MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
March 15, 2018

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order at 6:00 p.m. Thursday, March 15, 2018 in the Council Chambers located at 1500 Blowing Rock Road. Mayor Rennie Brantz presided. Council Members present were Mayor Pro-Tem Loretta Clawson, Lynne Mason, Connie Ulmer, Sam Furgiuele and Marshall Ashcraft. Staff present were Town Manager John Ward, Town Clerk Nicole Worley, Planning Director Jane Shook, Deputy Public Works Directors Eric Gustaveson and Josh Eller, Lt. Danny Houck and Fire Chief Jimmy Isaacs. Town Attorney Allison Meade was also present.

ANNOUNCEMENTS

Mayor Brantz welcomed all in attendance and asked anyone who wished to speak during public comment period to sign the public comment sign-in sheet.

Mayor Brantz read a statement:

"As Council Members know, we have a full agenda and a closing time of 11:00 p.m. Nevertheless, I want to be sure we discuss each item tonight fully and thoughtfully and in so doing I hope that we will continue to be focused, concise, respectful and considerate of our audience and our responsibilities. I want everyone to be heard and our decisions based on careful deliberations, solid information and the best interest of our community. As Council Member Ulmer noted at a recent meeting, we on the Council need to work together for the wellbeing of our entire community."

Mayor Brantz announced that the Appalachian Theatre has been awarded the highest honor for best facade in the state. He also announced that the Town of Boone has been recognized as a Tree City USA 2017 which is more than 20 years with that designation.

TENTATIVE AGENDA ADOPTION

Council Member Furgiuele asked that the fourth item under Closed Session be moved to the second item under Council Matters. Council Member Furgiuele made a motion to adopt the agenda with this change in order. Council Member Clawson seconded this motion.

VOTE:	Aye:	All
	Nay:	None

PUBLIC COMMENT

David Jackson of the Boone Area Chamber of Commerce thanked the Boone Fire Department and especially Assistant Fire Chief Mike Teague for their assistance with the Boone Leadership Challenge event involving a medivac helicopter. Mr. Jackson thanked staff for their participation in the lunch and learn regarding the NC School of Government DFI project and noted that the business community was vested in what happened Downtown and offered the Chamber of Commerce's assistance in further educating the public on the project.

Susan McCracken spoke as a board member of the Appalachian Theatre. She thanked Council for their support of the project and expressed the need for further support to allow for continued construction. She voiced concern with language in the proposed Memorandum of Understanding that would allow the Town to use the Theatre community space at no cost, adding that this would be detrimental to the Theatre's success. She added that the Theatre would be willing to work with Town on a reduced rate for usage of the community space and asked Council to be thoughtful of the types of conditions placed on the Theatre when choosing from the options presented in the Memorandum of Understanding.

Stephen Phillips addressed Council noting that he served on the 2030 Plan Committee. Mr. Phillips stated that he was in favor of keeping the 2030 Plan.

Harvard Ayers announced that he had met with the CEO of Envision Solar International, Inc. and invited Council to designate a couple of members to engage in future conversations with the company.

Andy Hill of Watauga River Keepers spoke in support of the 2030 Plan and in particular the environmental protection and the community involvement aspects. Mr. Hill added that he believed it would be premature to repeal the plan without having something to take its place.

REQUESTED APPEARANCES

JOHN WELCH - UPDATE ON COMMUNITY RECREATION CENTER

Chairman of the Watauga County Board of Commissioners presented Council with a PowerPoint presentation to update them on the recently approved community recreation center. Chairman Welch detailed the poor condition of the current County recreation facilities and outlined the features of the new facility, including community space and exterior restrooms. He indicated that the project had an estimated completion date of May 2020 and a projected cost of approximately 35 million dollars. Chairman Welch asked Council to keep the project in mind during budget time, stating the County's desire to partner with the Town on the project. He specifically asked Council to consider waiving construction fees or multi-year financial contributions, adding that County Tourism Development Funds could not be used on the project since it would be built inside Town of Boone limits. Council Member Furgiuele asked what the cost for permits would be to the Town, with Town Manager Deron Geouque estimating approximately $80,000. Council Member Furgiuele asked Chairman Welch to get numbers together in order to be considered during budget discussions. Chairman Welch and Mr. Geouque confirmed that flooding issues on the property had been addressed.

A complete copy of the PowerPoint presentation may be viewed by following this link: http://boonenc.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=&MeetingID=1799&MediaPosition=&ID=1760&CssClass=

SCOTT EGGERS - WATAUGA COMMUNITY HOUSING TRUST

Scott Eggers with the Watauga Community Housing Trust voiced the group's desire to address affordable housing in the area and more specifically workforce housing. Mr. Eggers noted that the WCHT was totally independent from government and that the Watauga County Commissioners committed the property near Brookshire Park for an affordable housing community. He stated that the project faced significant infrastructure challenges and asked Council to partner with the WCHT to provide water, sewer, materials and labor to the project, as well as to allow the property to be annexed after the project was completed. Council Member Mason stated that the housing model being used on the project had been used in other communities throughout the state. She added that the WCHT would retain ownership of the land and that the homes would be purchased with provisions in place to retain affordability should the homeowner decide to sell at a later date. Council Member Furgiuele asked Mr. Eggers what the total project cost would be after the houses were built, to which Mr. Eggers replied that since the housing trust was unsure of the level of Town commitment, they had not made it to that point in planning. Council Member Furgiuele expressed concern with the fact that the area was destabilized at one point and asked why the property would not be annexed until after construction. Mr. Eggers answered that the area on which homes would be built would be undisturbed land and that by annexing the property after construction, they could save $30,000-$40,000 per house by not being labeled as a major subdivision per the UDO. Chairman of the Watauga County Board of Commissioners John Welch added that the County had agreed to donate the property which was valued at approximately 1.6 million dollars as well as County staff to assist with the construction of roads, etc. and that this project would add to Town tax revenues while the property as it is currently was designated tax exempt. When asked by Mr. Eggers when an answer to their request for assistance could be expected, Mayor Brantz stated that the matter would be discussed during Town budget hearings.

