

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
FEBRUARY 23, 2015**

A regular meeting of the Boone Town Council was called to order at 5:30 p.m., Monday, Feb. 23, 2015, in the Council Chambers, 1500 Blowing Rock Road. Mayor Andy Ball presided. Council members present were Mayor Pro-Tem Rennie Brantz, Lynne Mason, Fred Hay, Jennifer Peña and Quint David. Town Attorney Allison Meade was also present. Staff members present were Town Manager John Ward, Town Clerk Christine Pope, Assistant to the Manager Jim Byrne, Human Resources Director Peri Moretz, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Finance Director Amy Davis, Planning Director Bill Bailey, Public Works Director Rick Miller and Cultural Resources Director Pilar Fotta.

CALL TO ORDER

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

TENTATIVE AGENDA ADOPTION

Town Manager John Ward stated there were no changes to the agenda. Upon a motion by Council Member Brantz, seconded by Council Member David, Council moved to adopt the tentative agenda, as presented.

VOTE: Aye – All
 Nay – None

CONSENT AGENDA ADOPTION

- A. Minutes: Jan. 22, 2015 – Regular Meeting.
- B. Approval of Memorandum of Understanding with the Appalachian Theatre of the High Country, Inc. **(Memorandum permanently on file in Town Hall.)**
- C. Approval of Parking License Agreement – Kingswood Condominiums, Inc. **(Agreement permanently on file in Town Hall.)**
- D. Authorization to Apply for Grant for 2015 Cycle – Watch for Me NC.
- E. Approval of Contract with Sweeting Appraisal Services and Accompanying Budget Amendment. **(Contract permanently on file in Town Hall.)**
- F. Approval of Budget Amendment – Right-of-Way Agent and W.K. Dickson Engineering Services.

- G. Approval of Budget Amendment – Reimbursement of Legal Expenses associated with Mountaineer Towing & Recovery Claim.
- H. Approval of Code Amendments – Chapter 30: Town Council.
- I. Approval of New Regular Meeting Schedule.

Council Member Brantz, seconded by Council Member David, moved to adopt the Consent Agenda. Council Member Mason requested one amendment to the minutes of Jan. 22, 2015, to reflect that the second sentence in the Noise Control discussion end after the word “information.” Council members Brantz and David accepted the amendment.

Council Member Mason also noted that she would be unable to attend the July regular meeting with the suggested revision of the regular meeting schedule. Town Manager John Ward advised that staff would bring an item to the March regular meeting for Council’s consideration to reschedule the July meeting date.

VOTE: Aye – All
 Nay – None

PUBLIC COMMENT

Tori Cox, general manager of the Watauga County Farmers’ Market, asked that Council take into consideration when approving license agreements for use of the Daniel Boone Park location the farmers’ market’s need for parking. She added that the year when the market did not piggyback with the Boone Heritage Festival, they had an increase in attendance, and hopes the Town continues to support the farmers’ market.

Matt Cooper, president of the board of the Watauga County Farmers’ Market, asked for clarification from Council regarding the nonexclusive use of a portion of the parking lot. He noted that the lower parking lot spaces that have nonexclusive use to the market could cause vendors to lose overall approximately \$5,000 to 8,000 per Saturday by those who can’t park. He also asked for clarification from Council regarding ownership of the sheds and corresponding insurance needs, and encouraged Council to simultaneously review the license agreements in the future.

Mike McKee, a professor of economics at Appalachian State University, spoke regarding the revisiting of the noise ordinance. He stated that for every dollar spent on these venues, approximately \$1.50 to \$1.60 is circulated back to the economy. He added that losing that source by more regulations on the noise ordinance will have an adverse effect on the overall taxes for the town and will harm the local economy.

Jason Roehrig, a Wilkesboro resident and vendor at the Watauga County Farmers' Market, stated he appreciates the Town's support and asked that they consider giving the market exclusive rights to the lower portion of the parking lot. He stated that the potential loss of revenue could cause a loss of income for families.

Colton Lentz, co-owner of The Local, stated he felt the current noise ordinance is overly restrictive. He stated that live music is a part of providing a vibrant night life and culture, and is important to Boone's legacy. He encouraged Council to consider not strangling this and work toward fostering a music environment.

Stephen "Skip" Sinanian, co-owner of the Boone Saloon, stated the noise ordinance regulations have caused a 3% loss in sales from 2012-2013. He added that they have installed \$3,500 worth of sound insulation and feels that the constant complaints toward his business has become systematic harassment. He added that with the police having to respond to these calls, it is overall affecting his business, and he felt the ordinance as it stands is not moderate, fair or sensible.

