

**MINUTES-REGULAR MEETING
BOONE TOWN COUNCIL
MARCH 20, 2012**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Tuesday, March 20, 2012, 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 Furguele 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 Works Director Blake Brown, Public Utilities Director Rick Miller, Planning Director Bill Bailey, Downtown Development Coordinator Pilar Fotta, and Administrative Support Specialist 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.

Mayor Clawson made the following announcement:

BOONE CLEAN-UP DAY AND SPRING LITTER SWEEP - In conjunction with the statewide “Spring Litter Sweep” campaign issued by Governor Beverly Perdue for April 14 through April 28, the Town of Boone will hold a “Spring Boone Clean-Up Day” Saturday, April 14, 2012. Interested participants may come by the Town of Boone Public Works Department located at 321 East King Street between 9:00 a.m. – 2:00 p.m. to pick up cleaning supplies. For more information, contact Shannon Isaacs at (828) 268-6230.

TENTATIVE AGENDA ADOPTION

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

1. Deletion of Item 4.C. – Approval of Memorandum of Understanding – Coffey Estate.
2. Addition of Item 4.D. – Approval of Mutual Release and Hold Harmless Agreement between the Town of Boone and Gang of Five, LLC.
3. Addition of Item 7.B. – Closed Session – Property Acquisition – Chestnut Street Connector.

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

VOTE: Aye – All
 Nay – None

CONSENT AGENDA ADOPTION

Minutes: February 21/23, 2012 – Regular Meeting.

Council Member Mason asked that the minutes be amended under “Continued Discussion of Proposed Road” to include the following statement: “Council Member Mason agreed that any design used should incorporate components of the Complete Streets design.”

Adoption of Ordinance – Town of Boone Code of Ordinances:

ORDINANCE #12-01

AN ORDINANCE ENACTING A CODE OF ORDINANCES FOR THE TOWN OF BOONE, NORTH CAROLINA, REVISING, AMENDING, RESTATING, CODIFYING AND COMPILING CERTAIN EXISTING GENERAL ORDINANCES OF THE TOWN OF BOONE DEALING WITH SUBJECTS EMBRACED IN SUCH CODE OF ORDINANCES, AND DECLARING AN EMERGENCY.

WHEREAS, the present general and permanent ordinances of the Town of Boone are inadequately arranged and classified and are insufficient in form and substance for the complete preservation of the public peace, health, safety and general welfare of the municipality and for the proper conduct of its affairs; and

WHEREAS, the Acts of the Legislature of the State of North Carolina empower and authorize the Town of Boone to revise, amend, restate, codify and compile any existing ordinances and all new ordinances not heretofore adopted or published and to incorporate such ordinances into one ordinance in book form; and

WHEREAS, the Council of the Town of Boone has authorized a general compilation, revision and codification of the ordinances of the Town of Boone of a general and permanent nature and publication of such ordinance in book form; and

WHEREAS, it is necessary to provide for the usual daily operation of the municipality and for the immediate preservation of the public peace, health, safety and general welfare of the municipality that this ordinance take effect at an early date.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA:

Section 1. The general ordinances of the Town of Boone as revised, amended, restated, codified, and compiled in book form are hereby adopted as and shall constitute the **ACode of Ordinances of the Town of Boone, North Carolina.**@

Section 2. Such Code of Ordinances as adopted in Section 1 shall consist of the following Titles:

- Title I: General Provisions**
- Title III: Administration**
- Title V: Public Works and Utilities**
- Title VII: Traffic Code Title**
- IX: General Regulations Title**
- XI: Business Regulations Title**
- XIII: General Offenses Title**
- XV: Land Useage Parallel**
- References**

Section 3. All prior ordinances pertaining to the subjects treated in such Code of Ordinances shall be deemed repealed from and after the effective date of this ordinance except as they are included and reordained in whole or in part in such Code; provided, such repeal shall not affect any offense committed or penalty incurred or any right established prior to the effective date of this ordinance, nor shall such repeal affect the provisions of ordinances levying taxes, appropriating money, annexing or detaching territory, establishing franchises, or granting special rights to certain persons, authorizing public improvements, authorizing the issuance of bonds or borrowing of money, authorizing the purchase or sale of real or personal property, granting or accepting easements, plat or dedication of land to public use, vacating or setting the boundaries of streets or other public places; nor shall such repeal affect any other ordinance of a temporary or special nature or pertaining to subjects not contained in or covered by the Code.