GEORGE SANTUCCI - NEW RIVER CONSERVANCY

George Santucci, president of the New River Conservancy presented Council with a PowerPoint presentation summarizing the Boone Watershed Plan and to outline potential grant funding to daylight Boone Creek as well as stormwater mapping opportunities. Mr. Santucci noted that the Town had done a good job at identifying and locating stormwater issues, but that mapping was not complete. He stated that while the New River Conservancy could not apply for funding, they would be willing to assist the Town in doing so and added that the deadline to apply was June 30th. Mr. Santucci voiced hopes of daylighting the stream underneath the Peacock Hall Parking Lot and added that the project would be a partnership between the Town, County and ASU. He stated that in addition to the possibility of collaborating with ASU on a parking deck, daylighting the stream would slow it down before it reached the Boone Mall and would reduce stormwater issues in that area. Mr. Santucci added that ASU supported a feasibility study and noted that the project would have a substantial positive impact on stormwater issues in Town. Town Manager John Ward noted that the Town currently had funds available to pay for flyover photography which would be beneficial to the project. Discussion ended with Council expressing their support for the project.

A complete copy of the PowerPoint presentation may be viewed by following this link: http://boonenc.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=&MeetingID=1799&MediaPosition=&ID=1724&CssClass=

COURTNEY BAINES - BLUE RIDGE WOMEN IN AGRICULTURE

Courtney Baines spoke on behalf of Blue Ridge Women in Agriculture to thank Council for their support of the High Country Food Hub and noted it's success. Ms. Baines presented a PowerPoint presentation which highlighted the efforts of BRWIA as well as their new "Double up Food Bucks" program, which would allow EBT participants to purchase food from their local Farmers Market and that one EBT dollar would equal two food bucks. Mayor Brantz suggested that Blue Ridge Women in Agriculture apply for Outside Agency Funding at the appropriate time.

A complete copy of the PowerPoint presentation may be viewed by following this link: http://boonenc.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=&MeetingID=1799&MediaPosition=&ID=1723&CssClass=

QUASI-JUDICIAL HEARING

REQUEST FOR SERVICE - HIDDEN CREEK MANAGEMENT SERVICE

Town Attorney Allison Meade opened public hearing at 7:30 p.m. Tucker Deal, attorney for the applicant Blake Pace, stated that the property in question was located in the former ETJ and that it was adjacent to Town limits. Mr. Deal stated that the applicant was denied a septic permit by the Watauga County Health Department due to insufficient space on the property for a tank and repair area. Mr. Deal indicated that the applicant had considered modifications to the site or type of system, but that none would effectively overcome the site's space constraints. Applicant Blake Pace of Hidden Creek Management, after being duly sworn, stated that the property would consist of affordable housing and that the current septic system had failed to the point where the ground was no longer able to pass percolation tests. He stated that he had spent $17,000 in attempts to repair the system and that it was not financially feasible to pump the system every two months. Mr. Blake confirmed that he would pay for the extension of sewer connections and that he would be willing to accept water services although the property had a well. Mr. Deal added that Mr. Pace would be required to use Town water services in order to receive sewer services as per Town regulations. Town Attorney Allison Meade inquired about an inaccuracy in the number of units located on the property which was contained on the denial letter from the Watauga County Health Department and asked whether the error could have contributed to denial of a septic permit. Mr. Pace confirmed that there were three buildings on the site with 11 units and Mr. Deal added that a site analysis was performed by the County. Ms. Meade asked whether other options had been explored to which Mr. Deal replied that they had looked into other options, but that they would be difficult and expensive to pursue. Public Works Deputy Director Josh Eller was duly sworn and stated that an analysis had been done on the property and that there were different routes that were feasible. Mr. Eller stated that the water mains were located across the street and that it would not be difficult to hook on to them from the property in question. He added that the nearest public connection via DOT right-of-way was approximately 1,000 feet away. Mr. Eller stated that another option would be to acquire a private easement from Deerfield Ridge Assisted Living to connect to a private line on Candy Lane. After brief discussion regarding the remaining life of the system, Ms. Meade closed the hearing at 7:52 p.m. Council Member Furgiuele stated that due to time pressures in terms of system failure, it was his view that the request to make a private connection was reasonable to approve. Council Member Mason concurred. Council Member Ulmer made a motion to approve the request as presented subject to the applicant petitioning for annexation. Council Member Furgiuele seconded, then asked to amend the motion to clarify that the applicant would pay for the extension to public lines for a private easement. Council Member Clawson seconded this amended motion.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Connie Ulmer, Councilwoman
SECONDER:	Sam Furgiuele, Councilman
AYES:	Furgiuele, Ulmer, Ashcraft, Mason, Clawson

APPROVAL OF ITEMS ON CONSENT AGENDA

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Loretta Clawson, Mayor Pro-Tem
SECONDER:	Lynne Mason, Councilwoman
AYES:	Furgiuele, Ulmer, Ashcraft, Mason, Clawson

APPROVAL OF CAC/HPC/TC SPECIAL MEETING MINUTES - DEC. 12, 2017 5:30 P.M.

Mayor Brantz declared a break at 7:54 p.m. Council reconvened at 8:07 p.m.

Town Manager John Ward noted that he did receive some suggested revisions to the minutes of the December 12, 2017 special meeting of the Community Appearance Commission, Historic Preservation Commission and Town Council from Historic Preservation Commission Chair Eric Plaag. These changes were passed along to the board secretary to make the necessary revisions.

APPROVAL OF PLANNING RETREAT MINUTES - JAN. 8, 2018 8:30 A.M.