Terry Taylor of 601 Grand Blvd. stated that he is in a household that is disturbed by the music, primarily from Boone Saloon. Mr. Taylor stated that according to the report provided, nothing could be done two-thirds of the time with how the noise ordinance is currently written. He felt that something needs to be done—whether sound-proofing or by turning the noise down.

Rob Holton of Holton Rentals/Management in Boone asked that Council take more time to study the Wellness District plan.

Jesse Miller of Grand Boulevard stated he and his wife moved to Boone for the culture. He stated the noise never disturbed them, but felt some apartment complexes could use addressing. He wanted to point out that they have never been disturbed by the music on the street.

Greg Williams of the Southern Appalachian Historical Association stated he would be happy to help Council in any way with respect to the audio/noise issue. He briefly discussed the different measures of sound and stated he would love to be a part of solving this issue.

Brandon Paul of Boone stated he wanted to personally introduce himself to Council, as he had submitted an application for consideration on the Board of Adjustment.

APPROVAL OF LICENSE AGREEMENT – SOUTHERN APPALACHIAN HISTORICAL ASSOCIATION

Town Manager John Ward presented a license agreement between the Town of Boone and Southern Appalachian Historical Association (SAHA) for Council's consideration. He stated that

the proposed agreement is based on the previous license with some minor changes regarding clarification of items. Discussion ensued regarding use of the parking lot and maintenance of the facilities including the bathrooms. Mayor Ball noted that one concern of the farmers' market was nonexclusive use of a portion of the parking lot, which applies to both the market and SAHA, and noted that at the retreat earlier that morning, Council directed staff that in negotiating the farmers' market license agreement, there not be a license fee moving forward.

Council Member Brantz, seconded by Council Member Mason, moved to approve the license agreement between the Town and SAHA (**Agreement permanently on file in Town Hall**). Brief discussion ensued providing clarification on parking limitations and the process for reserving use of the property through the Cultural Resources Department. Council Member David asked that staff begin reporting or provide a press release in order to show the Town's participation in these events and the significant resources the Town is providing to these groups to show support.

VOTE: Aye – All
 Nay – None

HISTORIC PRESERVATION COMMISSION REQUEST – JORDAN COUNCILL MEMORIAL CEMETERY

Town Manager John Ward presented a recommendation by the Historic Preservation Commission regarding ownership of the Jordan Councill Memorial Cemetery (Boone Cemetery). Council Member Brantz stated he felt it was an important way to honor and respect our heritage to find a way to bring it under the Town's leadership and maintenance in a proper way. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to authorize the town manager and staff to explore options for the Town to possibly acquire ownership of and maintain the Jordan Councill Memorial Cemetery.

VOTE: Aye – All
 Nay – None

DISCUSSION OF CHAPTER 93: NOISE CONTROL

Police Chief Dana Crawford presented a timeline as created by the Town Clerk of the events leading up to the current noise ordinance (**Timeline handout permanently on file in February 2015 meeting file**). He also provided some background on the creation of the ordinance, stating that enforcement is complaint-driven and the attempt was to create an objective standard. He added that the majority of complaints are coming from the same residence, but they also receive anonymous complaints. Council Member Hay provided the following statement:

"Based on my 14 years of service on the town's Board of Adjustment, I can honestly say that no one in town government has been a stronger defender of single-family neighborhoods and for a longer period of time than I, but I also recognize that we must be realistic about the changes in Boone over the last 20 years: university enrollment has doubled from 9,000 to 18,000; the population of Boone has grown from 13,472 in 2000 to more than 18,000 in 2013; and, we have huge periodic growth spurts in the population due to tourism. Boone is no longer a small town with a small teachers' college, but a big town with an important and nationally known university. Single-family neighborhoods are to be protected, but the downtown needs our protection as well.

With over 60% of the town's population between the ages of 15 and 24, we are going to have loud music. It is best to have it in our downtown business district. We don't want it happening out in the county somewhere and our younger citizens driving back to town late and possibly impaired, but downtown, next to campus and close to the greatest concentration of student housing. It would also be easier to police if it were in a contained area and we could use the noise ordinance to limit that area so as to keep it all concentrated in one clearly defined arts and entertainment district.

The current ordinance is unfair to our downtown businesses, and not only the performance venues, but to other businesses who benefit from the increased traffic.