- Section 4. Such Code shall be deemed published as of the day of its adoption and approval by the Town Council and the Clerk of the Town of Boone is hereby authorized and ordered to file a copy of such Code of Ordinances in the Office of the Clerk.
- Section 5. Such Code shall be in full force and effect as provided in Section 6, and such Code shall be presumptive evidence in all courts and places of the ordinance and all provisions, sections, penalties and regulations therein contained and of the date of passage, and that the same is properly signed, attested, recorded, and approved and that any public hearings and notices thereof as required by law have been given.
- Section 6. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the peace, health, safety and general welfare of the people of this municipality, and shall take effect at the earliest date provided by law.

PASSED AND ADOPTED by the Council of the Town of Boone on this 20th day of March, 2012.

ATTEST:

Loretta Clawson, Mayor

Kimberly S. Brown, Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 4, PAGE(S) 19& 20)

Approval of Mutual Release and Hold Harmless Agreement between the Town of Boone and Gang of Five, LLC:

STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

**MUTUAL RELEASE
& HOLD HARMLESS AGREEMENT**

The undersigned, Gang of Five, LLC and The Town of Boone, A North Carolina Municipal Corporation, for and in consideration of the mutual promises contained herein as well as other valuable consideration, the receipt of which is hereby acknowledged, each does hereby and for its respective successors and assigns hold harmless, release, acquit and forever discharge the other from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses and compensation whatsoever, which the undersigned now have or which may hereafter accrue on account of or in any way growing out of the construction of the sidewalk, in its current condition, located along Howard Street on the following described property:

All property located South of the centerline of Howard Street, West of S. Depot Street and North of the existing office building on Tract Three, as described in the Watauga County Deed Book 1323, at Page 680.

It is specifically intended and agreed upon by the parties that Gang of Five, LLC, hereby holds harmless, releases, acquits and forever discharges the Town from any liability for any water damage which has previously occurred, whatever the cause, or future water damage which might occur to the building owned by Gang of Five, LLC, adjacent to the property described, due to drainage from the sidewalk in its current condition.

It is further understood and agreed that the Town may retain the funds which were deposited by Gang of Five, LLC, for the sidewalk construction which the Town anticipated, in order to defray the Town's costs for the survey which was prepared relating to the alleyway

which runs perpendicular to Howard Street and behind Haircut 101, but will make no commitment to accept the alleyway or enforce its contract against the property owners who adjoin that alleyway without further action by the Town Council.

It is further understood and agreed that this release is the compromise of a doubtful and disputed claim by both parties and that the terms of this release are not to be construed as an admission of liability on the part of either party, and that said releasees deny liability therefore and intend hereby to avoid litigation and buy their peace.

It is further understood and agreed that the undersigned rely wholly upon their judgment, belief and knowledge of the nature, extent, effect and circumstances of the construction of the subject sidewalk, and this release is made without reliance upon any statement or representation of the party or parties hereby released.

This Release and Hold Harmless Agreement is limited to the subject sidewalk as constructed and in its current condition as of the date of this Agreement and is not intended to include any future issues that may arise as a result of changes to said improvement.

The undersigned have read the foregoing Release and fully understand it.

Upon a motion by Council Member Ball, seconded by Council Member Brantz, Council moved to adopt the Consent Agenda items, as amended.

VOTE: Aye – All
 Nay – None

PUBLIC COMMENT

There was no one present who wished to speak.

PRESENTATION OF P&I MONTHLY REPORT

Planning Director Bill Bailey presented the P & I Monthly report (**permanently on file in the March 2012 Town Council Packet.**)

UPDATE ON POST OFFICE PROJECT

Randy Jones, AIA, of David R. Jones Architecture appeared before the Council to give an update on the progress of the Downtown Post Office Renovation Project. He stated that the civil engineer's drawings have been completed and are ready to be turned in as part of a zoning permit application. Mr. Jones indicated that architectural drawings are almost completed. He stated that a furniture quote has been submitted to the Town Manager for review. An asbestos removal bid has been received and two more bids for asbestos removal are pending. In regard to review by the State Historic Preservation Office, preliminary approval has been given, but a final review of the interior and exterior drawing is still pending. Council Member Mason inquired as to a bid date for the project. Mr. Jones stated the anticipated bid date is April 26, 2012. In answer to a question by Council Member Brantz, Mr. Jones indicated the project will take approximately 8-10 months to complete. Council Member Ball asked about the use of solar panels on the roof of the building. Mr. Jones replied that the weight of the panels could be a safety issue and that the costs involved in reinforcing the roof structure to support the panels may be cost prohibitive. Council thanked Mr. Jones for the work he has performed and for the update.

