. Additional Information for Item 12.B.6. – Board Appointment – TDA Board.
- C. Additional Information for Item 13.B. – Rebecca Kaenzig – Discussion of Relationship between the Daniel Boone Native Gardens and the Garden Club of North Carolina.
- D. Additional Information for Item 13.D. – Michelle Ligon – Request for a Temporary Easement for the Placement of a Sign Commemorating the Horn in the West and Hickory Ridge Homestead.
- E. Addition of Item 14.D. – Legal Advice – To consult with the Town Attorney in order to preserve the attorney/client privilege between the attorney and the Town Council to consider and give instruction concerning the handling of a claim by Delta Holdings, LLC.

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

VOTE: Aye – All
 Nay – None
 Absent – 1 (Leigh)

PUBLIC COMMENT

Martin Root, an assistant professor of nutrition for Appalachian State University, spoke in favor of the Meatless Monday Campaign resolution. He stated he believes eating healthy and moving toward a vegan or vegetarian lifestyle is very important for him and the country. Mr. Root stated studies have found a connection between heart disease and meat consumption, and that our country could do no better for our health than to move to a diet with less meat—especially less red meat.

Liz DiRusso, a graduate student studying nutrition at Appalachian State University, spoke in favor of the Meatless Monday Campaign resolution. She felt that, as a community, Boone would greatly benefit from the Meatless Monday resolution, because the community cares about health as much as it cares for the environment. Ms. DiRusso added that vegan and vegetarian diets are appropriate for individuals in all stages of the life cycle, and she believes that raising awareness of the effects of meat consumption is of utmost importance.

Tim Radak spoke in favor of the Meatless Monday Campaign resolution. Mr. Radak stated that countless research studies provide data showing that reducing meat intake reduces the risk of heart diseases. He added that this resolution would be a win-win situation for the citizens of Boone and the many establishments/restaurants that provide meatless options. Mr. Radak stated meat consumption is connected to an increased mortality rate. He stated that in 2011, Durham County signed the Meatless Monday resolution and strongly supports it.

Ronnie Holste of the ABC Board stated that the commission sent a check for \$125,000 to the Town of Boone, which they plan to do every quarter for this year, and the commission has also given \$5,000 to the Boone Police Department and another \$12,000 for alcohol education, which the commission also plans to do every quarter for this year as well. Mr. Holste reiterated that the commission wants to provide funds back to the Town, and he believes there is a clear progression in the amount of funds earned. He also stated the commission is hoping for a possible expansion of the store, which they brought to the attention of the Town six months ago, in order to have more warehouse space. Mr. Holste indicated that it is becoming an issue of efficiency and not having product because there is not enough space. The expansion would include 1,000 sq.ft. of additional space in the warehouse and 400 sq.ft. of additional space in the front showroom, which would provide better security of the product.

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Clawson announced the following vacancies:

- **Planning Commission** – Jay Vincent submitted his resignation from the Planning Commission effective Jan. 1, 2013.
- **Planning Commission, Greenway Parks & Gardens Committee and Water Use Committee** – Bunk Spann submitted his resignation from these committees effective Jan. 14, 2013.
- **ABC Board** – Pat Wilkie’s term on this board is due to expire April 30, 2013.

BOARD APPOINTMENTS

Affordable Housing Task Force – There were no applications submitted for the vacant positions.

Board of Adjustment – Mayor Clawson noted that an application had been received from Richard Woods for consideration. Town Attorney Sam Furguele stated the Unified Development Ordinance revisions are trying to allow Council to send one application to the county for consideration whereas right now, there must be two applications submitted at a time to the county for approval. Council came to the consensus to defer action on this appointment at this time.

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

Outside Agency Funding Review Committee – There were no applications submitted for this vacancy.

Planning Commission – There were no applications submitted for this vacancy.