Therefore, I am making a two-part motion. First, that we raise the acceptable decibel level, for live musical performance, in the downtown business district to 75 until 2 a.m., seven days a week. Two, that after two successive complaints from one party in one calendar year where the business complained of was not out of compliance, that our police not investigate any additional complaints made by that party for a period of 12 months."

Council Member David seconded the motion, and made a friendly amendment, which was accepted by Council Member Hay, to increase the number of successive complaints from one party from two to five. Council Member Brantz stated he was concerned with this potentially violating free speech. Council Member Mason wondered what would happen if the sixth complaint not addressed was valid. Town Manager John Ward stated that the expectation of the complainant has to be taken into consideration, but when history of non-violation exists, you have to determine if it would be more adequate use of safety resources to address other matters. Town Attorney Allison Meade noted that before action can be taken on the amendment to the ordinance, it must be put in writing. A friendly amendment, accepted by Council members Hay and David, was made to direct

the Town Attorney to bring proposed language back to Council in March with the revisions made to increase the decibel level to 75 until 2 a.m. seven days a week for live musical performances in the downtown business district and to reflect that after five successive complaints from the same party in one calendar year where the business complained of was not out of compliance, that the police not investigate any additional complaints made by that party for a period of 12 months.

VOTE: Aye – 3 (David, Hay, Peña)
 Nay – 2 (Brantz, Mason)

CONSIDERATION OF ZONING CASES

- **Case 20140748 River's Walk** – G & B Oil, Inc. and Southern States Co-Operative Inc. have filed a Conditional District Map Amendment for property at 178 S. Water Street, and 190 and 208 Poplar Grove Road. The request is to rezone from B1 Central Business to Conditional District B1 Central Business with a site-specific development plan for a mixed-use project (River's Walk) containing approximately 16,647 square feet of commercial area and 145 apartments with 380 bedrooms.

Planning Director Bill Bailey advised Council that two modifications to this case had been made. First, a vegetative area will instead be brick, and the developers stipulated that they would participate in the Greenway Trail expansion and specified an eight-foot minimum trail. Brief discussion ensued regarding the Greenway Trail expansion on the property and flexibility in location. Concern was voiced by Council members that the drafted Planning Commission minutes had not been provided to them. Brief discussion ensued. Mr. Bailey provided Council will two additional exhibits provided by the developers (**Exhibits permanently on file in February 2015 meeting file**), and Council advised they felt this information was adequate to make a decision on the case.

Vote #1

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved that the 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 this project is a mixed-use redevelopment of brownfields sites within the heart of downtown Boone; that the projects' architectural elements design are harmonious to the overall architecture within downtown Boone; that this projects' stream buffer and Kraut Creek restoration efforts are in line with the outline in Section 4 page 39 of the Boone 2030 plan; that this project introduces a range of housing options and choices as outlined in Section 9 of the Boone 2030 plan; the project is an appropriate infill mixed-use project in downtown Boone as outlined in Section 7 of the Boone 2030 plan; and that the projects bikeability and walkability and the developers'

willingness to grant an easement for a greenway space or trail and for all of these reasons makes this a project to move forward with.

VOTE: Aye – All
 Nay – None

Vote #2

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve the amendment to the Town's zoning map with the eight conditions as agreed upon by the applicant, and believe approval is reasonable and in the public's interest because the mixed-use site will improve the B1 offerings in downtown Boone:

Conditions agreed upon:

1. Where there is a conflict between the application information and the plans (bearing a received date of January 26, 2014), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
4. The Town of Boone will be given the necessary easements for public sidewalks which leave existing street right-of-way.
5. All driveway permits shall be obtained prior to the issuance of a Zoning Permit.
6. Applicant demonstrate adequate parking for the development.
7. Applicant build the courtyard as demonstrated on the drawing submitted by Bill Dixon on February 9, 2015, at the Planning Commission meeting.
8. The applicant provide an easement for an eight-foot minimum greenway along Boone Creek through the development property.

VOTE: Aye – All
 Nay – None

• Case 20150007 Public Works Director Clarification Text Amendment

Planning Director Bill Bailey advised Council that this amendment is just to provide text clarification for the Public Works Director.

Vote #1

Upon a motion by Council Member Mason, seconded by Council Member David, 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 changes provide consistency with existing analogous language in the UDO making it more user-friendly and predictable.

VOTE: Aye – All
 Nay – None

Vote #2

Upon a motion by Council Member Mason, seconded by Council Member David, Council moved to approve the amendment to the Town's zoning ordinance and believe approval is reasonable and in the public's interest because it makes a needed clarification in the UDO.