DISCUSSION OF RENEWAL OF SAHA LEASE

Town Attorney Sam Furgiuele explained the changes in the proposed lease with the Southern Appalachian Historical Society (SAHA.) He pointed out that the proposed changes from SAHA include a proposed 25-year term. Mr. Furgiuele stated that he would advise a shorter-term lease since this is town property. Council Member Ball stated he agrees that a shorter-term lease may be more appropriate and that a sublease should be agreed upon between SAHA and the Watauga County Farmer's Market. Michelle Leagon, chair of the SAHA Board, stated that the organization has been in negotiations with the Farmer's Market over a sublease. She stated that a sublease can be forwarded to the Town Attorney for review, hopefully within the next week. Council Member Leigh stated that she cannot support a long-term lease and that there should be a standardized lease used for all town properties. Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to direct the Town Attorney to review the proposed sublease between the Southern Appalachian Historical Association and the Watauga County Farmer's Market and to table consideration of a renewal of the SAHA lease until the April regular meeting.

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

PRESENTATION OF MONTHLY NOISE REPORT

Police Chief Dana Crawford presented a noise report for the period of March 1, 2012 through March 20, 2012. **(Copy of report permanently on file in the March 2012 Town Council meeting packet.)** Council Member Leigh stated that she would like to receive some feedback from businesses within the commercial district regarding any alterations of their operations including adjusting band volume or installing any types of soundproofing. By consensus, Council agreed that Chief Crawford should present the monthly noise report at the regular meetings so that Council can stay aware of the situation.

CONSIDERATION OF ANNEXATION REQUESTS

Downtown Development Coordinator Pilar Fotta presented a request for the Council to begin the annexation process for two properties into the Municipal Service District (MSD). She explained that the properties are 150 Clay House Drive (Watauga County PIN #2900-78-3934-000) and 122 Moretz Street (Watauga County PIN #2900-78-3881-000.) She explained that annexation of these properties into the MSD would provide the opportunity for the DBDA to partner with the Town in order to help preserve and restore the properties, as well as to promote any future community activities or programming. Upon a motion by Council Member Mason, seconded by Council Member Scherlen, Council moved to direct staff to pursue annexation of these two properties.

VOTE: Aye – All
 Nay – None

MONTHLY WATER USES STATUS REPORT

Public Utilities Director Rick Miller presented the monthly water status report **(copy permanently on file in the March 2012 Town Council packet.)**

CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to enter Closed Session at 7:51 p.m. pursuant to NCGS 143-318-11a(3)(5) to hear the following items:

1. Legal Advice – Water Intake
2. Property Acquisition – Chestnut Street Connector.

VOTE: Aye – All
 Nay – None

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to exit Closed Session at 8:40 p.m.

VOTE: Aye – All
 Nay – None

RECESS MEETING

Upon a motion by Council Member Mason, seconded by Council Member Scherlen, Council moved to recess the meeting at 8:41 p.m. until Thursday, March 22, 2012, at 6:30 p.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE: Aye – All
 Nay – None

CALL TO RECONVENE

A recessed meeting from March 20, 2012 was called to order at 6:30 p.m., Thursday, March 22, 2012, in the Council Chambers, 1500 Blowing Rock Road. Mayor Pro-Tem Jamie Leigh presided. Council members present were Lynne Mason, Rennie Brantz, and Allan Scherlen. Town Attorney Sam Furguele 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 Works Director Blake Brown, Public Utilities Director Rick Miller, Planning Director Bill Bailey, Downtown Development Coordinator Pilar Fotta, and Human Resources Director Peri Moretz.

ANNOUNCEMENTS

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

TENTATIVE AGENDA ADOPTION

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

1. Addition of Closed Session, pursuant to NCGS 143-318.11(a)(3), for Legal Advice – Consultation with Town Attorney for Instructions Regarding a Lawsuit Against the Town.
2. Council Member Mason asked to leave the meeting at 7:45 p.m. due to a prior engagement.