Tourism Development Authority Board – Mayor Clawson noted that an application had been received from Mike Hall for consideration. Council Member Mason nominated Mike Hall to serve on the Tourism Development Authority Board as a Watauga County resident who owns/operates a restaurant in the town of Boone.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Leigh)

Transportation Committee – Mayor Clawson noted that two applications had been received for consideration from Shaw Brown and Kathy Henson. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to appoint Kathy Henson to the Transportation Committee.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Leigh)

Tree Board – Mayor Clawson noted that an application had been submitted by Shawna Rhyne for consideration. It was the consensus of the Council to defer action on appointment to the Tree Board at this time, since the qualifications to be eligible to serve on the board were recently amended.

REQUESTED APPEARANCE – DR. MATT ROBINSON

Dr. Matt Robinson appeared before the Council to present information on a resolution to abolish capital punishment in North Carolina for Council to vote on at the March regularly scheduled meeting. **(Handout permanently on file at Boone Town Hall.)** Dr. Robinson stated that the City of Durham became the largest city in the South to approve a resolution against the death penalty, and it was through a unanimous vote. He added that capital punishment starts at the local level, and the United States is the only remaining developed nation in the world that utilizes the death penalty. Appalachian State University graduate student Amanda Moore added that for the European countries, they see the death penalty as a human rights issue whereas the United States treats it as criminal justice. Dr. Robinson stated that murder is rare in our community, and that in the past five years, there have been two capital cases, but neither produced the death sentence. He added that abolishing capital punishment will free up financial resources that can be devoted to other areas, and he believes this is what is driving the move away from the death penalty in many areas.

REQUESTED APPEARANCE – REBECCA KAENZIG

Rebecca Kaenzig appeared before the Council to discuss the relationship between the Daniel Boone Native Gardens and the Garden Club of North Carolina. Town Attorney Sam Furguele advised Ms. Kaenzig that having a 501(c)(3) separate from that of the Garden Club of North Carolina is in violation of the lease agreement and explained that the two are considered different legal entities. Lengthy discussion ensued regarding possible ways to resolve this matter. Council Member Ball voiced the need to find a way to include the new organization on the lease without assigning it over to them in order to keep the Garden Club of North Carolina on the lease as well.

Council came to the consensus that Ms. Kaenzig would contact the Garden Club of North Carolina regarding this possibility and to work with Town Attorney Sam Furguele to find appropriate wording to resolve this issue. Ms. Kaenzig stated she would talk to the Garden Club of North Carolina and report back to Council next month. She voiced her appreciation that Cultural Resources Director Pilar Fotta brought this matter to her attention now before it had the potential to cause issues when looking into grant options.

REQUESTED APPEARANCE – EVA RAND

Eva Rand appeared before the Council to request the adoption of a resolution of support for the Meatless Monday Campaign. Ms. Rand stated that raising awareness is very important, and store managers in Boone are enthusiastic about the resolution. Ms. Rand pointed out there is a common misunderstanding that people must eat meat for the protein, and provided comparisons of the amount of protein in meat versus broccoli, lentils and other foods. She stated that, if the resolution is adopted, she would be calling on supporters and many others in the community in business and health care, like Dr. Matt Brown, to publicize awareness, would contact a vegetarian organization based out of Raleigh for promotional suggestions, and would use different tactics for promoting this campaign depending on the demographic. Council Member Mason voiced her support for this resolution and stated the Appalachian District Health Department has several wellness initiatives, and Ms. Rand could seek these staff members out as well.

Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved to adopt the resolution of support for the Meatless Monday Campaign.

Resolution of Support

WHEREAS, meat production contributes 18% of greenhouse gas emissions that are accelerating climate change, according to the UN's Food and Agriculture Organization; and

WHEREAS, a report published by the Environmental Working Group in 2011 found that if every American eliminated both meat and cheese from their diet for one day a week, it would be equivalent to removing 7.6 million cars from the road; and

WHEREAS, substituting plant foods for farmed animals reduces pollution of soil and waterways from animal waste products that may also contain pathogenic bacteria, hormones, steroids and other veterinary drugs found in this waste; and

WHEREAS, according to The Burden of Obesity in North Carolina, a report developed by the NC Division of Public Health, 65.7% of N.C. adults are overweight or obese, North Carolina ranks 5th in the US in childhood obesity, four of the leading 10 causes of death in the US are related to obesity, and one of the targeted behaviors in this report is to encourage consumption of more fruits and vegetables; and