APPROVAL OF RESOLUTION - NATIONAL BIKE MONTH

RESOLUTION DECLARING MAY NATIONAL BIKE MONTH

WHEREAS, National Bike Month was established in 1956 to showcase the benefits of cycling and encourage current and potential bicyclists to incorporate bicycling into their everyday lives; and

WHEREAS, it exists as an implementation strategy of the 2014 Bicycle and Pedestrian Plan to provide communication and outreach in order to celebrate successes and raise awareness of the overall pedestrian and bicycle network and its benefits; and

WHEREAS, Bike Month is listed as an Outreach Resource in Appendix B: Program Resources in the 2014 Bicycle and Pedestrian Plan; and

WHEREAS, the Town of Boone participates in Watch for Me NC, a statewide comprehensive program aimed at reducing the number of pedestrians and bicyclists hit and injured in crashes with vehicles; and

WHEREAS, it is a goal of the Boone Town Council, Transportation Committee, and Alternative Transportation Subcommittee to encourage the safe use of bicycles as a method of alternative transportation; and

WHEREAS, creating a bicycling-friendly community has been shown to improve citizens' health, well-being, and quality of life, growing the economy of the Town of Boone, attracting tourism dollars, improving traffic safety, supporting student learning outcomes, and reducing pollution, congestion, and wear and tear on our streets and roads; and

WHEREAS, the Town of Boone is promoting bicycle tourism year-round to attract more visitors to enjoy our local restaurants, hotels, retail establishments, and cultural and scenic attractions; and

WHEREAS, the Town of Boone is promoting greater public awareness of bicycle operation and safety education in an effort to reduce collisions, injuries, and fatalities and improve health and safety for everyone on the road.

NOW, THEREFORE, BE IT RESOLVED that the Boone Town Council unanimously recognizes May as National Bike Month, and urges all road users to share the road safely with bicyclists.

Adopted this 15th day of March, 2018.

ATTEST: Mayor Rennie Brantz

Town Clerk Nicole Worley

COUNCIL MATTERS

CONSIDERATION TO REPEAL 2030 PLAN

Upon a motion by Council Member Mason, seconded by Council Member Ulmer, Council moved to allow additional comments in regards to agenda item 8a-Consideration to Repeal 2030 Plan.

VOTE: Aye: All
Nay: None

Planning Commission Member Abbie Bonevac stated that the 2030 Plan took an immense amount of time, money and effort to put together, and asked Council to consider other options. She stated that the Planning Commission would be willing to work with Council to combine the UDO and the 2030 Plan and to remove inconsistencies, but that repeal of the 2030 Plan was not the best option. Ms. Bonevac added that the 2030 Plan was key to the development of Boone and had many benefits that outweighed the negatives.

Board of Adjustment Member Rich Crepeau spoke as a citizen of the Town and noted his expertise in the planning field. Mr. Crepeau stated that he had been a member of the Board of Adjustment since 2001 and was a member of the 2030 Plan Project Advisory Committee. He added that he understood that the 2030 Plan had conflicts with other Town plans, but asked Council not to repeal the plan. Mr. Crepeau stated that the 2030 Plan should be relied on as a source of Town policy where the UDO does not speak and added that inconsistencies could be resolved.

Council Member Furgiuele began discussion by asking Planning Director Jane Shook if it was true that the prior Council ordered the integration of the Comprehensive Plan and the 2030 Plan. Ms. Shook answered that this was true and that the new, combined plan would supersede the existing plans. When asked by Council Member Furgiuele whether Council could accept parts of the 2030 Plan and disregard parts, Ms. Shook stated that there was nothing that would prevent Council from doing so. Council Member Furgiuele noted that there was a recent change in state law which stated that in order to support a request to re-zone, there must be consistency with all adopted plans throughout the town. Council Member Mason voiced concerns about repealing the 2030 Plan, and stated that the plan was developed with public participation and input. She added that the document, while not a regulatory document, served as a vision of the Town's future self. Council Member Mason stated that the plan served to protect natural resources and served as a guide when deliberating water allocations and annexations outside the city limits. She noted that the 2030 Plan was no different than any other plan adopted by the Town and expressed the desire to promote growth that was in harmony with the character of our community and natural resources. Council Member Mason stated that at the Planning Retreat after Council Member Furgiuele presented a legal argument against the plan, she agreed to the idea of repealing the plan initially. She continued to say that after speaking with the Town Attorney, she did not believe the 2030 Plan posed a great legal risk to the Town. She asked Council to consider reviewing and updating the 2030 Plan and the Comprehensive Plan and consider consolidation of the two. Council Member Clawson stated that she had been serving the Town for over thirty years on various boards and that there were buildings in the works currently that could have been approved due to the 2030 Plan and felt like the public would be disappointed when construction was complete. She added that Council did not plan to throw away the document completely, but instead would take good parts from the plan. Council Member Clawson stated that she did not want to take a chance of a lawsuit against the Town. Council Member Clawson made a motion to repeal the 2030 Plan and to combine it into one document with the Comprehensive Plan, which would be upheld by the state. Council Member Furgiuele seconded. Council Member Ashcraft stated that everyone he had talked to and everyone that spoke at the meeting this evening is opposed to the repeal of the document. He added that he believed that 90%

of the document was good but that a few minor amendments could be made which would eliminate concerns. Council Member Ulmer expressed concern that the plan had been adopted in 2009 and needed to be updated. Council Member Furgiuele stated that he had not heard anyone say that Boone was moving in the right direction since 2009 and expressed concern with the fact that demographics within the Town were changing due to development in the Town. He added that there were also issues with the Comprehensive Plan and that it needed to be redone to include the best features of the 2030 Plan. Council Member Furgiuele stated that the Council was charged with protecting the fiscal integrity of the Town and that even a low risk that the Town could be sued due to the 2030 Plan did not make sense to him. Council Member Ashcraft agreed with Council Member Furgiuele's concerns, but stated that he believed the document could be amended with less drastic means than the repeal of the entire plan. Mayor Brantz asked Planning Director Jane Shook how long it would take for staff to develop a new plan. Ms. Shook replied that it would depend on Council's direction to staff and that a document should be updated every five years to stay current. Ms. Shook noted that staff had been working with various committees and the High Country Council of Government on the merger of the Comprehensive Plan and the 2030 Plan, but that Council had concerns that new members had not had sufficient time to review the document. Council Member Furgiuele asked that new members be given time to review the merged document before sending to committees and that the group have discussion on the matter. Council Member Mason added that she would like an item placed on next month's agenda to schedule a special meeting to discuss the merged document.