Upon a motion by Council Member Brantz, seconded by Council Member Scherlen, Council moved to approve the addition of a Closed Session pursuant to NCGS 143-318.11(a)(3) for Legal Advice – Consultation with Town Attorney for Instructions Regarding a Lawsuit Against the Town.

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

Upon a motion by Council Member Brantz, seconded by Council Member Scherlen, Council moved to excuse Council Member Mason from the remainder of the meeting at 7:45 p.m.

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

PUBLIC COMMENT

There was no one present who wished to speak.

PUBLIC HEARING – CDBG GRANT ON BEHALF OF OASIS, INC.

Mayor Pro-Tem Leigh opened the public hearing at 6:31 p.m. Town Manager Greg Young stated that the CDBG Grant application is in the amount of \$384,000 to create transitional housing for victims of domestic violence served by OASIS, Inc. He explained that the project budget is as follows: \$320,000 for acquisition, \$34,000 for administration, and \$30,000 for supportive services. With no one to speak on this application, Mayor Pro-Tem Leigh closed the public hearing at 6:31 p.m.

PUBLIC HEARING – USDA LOAN APPLICATION FOR THE REPLACEMENT OF AN AERIAL FIRE TRUCK

Mayor Pro-Tem Leigh opened the public hearing at 6:31 p.m. Fire Chief Jimmy Isaacs stated that the loan application is for up to \$1 million for the replacement of a 1986 model aerial fire truck. He explained that the loan will be a fixed rate loan for 3.75% for a 20-year term. With no public input, Mayor Pro-Tem Leigh closed the public hearing at 6:32 p.m.

BOARD APPOINTMENTS

ABC Board

There were no applications submitted for this vacant position.

Affordable Housing Task Force

There were no applications submitted for the vacant positions.

Board of Adjustment

Mayor Pro-Tem Leigh stated that an application from Fred Badders has been received for consideration. Council Member Mason nominated Mr. Badders to serve as an alternate resident position on the board. Council Members Brantz and Leigh suggested that Mr. Badders be appointed to a full-time position on the Board as soon as one becomes available. With no other nominations, Mayor Pro-Tem Leigh called for a vote on the nomination of Fred Badders.

VOTE: Aye – 2 (Scherlen, Mason)
 Nay – 2 (Leigh, Brantz)
 Absent – 1 (Ball)

The motion failed.

Community Appearance Commission

There were no applications submitted for this position.

Historic Preservation Commission

Mayor Pro-Tem Leigh stated that an application from Diane Blanks has been received for this vacancy. Council Member Brantz nominated Diane Blanks for the vacant position. With no other nominations, Mayor Pro-Tem Leigh called for a vote on the nomination of Diane Blanks.

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

Jones House Advisory Board

There were no applications submitted for consideration for these vacancies.

Tree Board

There were no applications submitted for consideration for these vacancies.

Water Study Committee

Council Member Brantz nominated Fred Badders to serve on the Water Study Committee. With no other nominations, Mayor Pro-Tem Leigh called for a vote on the nomination.

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

REQUESTED APPEARANCES – BRIAN CHATHAM

Mr. Brian Chatham, Conservation Technician with the Soil and Water Conservation District, appeared before the Council to present information on a program from the NC Community Conservation Assistance Program for the facilitation of additional pet waste stations. He explained that the Town would be responsible for a 10-year maintenance agreement for the stations and that the stations have to be located on Town properties. Public Works Director Blake Brown stated that the Town already uses biodegradable bags in the existing pet waste stations. Council thanked Mr. Chatham for his presentation.

REQUESTED APPEARANCES – RANDY MCDONOUGH

Randy McDonough, chair of the Greenway, Parks & Gardens Committee, appeared before the Council to request that the Town apply for financial assistance provided by the NC Community Conservation Assistance Program for the purchase of pet waste receptacles. Upon a motion by Council Member Mason, seconded by Council Member Scherlen, Council moved to approve the request to apply for financial assistance from the NC Community Conservation Assistance Program for the purchase of six new pet waste stations, four of which will be placed on the Town of Boone's Greenway Trail and two that will be located within downtown Boone.