WHEREAS, according to the Centers for Disease Control, as increasing weight reaches levels defined as “overweight” and “obese,” risks increase for coronary heart disease, type 2 diabetes, several forms of cancer, hypertension, stroke, liver and gallbladder disease, sleep apnea and other respiratory problems, and osteoarthritis; and

WHEREAS, in 2010 the USDA recognized in its Dietary Guidelines for Americans that reducing meat consumption decreases the risk of various health problems stating, “In prospective studies of adults, compared to non-vegetarian eating patterns, vegetarian-style eating patterns have been associated with improved health outcomes -- lower levels of obesity, a reduced risk of cardiovascular disease, and lower total mortality”; and

WHEREAS, the Academy of Nutrition and Dietetics, formerly known as The American Dietetic Association, recognizes that reduced meat consumption decreases the risk of various

health problems, stating, “Scientific data suggests positive relationships between a vegetarian diet and reduced risk for several chronic degenerative diseases and conditions, including obesity, hypertension, diabetes mellitus, and some types of cancer”; and

WHEREAS, the American Institute for Cancer Research states "strong evidence shows that a diet filled with a variety of plant foods lowers risks for many cancers"; and

WHEREAS, the US FDA estimates there are 5,000 deaths and 76 million cases of food-borne illness annually, much stemming from industrial animal production systems; and

WHEREAS, the health advantages from meat reduction enumerated above can significantly lower health care costs; and

WHEREAS, a growing number of people are reducing their meat consumption to lessen animal cruelty and dangers to human workers associated with factory-farming conditions, slaughterhouse practices, and inhumane treatment in general; and

WHEREAS, because animals raised for meat and dairy receive an estimated 80% of the nation's antibiotics, antibiotic-resistant infections have escalated in humans, with the CDC estimating that 60,000 Americans die each year as a result; and

WHEREAS, many school systems, colleges, hospitals, corporations, and universities nationwide have added Meatless Monday menu items in their cafeterias; and

WHEREAS, many Boone restaurants provide meal alternatives that reduce dependence on animal-based foods; and

WHEREAS, many local units of government, including Durham and Chapel Hill, NC, Los Angeles and San Francisco, CA, and Washington DC have passed Meatless Monday resolutions encouraging their citizens to consider the many benefits thereof;

NOW, THEREFORE, we, The Town Council of Boone, NC, do resolve to support the Meatless Monday Movement to raise awareness about health benefits to individuals and the environment, and by encouraging residents to explore meatless options to their diets.

ATTEST:

Loretta Clawson, Mayor

Kimberly S. Brown, Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 190-191)

VOTE: Aye – All
 Nay – None
 Absent – 1 (Leigh)

REQUESTED APPEARANCE – MICHELLE LIGON/SAHA

Michelle Ligon appeared before the Council to request a temporary easement for the placement of a sign commemorating the Horn in the West and Hickory Ridge Homestead. Ms. Ligon stated the Town and SAHA have the opportunity to choose and finalize the sign's text later in the stage of getting the sign placed. Discussion ensued regarding whether or not to have a formal easement agreement in place or an encroachment agreement, and where the management and responsibility of the sign lies, whether it is SAHA or the Blue Ridge National Heritage Area, during the remaining term of SAHA's lease. Town Attorney Sam Furgiuele pointed out that the Blue Ridge National Heritage Area is setting a time frame of five years for this sign to be in place, and if the SAHA lease is not renewed, the Town must address who will take responsibility of maintenance of the sign for the remaining time it is there. Several council members voiced their support for the sign and believed they should take responsibility for it if the SAHA lease is not renewed. Town Manager Greg Young added that SAHA should discuss the design of the sign with Cultural Resources Director Pilar Fotta and then with the Cultural Resources Advisory Board. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to authorize the town manager and town attorney to work with Ms. Ligon to get an appropriate agreement in place, whether an encroachment or some other form, and bring back to Council for approval.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Leigh)

REQUESTED APPEARANCE – MAUREEN JACKSON

Maureen Jackson and Joelle Justiz appeared before the Council to request approval of a Special Event Permit for the Howard Street Exchange Pedestrian Fair. Ms. Jackson explained that the event is a street fair scheduled for Sunday, April 7, 2013, from 11 a.m. to 5 p.m., and they requested waiver of the \$1,500 event fee. She also stated that she spoke with the Boone Police Department, and following their recommendation, requested that the location of the street fair for consideration be Howard Street between Water and Depot streets.