VOTE: Aye – All
 Nay – None

- **Case 20150021 Wellness District Small Area Plan**

Planning Director Bill Bailey advised Council that the Planning Commission recommended another workshop; however, there is no requirement under statute or the UDO to take action. Council Member Peña stated that a lot of people feel that their voices haven't been heard or they are not adequately informed, and felt it would be a good idea to hold another workshop in which the property owners and public are notified well in advance.

Upon a motion by Council Member Mason, seconded by Council Member Peña, Council moved to schedule a special meeting with the Planning Commission for Monday, April 13, 2015, beginning at 5:30 p.m. in the Council Chambers located at 1500 Blowing Rock Road for the purpose of holding a Wellness District Small Area Plan workshop, and to direct that all property owners in the proposed wellness district receive notification at least 30 days prior and that the purpose of the workshop will be to solicit additional feedback from the property owners.

VOTE: Aye – All
 Nay – None

Mayor Ball declared a break at 7:43 p.m. Council reconvened at 7:58 p.m.

TOWN MANAGER UPDATE

Town Manager John Ward advised Council that there will be a project team conference call with the contractor regarding the parking meter implementation in order to coordinate between staff on the installation and to set a schedule for the meters. He added that there are some shipment issues they are waiting on to finalize.

Mr. Ward also stated that the lease with the county for use of the recreational fields will be on the March agenda, noting that it is a step toward working with the county.

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Ball noted that the following positions are set to expire on the Water Use Committee:

- One vacant community member position will expire on March 22, 2015.
- One Planning Commission appointment position will expire on April 22, 2015.

Mayor Ball noted that in addition to the resigned positions, the following positions are also vacant:

Board of Adjustment: six positions – three Alternate Resident, two Alternate ETJ and one ETJ position.

Community Appearance Commission: four positions – must reside in the Town of Boone's planning jurisdiction.

Downtown Boone Development Association: one position – town-appointed.

Greenway Committee: two regular positions.

Outside Agency Funding Review Committee: three at-large positions – must reside in the Town of Boone.

Planning Commission: two ETJ positions.

TDA Board: one resident position in the BACC.

Tree Board: two positions – to the extent qualified persons can be found, the applicant shall have special training or experience in arboriculture, horticulture, architecture or landscape design.

BOARD APPOINTMENTS

Board of Adjustment

Mayor Ball noted that applications had been received from Thomas Kane and Brandon Paul for consideration. Council Member Mason nominated Brandon Paul for an Alternate Resident position. Mayor Ball called for a vote.

VOTE: Aye – All
 Nay – None

Council Member Brantz nominated Thomas Kane for an Alternate Resident position. Mayor Ball called for a vote.

VOTE: Aye – All
 Nay – None

Mr. Paul's and Mr. Kane's terms will expire June 30, 2018.

Downtown Boone Development Association

Mayor Ball noted one application for consideration was received from Tucker Deal. Council Member Mason nominated Tucker Deal to serve in the Town-appointed position. With no other nominations, Mayor Ball called for a vote.

VOTE: Aye – All
 Nay – None

Mr. Deal's term will expire July 31, 2016.

Greenway, Parks & Gardens Committee

Mayor Ball noted three applications were received from Jason Selong, Thomas Kane and Kevin Asher. Council Member Brantz nominated Kevin Asher and Jason Selong to serve on this board. With no other nominations, Mayor Ball called for a vote.

VOTE: Aye – All
 Nay – None

Mr. Selong's and Mr. Asher's terms will expire July 31, 2017.

Outside Agency Funding Review Committee

Mayor Ball noted one application was received from Craig Caldwell. Council Member Brantz nominated Craig Caldwell to serve on this board. With no other nominations, Mayor Ball called for a vote.

VOTE: Aye – All
 Nay – None

Mr. Caldwell's term will expire July 31, 2017.

Tourism Development Authority

Mayor Ball noted one application was received from Lenny Cottom. Council Member Mason nominated Lenny Cottom to serve as the resident in the BACC. With no other nominations, Mayor Ball called for a vote.

VOTE: Aye – All
 Nay – None

Mr. Cottom's term will expire Feb. 28, 2018.