RESULT:	**APPROVED [3 TO 2]**
MOVER:	Loretta Clawson, Mayor Pro-Tem
SECONDER:	Sam Furgiuele, Councilman
AYES:	Furgiuele, Ulmer, Clawson
NAYS:	Ashcraft, Mason

MEMORANDUM OF UNDERSTANDING - APPALACHIAN THEATRE

Town Attorney Allison Meade began discussion stating that Town Manager John Ward had approached the owner of the building on the eastern side of the Theatre on multiple occasions and that there had been no concrete movement in terms of property acquisition. She indicated that since efforts were not yet at the point of negotiating terms, she felt that closed session discussion on the topic was not appropriate. Council Member Furgiuele stated that he believed it was too late to have discussion regarding property acquisition on the eastern side of the Theatre because it would prohibit the Theatre from getting the funding needed to proceed with construction. Council Member Furgiuele made a motion to remove Closed Session Item 4 (Pursuant to N.C.Gen.Stat.§ 143-318.11 (a)(5), to establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease). The motion was then seconded by Council Member Clawson.

VOTE:	Aye:	All
	Nay:	None

Ms. Meade stated that she had spoken with the building inspector and the architect for the project regarding egress out of the building. She noted that theTheatre had to have a commitment for egress on either the eastern or western side of the Theatre in order to continue with its construction schedule. Ms. Meade noted that flexibility could be maintained within the Memorandum of Understanding that would allow for the movement of the egress and that it would not be costly to move it prior to actual construction. She indicated that there would be several months to change the easement and that negotiations with the eastern property owner could continue. Council Member Clawson stated that she wanted to see the Theatre succeed. Council Member Mason expressed concern with option one of the memorandum relating to Town use of Theatre space, adding that revenue streams are very important to non-profit organizations. She stated that she believed the non-profit rate for Town use of the community space in the Theatre (option two) was fair. Mayor Brantz expressed support for option two of the memorandum. Upon a motion by Council Member Mason, seconded by Council Member Clawson, Council voted to approve the Memorandum of Understanding - Option Two.

<u>Memorandum of Understanding</u>

This Memorandum of Understanding (hereinafter, "MOU") is agreed to as of the _____ day of ____________, ~~2015~~2018 by and between the Town of Boone, a North Carolina municipal corporation (hereinafter, "Town") and the Appalachian Theatre of the High Country, Inc., a North Carolina non-profit corporation (hereinafter, "Theatre"). Town and Theatre may be collectively referred to hereinafter as "the parties."

WHEREAS, the Town has previously conveyed to Theatre that certain parcel of land known as the Appalachian Theatre as further described in that deed recorded at Book 1710, Page 666 of the Watauga County Register of Deeds Office (hereinafter, said parcel of land is referred to as the "Theatre Property");

WHEREAS, the aforesaid conveyance from the Town to the Theatre was made subject to those restrictions set forth at Exhibit A of the deed recorded at Book 1710, Page 666 of the Watauga County Register of Deeds Office (hereinafter, the "Restrictions");

WHEREAS, the Town and Theatre previously entered into an MOU dated as of February 23, 2015 that has now expired of its own terms;

WHEREAS, the Theatre has requested that the Town convey to Theatre an additional parcel of land adjoining the Theatre Property that is approximately ~~28'-10~~ 38'1" by ~~21'-5"~~18' 6"" in dimensions and is located approximately as set forth on the schematic design attached hereto as Exhibit 1 (hereinafter, said additional parcel of land is referred to as the "SL Wing Addition property");

WHEREAS, the Theatre has requested the aforesaid conveyance in order to undertake the renovation and expansion of the Theatre building as shown at Exhibit 1;

WHEREAS, the Theatre has requested that the Town convey to Theatre a permanent easement for the construction of a code-compliant emergency exit from the Theatre auditorium on the west side of the Theater building to a landing, down the stairs to a landing at ground level, and continuing to join the emergency exit way that serves the rear of the Town of Boone building as shown on Exhibit 2;

Whereas the Theatre has requested that the Town convey to Theatre a temporary construction easement on the parking lot joining the Theatre as shown on Exhibit 3 for the purpose of constructing the improvements to the Theatre including, but not being limited to the SL wing and the emergency exit from the west side of the Theatre; and

WHEREAS, the Town has determined that it is in the public interest, for a public purpose, and appropriate and lawful to convey the SL Wing Addition property, a permanent easement for the emergency egress from the building, and the temporary construction easement to Theatre, subject to the conditions and restrictions set forth herein;

NOW THEREFORE, the parties do agree and undertake the following:

1. Subject to and consistent with N.C.G.S. §§ 160A-267 and 160A-279, the Town agrees that it will convey the SL Wing Addition property, a permanent easement for an emergency exit and egress way from the Theatre auditorium on either the west or the east side of the building, and the temporary construction easement, all as shown on Exhibits 2-3, to the

Theatre upon the happening of all of the following (and only upon the happening of all of the following), and subject to the further conditions set forth in this MOU:

a. The Theatre has obtained funds, either in hand or by loan from a bank, required to complete the proposed Appalachian Theatre project as generally set forth at Exhibit 1;

b. The Town has approved any relocated overhead or underground utilities, the locations of which may be designated by the Town;

c. The Town has approved site plans for the SL Wing Addition, a permanent easement for an emergency exit and egressway on either the eastern or western side of the theatre auditorium, and the area for the temporary construction easement project to ensure that such plans serve the Town's interests with respect to the Town Hall property. The Town may require that said site plans include improvements to areas adjoining the SL Wing addition even though said areas remain the property of the Town. By way of example only and not by way of limitation, the site plans shall meet the Town's interests in (i) ensuring ~~minimal~~the impact to the Town's existing parking and operations at the Town Hall property will be minimized to the extent reasonably possible considering the work to be done over the anticipated 12 month construction period, (ii) proper drainage of storm water and/or other water runoff or drainage (whether from the Theatre property, the Town Hall property, or any other property), (~~iv~~iii) appropriate exterior design and appearance of the SL Wing addition building; and (iv) appropriate landscaping and any other necessary improvement of the surrounding grounds adjacent to the SL Wing addition and the permanent easement area.

