

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
March 22, 2018**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order at 6:00 p.m. Thursday, March 22, 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, Sam Furgiuele, Connie Ulmer and Marshall Ashcraft. Staff in attendance were Town Manager John Ward, Town Clerk Nicole Worley, Cultural Resources Director Pilar Fotta, Police Chief Dana Crawford, Planning Director Jane Shook, Urban Design Specialist Brian Johnson, Planner Marty Little, GIS Coordinator Chris Miller, Downtown Boone Development Coordinator Brittney Clark 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 hearing to sign up.

TENTATIVE AGENDA ADOPTION

PUBLIC COMMENT

Dan Flowers spoke regarding gun control in the Town and stated his view that gun control was ineffective and that he believed there was an ideological divide between citizens and police officers. Mr. Flowers added that tightening the regulations on gun ownership in Boone would be divisive and create animosity among the community.

Bob Flanigan spoke against the possible repeal of the planned development process. Mr. Flanigan voiced his opinion that the process was a workable, fully vetted process that provided Council with an opportunity to look at planned development all inclusively. He indicated that while some new development had been approved using the planned development process, others did not get approved in the process.

Justin Kieler addressed Council regarding the Chen property and asked members to uphold the fines assigned to Dr. Chen. Mr. Kieler stated that he had spent thousands of dollars to improve his own property and that bamboo from the Chen property was intruding.

Andrew Mason spoke in favor of proposed changes to the UDO regarding brewpubs and added that a requirement of 50% of beer sales in house was unworkable. He continued to say that the alteration of uses within the M1 zoning district was a good thing if there was vacant space that could be used appropriately, but added that M1 space in the Town was very limited, with most M1 zoned properties belonging to the Town.

Daniel Minton provided Council with information that depicted the lack of local authority regarding gun control.

CONSENT AGENDA ADOPTION

Council Member Furgiuele asked that minutes for Council meetings held on Jan. 23, Feb. 15 and Feb. 19 be tabled until the April regular Council meeting since he and other members had not had a chance to review them. Brief discussion ensued regarding past practices on waiving fees associated with special events held by outside parties. Council Member Furgiuele asked that staff anticipate fees associated with recurring special events during budget time.

Upon a motion by Council Member Furgiuele, seconded by Council Member Mason, Council voted to approve the following items on the Consent Agenda:

1. Approval of Budget Amendments
2. Boone Cyclo.Via! Special Event Permit and accompanying budget amendment
3. Village Vision Special Event Permit and accompanying budget amendment
4. Pancakes in the Park License Agreement

APPROVAL OF MINUTES OF TOWN COUNCIL RETREAT JANUARY 23, 2018

RESULT:	TABLED [UNANIMOUS]	Next: 4/19/2018 6:00 PM
MOVER:	Sam Furgiuele, Councilman	
SECONDER:	Lynne Mason, Council Member	
AYES:	Mason, Clawson, Furgiuele, Ulmer, Ashcraft	

APPROVAL OF MINUTES OF TOWN COUNCIL REGULAR MEETING FEB. 15, 2018

RESULT:	TABLED [UNANIMOUS]	Next: 4/19/2018 6:00 PM
MOVER:	Sam Furgiuele, Councilman	
SECONDER:	Lynne Mason, Council Member	
AYES:	Mason, Clawson, Furgiuele, Ulmer, Ashcraft	

APPROVAL OF MINUTES OF TOWN COUNCIL REGULAR MEETING FEB. 19, 2018

RESULT:	TABLED [UNANIMOUS]	Next: 4/19/2018 6:00 PM
MOVER:	Sam Furgiuele, Councilman	
SECONDER:	Lynne Mason, Council Member	
AYES:	Mason, Clawson, Furgiuele, Ulmer, Ashcraft	

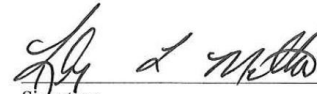
APPROVAL OF BUDGET AMENDMENTS

TOWN OF BOONE
TOWN COUNCIL BUDGET AMENDMENT REQUEST
FY 2017-2018

DATE:

TO: Mayor & Town Council

FROM: Ricky Miller, Public Works Director


Signature

I hereby request that the following BUDGET AMENDMENTS be approved by the Boone Town Council:

	LINE ITEM DESCRIPTION	ACCOUNT NO.	AMOUNT
TO:	Street Division Vehicle Maintenance	010-600-401-525301	\$500.00
FROM:	Miscellaneous Revenue	010-000-000-489900	\$500.00

EXPLANATION/JUSTIFICATION:
Insurance reimbursement

Date

Town Clerk

TOWN OF BOONE
TOWN COUNCIL BUDGET AMENDMENT REQUEST

DATE: 2/28/2018

TO: Mayor & Town Council

FROM: Chief Dana Crawford

12

Signature

I hereby request that the following BUDGET AMENDMENTS be approved by the Boone Town Council:

	LINE ITEM DESCRIPTION	ACCOUNT NO.	AMOUNT
TO:	Maintenance Vehicles	010-500-300-525301	\$1,126.00
FROM:	Miscellaneous Revenue	010-000-000-489900	(\$1,126.00)

EXPLANATION/JUSTIFICATION: Insurance check to pay for repairs to asset 6111.