Ms. Justiz added that the New Economy Institute based out of Boston, Mass. did campus networking with a grant competition to promote economic sustainability. She stated they won the competition with a \$1,000 grant and will have a summit/conference at Appalachian State University hosting local non-profit groups and an activist/author keynote speaker. Ms. Jackson stated they plan to ask local artists, Watauga County Farmers' Market vendors, local musicians and others to participate, but were waiting for approval from Town Council before approaching any vendors. She added that the farmers' market vendors and local artists, and local non-profits that are scheduled to participate at the conference would have priority for space at the street fair, and there will be a limit to the number of vendors. Lengthy discussion ensued regarding concerns from several Town departments and the local merchants with businesses on that portion of Howard Street, the lack of information/a plan on the application submitted, and the potential of music from the street fair affecting nearby church services. Ms. Jackson stated they would invite the merchants on that part of Howard Street to participate and work with all Town departments necessary to organize the fair.

Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to approve the Howard Street Exchange Pedestrian Fair, scheduled for Sunday, April 7, 2013, from 11 a.m. to 5 p.m. between Water and Depot streets, with the following conditions:

1. Payment of the required event fee, which was reduced to \$1,000;
2. Proof of insurance;

3. Collaboration with the Boone Fire Department on occupancy limitations and a detailed vendor map, as well as a plan for power/electricity for the event, stage orientation and a noise control plan;
4. A crowd control plan;
5. Noise must be in compliance with the Noise Ordinance and not start before 1 p.m.;
6. A trash and clean-up plan and plan for restroom facilities; and
7. Final approval at Council's regularly scheduled meeting in March.

Council Member Brantz reiterated Ms. Jackson's request for Town sponsorship of the event, which was requested in the application. Council Member Ball indicated the Town's sponsorship is approval of the permit and the \$500 reduction in the required event fee.

VOTE: Aye – 3 (Mason, Scherlen, Ball)
 Nay – 1 (Brantz)
 Absent – 1 (Leigh)

CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to enter Closed Session at 8:29 p.m. pursuant to NCGS 143-318-11a(3)(5) to hear the following items:

- A. Property Acquisition and Legal Advice – To consult with the Town Attorney in order to preserve the attorney/client privilege between the attorney and the Town Council and to instruct Town staff and the Town Attorney concerning the positions to be taken by or on behalf of the Town in negotiating the price and other material terms of proposed contracts for the acquisition of easements in real property related to the proposed raw water intake, and to consult with an attorney employed or retained by the public body, which privilege is hereby acknowledged, to consider and give instructions to the attorney concerning the handling or settlement of a judicial action.
- B. Legal Advice – To consult with the Town Attorney in order to preserve the attorney/client privilege between the attorney and the Town Council to consider and give instruction concerning the handling of a settlement offer regarding Bank of America.
- C. Legal Advice – To consult with the Town Attorney in order to preserve the attorney/client privilege between the attorney and the Town Council to consider and give instruction concerning the handling of a settlement offer regarding Carl Paolucci.
- D. Legal Advice – To consult with the Town Attorney in order to preserve the attorney/client privilege between the attorney and the Town Council to consider and give instruction concerning the handling of a claim by Delta Holdings, LLC.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Leigh)

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to exit Closed Session at 10:22 p.m.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Leigh)

POSSIBLE ACTION FOLLOWING CLOSED SESSION

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve a settlement of \$250.00 for satisfaction of penalties adopted in the Town Code of Ordinances in the Paolucci’s case.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Leigh)

ADJOURNMENT

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to adjourn at 10:24 p.m.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Leigh)

Kimberly S. Brown, Town Clerk

Loretta Clawson, Mayor