2. Upon the happening of all the events set forth at (1) above, the Town will convey the SL Wing Addition ~~property~~, a permanent emergency egress easement and the temporary construction easement to the Theatre by non-warranty deed subject to the following conditions:

a. The dimensions of the SL Wing Addition property to be conveyed will be no greater than that shown on the attached Exhibit 1 ~~plus or minus six (6) inches in either direction~~, with the understanding and agreement that (i) the property area may be shifted slightly either North or South as and for the reasons indicated on Exhibit 1~~; and (ii) the western boundary of the SLWing Addition shall align with the corner of the rear of the Town Hall building as indicated on Exhibit~~.

b. The temporary construction easement shall be located as shown on Exhibit 3, with the understanding that the Town's drive-thru utility service lane will be kept open for use by utility customers at all times, and that the Theatre will minimize the effects on the Town's operations to the extent reasonably possible during the construction period.

c. The Town will convey a permanent easement for an emergency exit and egress way from either the western or eastern side of the Theatre auditorium sufficient to meet applicable building code requirements for emergency egress. This egress

2

way is currently planned for the west side of the building as shown on Exhibit 2 to allow persons exiting the Theatre auditorium to exit onto an upper landing, down the stairs to a landing at ground level, and continuing to join the emergency exit way that serves the rear of the Town of Boone building. However, it is understood and agreed that the Town (or its successors or assigns) may require re-location and/or any other modification of the emergency exit and egress easement at any time so long as the relocated exit and egress way complies with applicable regulations. It is further agreed that the Town may require relocation at the Theatre's expense, if such can be accomplished prior to the beginning of construction or during construction with no substantial increase in construction cost. After the emergency exit has been constructed, the Town (or its successors or assigns) shall retain the right in perpetuity to require relocation or other modification of the emergency egress at its own expense and in compliance with applicable regulations.

~~b.~~d. The Theatre will bear all costs, responsibilities and liabilities associated with construction, utility relocation, restoration and/or redesign of the SL Wing Addition and of the existing parking lot that will continue to serve Town Hall.

~~c.~~e. The Theatre will bear any legal expenses and any other costs of whatever nature associated with the conveyance of the SL Wing Addition property and the easements contemplated herein from the Town to the Theatre.

~~d.~~f. The conveyance(s) will be subject to the same or similar restrictions and reversionary interests to be retained by the Town as are set forth in the Restrictions, in order to ensure the continued use of the conveyed property for public purpose.

~~e.~~g. Theatre agrees that the Town will have the right in perpetuity to ~~rent~~use the Theatre space ~~at the rates and~~ on the ~~terms customarily extended to non-profit users.~~ as follows:

~~[Option 1]~~

~~i. The Town may use the Community Room for Town meetings on Mondays and/or Tuesdays up to three (3) times per month at no charge, such dates to be booked (1) at least 12 months in advance or (ii) fewer than 60 days in advance, on dates the Room is not otherwise booked.~~

~~ii. The Town may use the Community Room for additional Town meetings at one-half the rate normally charged to non-profit users subject to availability.~~

~~iii. The Town shall have the right to use the Theatre's main auditorium at no charge up to three times per year at times the Theatre is not previously booked. Any concessions revenues generated in connection with such use shall first be used to pay for associated custodial, security, or similar services required as~~

3

~~the result of the use, with any remaining revenues to be retained by the Theatre.~~

~~Option 2~~

i. Theatre agrees that the Town will have the right ~~in perpetuity~~ to reserve and use the Community Room and the Theatre auditorium on the same terms and at the same rates as other non-profit organizations.

ii. Without limiting the immediately foregoing provision, the Theatre specifically agrees that, so long as meeting dates are scheduled at least 12 months in advance, the Town may reserve regular meeting dates in the Community Room on Mondays and/or Tuesdays up to three (3) times per month, for which the Town will pay the same rates customarily charged to other non-profit organizations.

~~By way of further clarification, and without in any way limiting the Town's rights under the foregoing provisions of this section (g), the Town Council may choose to use or not use Theatre space as it believes to be in the best interest of the Town of Boone, taking into account among any other relevant factors the potential benefits that a successful Theatre may bring to the Town. The Theatre is free at any time to petition the Town Council to adjust the Town's actual or planned use of Theatre space, and the Town Council may choose to use or not use Theatre space as the Town Council, in its discretion, deems best for the community.~~

h. To the extent the Town uses the Theatre's Community Room for Town meetings, the parties further agree as follows:

i. The Town will supply at its own cost any technology, fixtures, or other items that it requires for the meeting space other than chairs. In particular, the Theatre does not anticipate installing a dais, projector screen, or media audio-video technology sufficient to meet the Town's needs, and such items would need to be supplied by the Town. Theatre agrees that it will work with the Town to accommodate such fixtures and technology, including installation of a movable dais.

ii. The cost of setting up and taking down the room and required fixtures under the immediately preceding paragraph (i) and of providing custodial services commensurate with its use shall be paid by the Town. The Town shall have the option to use its employees to perform this work subject to approval by the Theatre, which approval shall not be unreasonably withheld.

3. This MOU may be modified by mutual consent of the parties, and will remain in effect until modified or terminated by mutual consent; *provided, however*, that in the absence of mutual agreement by the parties extending the term of this MOU, it will terminate two (2) years

4

from the date first written above if all the conditions set forth at section (1) have not been satisfied by that time.

4. The Theatre shall procure and maintain commercially reasonable amounts of insurance, including but not necessarily limited to property and casualty insurance, general liability insurance, builder's risk, employment and workers' compensation insurance, at all times during the renovation and construction of the Theatre building and SL Wing Addition, and shall provide proof of such insurance to Town upon request.