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

WATER & SEWER REQUEST – HARROD/AP LLC

Town Attorney Allison Meade opened a public hearing at 8:06 p.m. to hear sworn testimony on a request for water and sewer service to property located at the intersection of Poplar Grove Road and Water Street. Mr. Jim Deal, being duly sworn, stated he was representing the client. Mr. Deal presented an e-mail sent by Mr. Travis King who is an engineering working with the developer on this project, which shows calculations of what they anticipate to be the actual water usage for the property, which is less than the amount according to the required state calculation method. He added that the project is to be completed over a two-year period, and the Council could allocate water over the two-year period if they wanted to have that flexibility when looking at the actual water usage. Council Member David pointed out that the state calculation method also doesn't necessarily match up with the fixtures they encourage people to use. Mr. Deal advised Council that the fixtures used when calculating their anticipated water usage is an actual reflection of what the engineers' have used in their experience. Public Works Director Rick Miller, being duly sworn, stated that should Council choose to allocate water and sewer, they will have to allocate the amount in accordance with the state's calculation method, but should the actual usage be more or less, the

corresponding party would be reimbursed for the difference. He added that water allocation amounts as of today is approximately 193,000 remaining for 2015 with the 2014 rollover; will be approximately 180,000 for 2016; and, will be approximately 150,000 for 2017 not including this request. He also advised Council that at next month's Council meeting a recommendation from the Water Use Committee will be presented to maintain the 150,000 gallons per day water allocation through 2018. With no other testimony, Ms. Meade closed the public hearing at 8:18 p.m. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve Harrod/AP LLC's request for water and sewer service with the predicted usage of 64,068 gallons per day to be divided between 2015 and 2016.

VOTE: Aye – All
 Nay – None

WATER & SEWER REQUEST – JUSTIN ROGERS/ROGERS MECHANICAL

Town Attorney Allison Meade opened a public hearing at 8:20 p.m. to hear sworn testimony on a request for water and sewer service to property located on IJ Bingham Place. Justin Rogers, being duly sworn, introduced himself as the owner of the property. He stated they hoped to place a 2400 square foot shop on the premises, adding that the property is located off Archie Carroll Road and there is a sewer main going down this road. In response to Council Member Brantz' question regarding why Mr. Rogers wants town water and sewer, Mr. Rogers stated that they do not believe they could use a traditional system in this area, since NCDOT is dumping a large amount of water onto the property so it will not perk. He added that there are alternate methods that have been mentioned, but they are questionable. Mr. Rogers indicated that should he receive water and sewer service, he would be willing to pay the costs to hook onto the system and to annex. Public Works Director Rick Miller, being duly sworn, stated that with Mr. Rogers being outside the corporate limits, the hardship definition applies and would be dependent on the health department evaluating the septic system and well. Brief discussion ensued regarding the difference between an extension and a connection. Mr. Rogers advised that a perk test was completed and turned down. Ms. Meade stated there is a high bar set that requires clear and convincing evidence that there is no other reasonable alternative. Mr. Miller stated that should Council deny or continue the hearing in order to allow Mr. Rogers to provide more evidence, no fee would be associated with his continuation or reapplying for the service by the Town. With no other testimony, Ms. Meade closed the public hearing at 8:33 p.m. Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to deny the request for water and sewer service by Justin Rogers/Rogers Mechanical, and encouraged him to bring forward evidence of hardship as soon as possible. Council Member Mason added that staff would provide him with a copy of the Town's hardship policy.

VOTE: Aye – All

Nay – None

CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to enter Closed Session at 8:36 p.m. pursuant to NCGS § 143-318-11(a)(1)(3)(5) and NCGS § 132-1.4(a) to hear the following items:

- A. Pursuant to N.C. Gen. Stat. §143-318.11(a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and consider and give instructions to the attorney concerning the handling of a claim involving the Town of Boone.
- B. Pursuant to N.C. Gen. Stat. §143-318.11(a)(1) and N.C. Gen. Stat. §132-1.4(a), and pursuant to N.C. Gen. Stat. §143-318.11(a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and consider and give instructions to the attorney concerning the handling of a claim involving the Town.
- C. Pursuant to N.C. Gen. Stat. §143-318.11(a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and consider and give instructions to the attorney concerning the handling of the claim by the Town of Boone against the State of North Carolina.
- D. Pursuant to N.C. Gen. Stat. §143-318.11(a)(5), to establish, or to instruct the Town's staff or negotiating agents concerning the position to be taken by or on behalf of the Town in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property on Rich Mountain.

VOTE: Aye – All
 Nay – None

Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to exit Closed Session at 9:45 p.m.

ADJOURNMENT

Upon a motion by Council Member Brantz, seconded by Council Member Hay, Council moved to adjourn at 9:46 p.m.

VOTE: Aye – All
 Nay – None

Christine Pope, Town Clerk

Andy Ball, Mayor