VOTE: Aye – All

Nay – None
Absent – 1 (Ball)

REQUESTED APPEARANCES – REBECCA KAENZIG

Ms. Rebecca Kaenzig, of the Daniel Boone Native Gardens, appeared before the Council to request assistance from the Town for a new fence on the side of the gardens adjacent to Horn in the West Drive. She stated this would protect the gardens from traffic noise and from the use of salt in the winter on the roadway. Bob Oelberg, a local landscape architect, presented pictures **(copies of photographs permanently on file in the March 2012 Town Council meeting file)** which listed two options for fencing including a waddle fence and a shadowbox fence. He presented an estimated cost of \$5,400 for the project. The Town Attorney stated that the Council must approve any changes made to the property. It was the consensus of the Council that Ms. Kaenzig confer with Public Works staff and the Town Manager and to bring a proposal back to the Town Council in April.

REQUESTED APPEARANCES – SANDRA HAGLER

Ms. Sandra Hagler appeared before the Council to request approval of a Special Event permit for the Junaluska Jubilee, which would include street closures for Tremont Drive and a portion of Church Street. She informed the Council that the event is scheduled for Saturday, April 21, 2012, from 10:00 a.m. until 6:00 p.m. Furthermore, she stated that a majority of the residents who live on both Church Street and Tremont Drive are involved with the event and are agreeable to the closures. Upon a motion by Council Member Brantz, seconded by Council Member Scherlen, Council moved to approve the Special Event Permit for the Junaluska Jubilee Saturday, April 21, 2012, to approve the closure of a portion of Church Street and Tremont Drive from 10:00 a.m. until 6:00 p.m. on that date, and to waive the application fee of \$1,500, but that a certificate of liability insurance will be required for the event.

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

REQUESTED APPEARANCES – ERIC WOOLRIDGE

Eric Woolridge of the Boone Tourism Development Authority, along with Fred Halback, appeared before the Town Council to provide an update on the Daniel Boone Park project. A power-point presentation was presented to the Council. **(Copy of power-point presentation permanently on file in the March 2012 Town Council meeting file.)**

REQUESTED APPEARANCES – BING OLIVER

Eric Woolridge appeared on behalf of Bing Oliver to request approval of a Special Event permit for Cyclovia, which include street closures on portions of Rivers, Depot, and Howard Streets. He explained that the event is scheduled for Sunday, June 24, 2012, from 11:00 a.m. until 5:00 p.m. Mr. Woolridge noted that the Certificate of Liability Insurance for the event has been turned in to the Clerk. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to approve the Special Event Permit for Cyclovia on Saturday, June 24, 2012, to approve the closure of portions of Rivers Street, Depot Street and Howard Street from 11:00 a.m. until 5:00 p.m. on that date, and to waive the application fee of \$1,500.

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

Before deliberating on the quasi-judicial requests, Town Attorney Sam Furgiuele questioned the members of the 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 – MIKE WINSTEAD/MEGA BUILDERS LLC

Town Attorney Sam Furgiuele opened a public hearing at 7:43 p.m. to hear sworn testimony from Frances Ford of Mega Builders on behalf of Mike Winstead. Mr. Ford explained that he is not an attorney but is the Director of Development for Mega Builders, LLC. He stated that he does have a letter from Mike Winstead that authorizes Mr. Ford to represent Mike Winstead and Mega Builders, LLC. Mr. Ford stated that he has seen the information contained in the Council's packet and believes that the information is correct to the best of his knowledge. Council Member Mason pointed out that properties 2 and 3, as designated in the Council's packet, are not zoned appropriately for this use and inquired if the applicant would rather pursue the appropriate zoning for these properties before requesting water and sewer service. Mr. Ford answered that the applicant decided to request water and sewer before pursuing a rezoning of the property. He explained that without approval for the water and sewer allocation, a request for rezoning of the properties would be rendered moot. **(Council Member Mason left the meeting at 7:50 p.m.)** Town Attorney Sam Furgiuele pointed out to Mr. Ford that, at this point with the exit of Council Member Mason, there was not a quorum of Council members present to take action on the request. He explained that Mr. Ford could proceed with his presentation but that no action could be taken at this time. Mr. Ford requested that the applicant be able to come back before the Council next month to present the water and sewer request. Mr. Furgiuele suspended the public hearing at 7:56 p.m.

CLOSED SESSION

Due to a lack of quorum of Council Members, Council did not proceed into Closed Session.

ADJOURMENT

Upon a motion by Council Member Brantz, seconded by Council Member Scherlen, Council moved to adjourn the meeting at 7:58 p.m.

VOTE: Aye – All
 Nay – None
 Absent – 2 (Ball, Mason)

Kimberly S. Brown, Town Clerk

Loretta Clawson, Mayor