5. Nothing in this MOU should be construed as creating or indicating any partnership or joint venture between the parties, or requiring any funding from the Town, or as establishing any other obligation on the part of the Town. Other than what is expressly set forth herein, the Town undertakes no responsibility or obligation whatsoever with respect to the Theatre, its operations, and/or its renovation and/or expansion project(s).

6. Nothing in this MOU is intended to benefit any third party; nor shall it be deemed to create any third party rights or interests of any kind; and nor shall any third party have any rights of any kind hereunder.

7. This MOU is not assignable and neither party may transfer or assign its rights or obligations thereunder. Any such attempted assignment or transfer shall be void and of no effect.

8. The Town's failure to insist upon strict performance of any provision of this MOU or to exercise any right arising out of this MOU, regardless of the duration of such non-performance or non-exercise, shall neither impair that provision or right nor constitute a waiver of that provision or right, in whole or in part, in that instance or in any other instance. Any waiver by the Town of any particular provision or right in this MOU must be in a writing duly authorized by Town Council.

TOWN OF BOONE

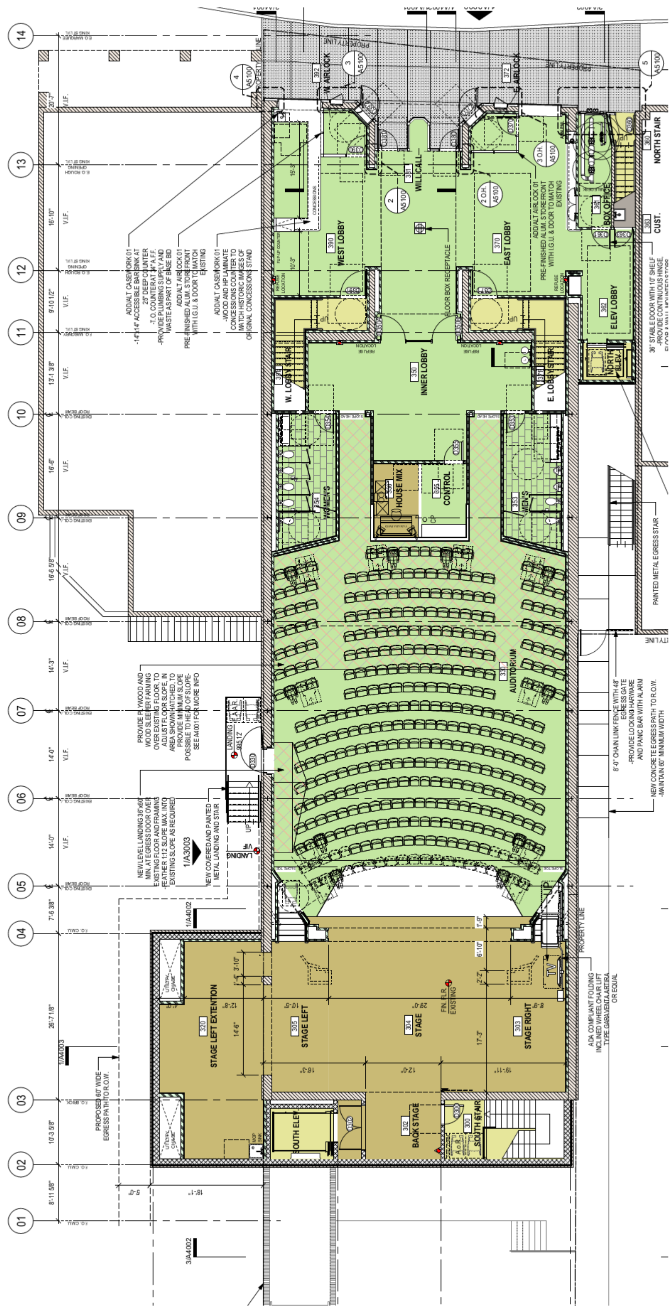
Rennie Brantz, Mayor Date

APPALACHIAN THEATRE OF THE HIGH COUNTRY, INC.

John Cooper, Chairman Date

5

Exhibit 1



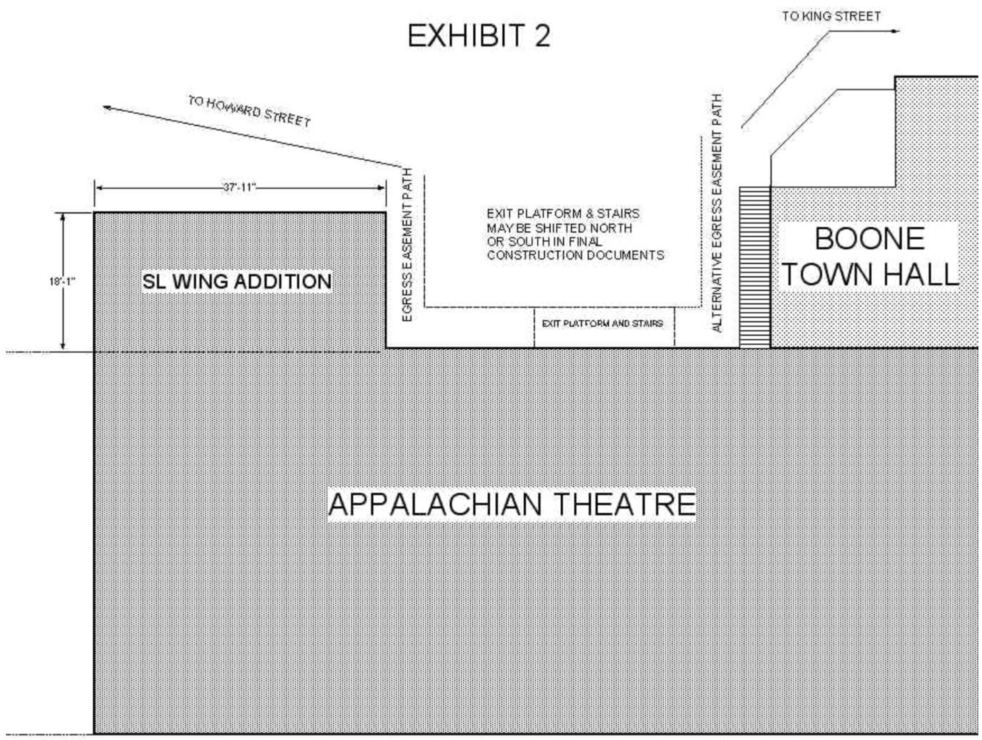
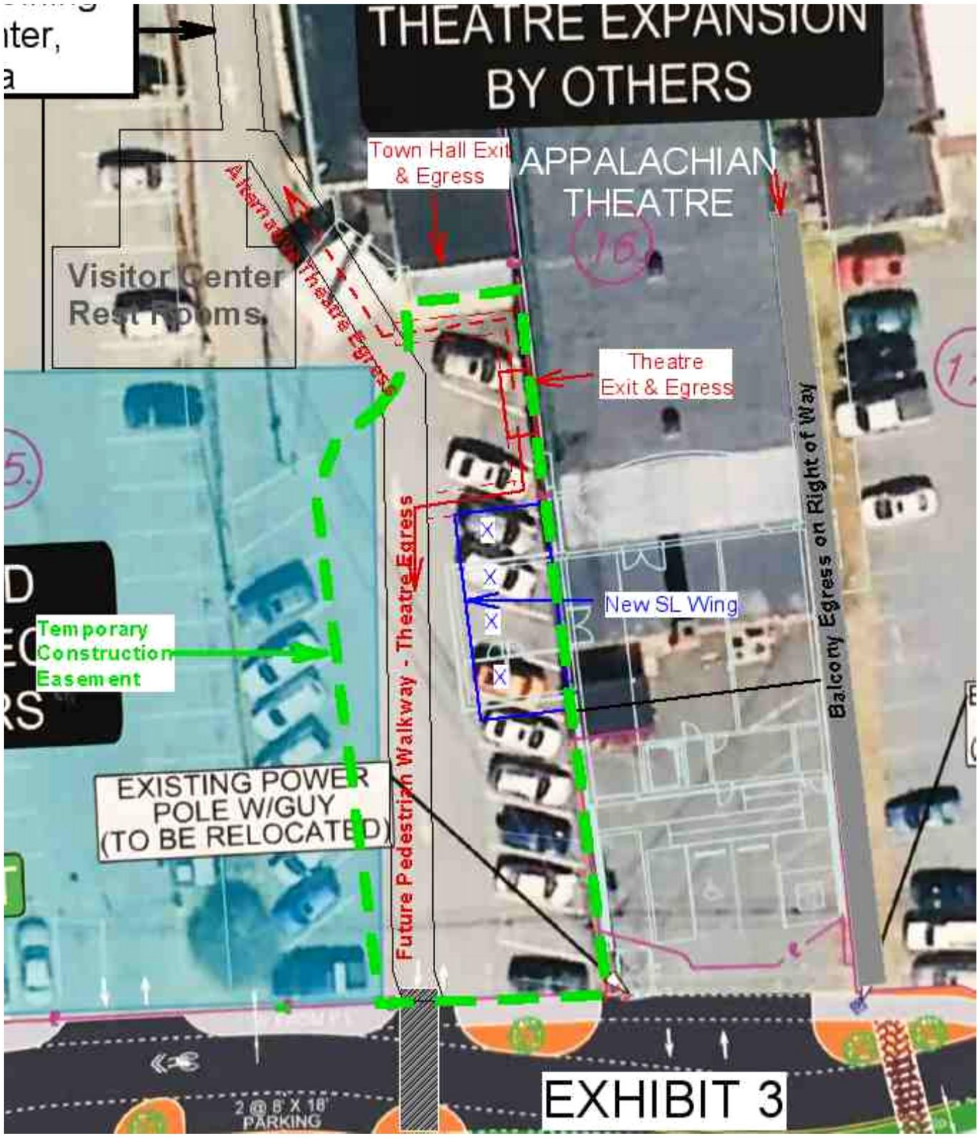


EXHIBIT 2
TO KING STREET
TO HOWARD STREET
37'-11"
18'-1"
EGRESS EASEMENT PATH
EXIT PLATFORM & STAIRS MAY BE SHIFTED NORTH OR SOUTH IN FINAL CONSTRUCTION DOCUMENTS
ALTERNATIVE EGRESS EASEMENT PATH
BOONE TOWN HALL
SL WING ADDITION
EXIT PLATFORM AND STAIRS
APPALACHIAN THEATRE



RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Lynne Mason, Councilwoman
SECONDER:	Loretta Clawson, Mayor Pro-Tem
AYES:	Furgiuele, Ulmer, Ashcraft, Mason, Clawson

DOWNTOWN REVITALIZATION PLAN

Council Member Furgiuele presented a request for the creation of a new plan to address the revitalization of the entire Municipal Service District. Town Manager John Ward stated that staff had started work on an updated MSD streetscape plan which would incorporate old plans as well as a schedule of improvements. He added that once the plan was refined, it would be presented to Council either before or after presentation to the Downtown Boone Development Association. Council Member Furgiuele expressed that he would like for Council to see the plan before it was presented to the DBDA adding that he had concerns with committee recommendations coming from committees consisting of few people. Council Member Mason responded that the DBDA had good participation. Council Member Furgiuele stated that he would like for an open forum to be held at which all MSD taxpayers and all citizens were invited to give their input. Council Member Furgiuele made a motion that the new MSD streetscape plan that was currently underway be brought to Council. The plan would then sent to the Downtown Boone Development Association then have public forums. Council Member Mason seconded. Council Member Ashcraft added that he hoped the plan would reflect the reasoning behind items on the project schedule. Discussion ensued regarding the reasons streetscape work in front of the Theatre was expedited. Council Member Furgiuele stated that he believed businesses that are not located on the main section of King Street and do not see the direct benefits of being a part of the MSD be excluded. Council Member Mason expressed that side streets were important to the DBDA.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Sam Furgiuele, Councilman
SECONDER:	Lynne Mason, Councilwoman
AYES:	Furgiuele, Ulmer, Ashcraft, Mason, Clawson

AMENDMENT TO TOWN CODE CHAPTER 97

Council Member Furgiuele presented a request to amend chapter 97 of the Town Code and stated that he found the chapter to be problematic adding that the Town should protect the few large trees it had left. Deputy Public Works Director Eric Gustaveson gave Council a brief background on the contents of the chapter, noting that the Town no longer had a "Landscape Planner" position. He continued to say that in 2002, two positions were created: a Landscape Specialist in Public Works and an Urban Design Specialist in Planning and Inspections and that the code was never revised to reflect that change. Mr. Gustaveson stated that he had been employed with the Town since 1992 and had not seen a permit as required by Chapter 97 in that time.

PARKING TICKET REBATE PROGRAM

Council Member Furgiuele asked that Council consider a parking ticket rebate program in which a person who received a parking ticket for exceeding the time limit be allowed a $5 credit on the $12 fine if the offender provided to the Town a time and date stamped receipt showing a purchase at a business within the Municipal Service District for at least $10 within 24 hours after the time and date of the parking ticket. Council Member Mason expressed concern with the proposal stating that the program could be complicated and difficult to train employees, as well as the fact that some businesses in the area did not print paper receipts. Discussion ensued regarding the need for signs advertising unutilized parking, validations stamps and an extended grace period on time violations. Town Manager John Ward noted that when they were being used, over $66,000 in fines were being negated by validation stamps. Council Member Mason offered that businesses could purchase violation stamps from the Town for time violations under an hour. Council Member Furgiuele stated that he would like to have know that the DBDA was going to discuss this proposal at their recent meeting since it was his idea, and added that he would like to bring parking back in-house.

APPOINTMENT TO AFFORDABLE HOUSING TASK FORCE

Candace Lang's application to the Affordable Housing Task Force was tabled until the April meeting to allow the applicant more time to review the Comprehensive Plan.

VOTE:	Aye:	Furgiuele, Ulmer, Mason, Clawson
	Nay:	Ashcraft

RESULT:	**TABLED [4 TO 1]**	**Next: 4/19/2018 6:00 PM**
MOVER:	Sam Furgiuele, Councilman	
AYES:	Furgiuele, Ulmer, Mason, Clawson	
NAYS:	Ashcraft	

APPOINTMENT TO TDA

Lenny Cottom's application to the Tourism Development Authority was tabled until the March 22 meeting to allow Mr. Cottom to complete his application.

VOTE: Aye: Furgiuele, Ulmer, Mason, Clawson
Nay: Ashcraft

RESULT:	**TABLED [4 TO 1]**	**Next: 3/22/2018 6:00 PM**
MOVER:	Sam Furgiuele, Councilman	
AYES:	Furgiuele, Ulmer, Mason, Clawson	
NAYS:	Ashcraft	

EXPAND SUSTAINABILITY, ECONOMICS AND ENVIRONMENT COMMITTEE MEMBERSHIP

Council Member Furgiuele presented a request to expand the Sustainability, Economics and Environment Committee and stated that he knew of people with extensive knowledge in sustainability and that he believed there was no downside to having additional members. Upon a motion by Council Member Ashcraft, seconded by Council Member Mason, Council voted to approve the expansion of the SEEC by one member with an initial term of two years and a second term of one year.

VOTE: Aye: All
Nay: None

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Marshall Ashcraft, Councilman
SECONDER:	Lynne Mason, Councilwoman
AYES:	Furgiuele, Ulmer, Ashcraft, Mason, Clawson

REQUEST FOR DIRECTION - BEE CITY USA

Planning Director Jane Shook noted the requirements attached to the Bee City USA designation and added that there would be a need for the planning department to have discussion with public works regarding pesticides. Ms. Shook indicated that staff would prepare a resolution in support of the Bee City USA movement that would be brought back to Council for approval.

RESULT:	**CONSENSUS**

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Brantz announced the following board vacancies:

AFFORDABLE HOUSING TASK FORCE
One position (Community Member At-large)

BOARD OF ADJUSTMENT
Three positions (3-Alternates)

COMMUNITY APPEARANCE COMMISSION
Three positions

CULTURAL RESOURCES ADVISORY BOARD
One position

HISTORIC PRESERVATION COMMISSION
Three positions

OUTSIDE AGENCY FUNDING REVIEW COMMITTEE
One position

PLANNING COMMISISON
One position

TOURISM DEVELOPMENT AUTHORITY
One position for member of BACC

WATER ADVISORY COMMITTEE
Six positions

TOWN MANAGER UPDATE

-Glendale sanitary sewer update
-Notice of Construction on the Wellness Center Greenway Connector
-Notice of Construction on the removal of brick and concrete foundation at 2239 421S. also known as the Bolick Farm
-Crews have used 1,180 tons of salt since December
-Water intake project updates for February-March
-National Council for Home Safety and Security has listed Boone and ASU as on of the fifteen safest campuses in the United States

CLOSED SESSION

Upon a motion by Council Member Clawson, seconded by Council Member Ulmer, Council moved to table the following closed session items until the March 22, 2018 continuation meeting.

1. Pursuant to N.C.Gen.Stat. § 143-318.11 (a)(1), to review, approve and seal closed session minutes from Council's prior closed session.
2. 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 obtain legal advice, consider and/or give instructions to the attorney concerning the claim involving the Town of Boone and Zhiyuan Chen.
3. 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 obtain legal advice, and/or give instructions to the attorney concerning one or more potential claims.

ADJOURNMENT

Mayor Brantz ended the meeting at 10:59 p.m. by announcing that this regular meeting of the Boone Town Council would be recessed until Thursday, March 22, 2018 at 6:00 p.m. at Council Chambers located at 1500 Blowing Rock Road.

Nicole Worley, Town Clerk Rennie Brantz, Mayor