Date

Town Clerk

*\$ received
0128/18
(aw)*

ad

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

BOONE CYCLO.VIA! FESTIVAL

TOWN OF BOONE
TOWN COUNCIL BUDGET AMENDMENT REQUEST

DATE: March 22, 2018
 TO: Mayor & Town Council
 FROM: Nicole Worley, Town Clerk


 Signature

I hereby request that the following BUDGET AMENDMENTS be approved by the Boone Town Council:

LINE ITEM DESCRIPTION	ACCOUNT NO.	AMOUNT
TO: Overtime - Police Department	010-000-400-301.004	\$ 750.00
Overtime - Street Department	010-000-401-301.004	\$ 750.00
FROM: Appropriated Fund Balance - General Fund	010-000-000-499900	\$ (1,500.00)

EXPLANATION/JUSTIFICATION:
 Appropriate funds to cover fee waiver for the Cyclo.Via event submitted by Jek-gyn Mahoney.

Date: _____ Town Clerk: _____

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

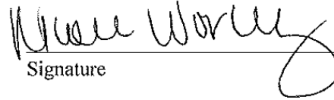
VILLAGE VISION FESTIVAL

**TOWN OF BOONE
TOWN COUNCIL BUDGET AMENDMENT REQUEST**

DATE: March 22, 2018

TO: Mayor & Town Council

FROM: Nicole Worley, Town Clerk


Signature

I hereby request that the following BUDGET AMENDMENTS be approved by the Boone Town Council:

	LINE ITEM DESCRIPTION	ACCOUNT NO.	AMOUNT
TO:	Overtime - Police Department	010-500-300-501201	\$ 750.00
	Overtime - Street Department	010-600-401-501201	\$ 750.00
FROM:	Appropriated Fund Balance - General Fund	010-000-000-499900	\$ (1,500.00)

EXPLANATION/JUSTIFICATION:

Appropriate funds to cover fee waiver for the Village Vision event submitted by Christina Bailey.

Date

Town Clerk

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

APPROVAL OF PANCAKES IN THE PARK LICENSE AGREEMENT

STATE OF NORTH CAROLINA

LICENSE

COUNTY OF WATAUGA

THIS LICENSE is granted this 22nd day of March, 2018, by the Town of Boone, a North Carolina Municipal Corporation, hereinafter referred to as "Licensor," to Mountain Alliance, a North Carolina non-profit corporation, hereinafter referred to as "Licensee,". Licensee has signed this License to signify that it understands and agrees to its limitations and requirements. The term "Licensee" shall include, but is not limited to, Licensee's officers, agents, employees, participants, patrons, invitees and contractors.

1. **Express Limitations:** This license is not intended to restrict in any way Licensor's use of the premises, not Licensor's access to any part of the premises as it sees fit, including, but not limited to inspection to determine compliance by Licensee with the limitations and requirements of this License; maintenance, repair, alterations to the premises; safety inspections of any and all improvements as Licensor may deem necessary; and use of the premises as it sees fit.
2. **License Area:** As detailed on Attachment "A," attached hereto and incorporated by reference herein, Licensee shall be entitled to the use of the described portions of "Daniel Boone Park," that certain piece, parcel or lot of land situated, lying and being in Boone Township, Watauga County, North Carolina, and the described improvements thereto, hereinafter collectively referred to as "the License area," during the times described therein, for the purposes provided herein.
3. **Term:** This License authorizes the described uses by Licensee for the period commencing and concluding on the following dates and times: May 26, 2018 from 6:30 am to 12:30 pm; and June 2, 2018 from 6:30 am to 12:30 pm.
4. **Scope of License:**
 - A. The license area may be used by Licensee for the primary purposes of:
Hosting the Mountain Alliance Pancakes in the Park fundraiser.
 - B. This license includes and authorizes other and secondary activities conducted in association with the allowed uses as well as the use of such other and secondary facilities which are integral and necessary to support the authorized uses, so long as they are integral to the approved uses or constitute only an incidental and insubstantial part of the total activity; they are commonly associated with the use; and they are confined to the License areas and terms of use authorized in Attachment "A". Associated support activities shall include use of the parking lot in appropriate locations during appropriate times.
 - C. Any specific uses beyond the primary ones listed are permitted only with the advance approval of the Town Manager.
 - D. At the conclusion of each of the authorized periods permitted by this license, Licensee shall properly:
 - i. Clean, secure and make safe all structures to which it is entitled.
 - ii. Remove any portable structures.
 - iii. For purposes of this section, the term "make safe" shall include remediation of hazards which do not involve alterations of facilities or repair work which requires a permit or an expert to perform; and removal of litter, debris, scrap materials, junk, trash, and other items which could cause injury to a person,

promote rodent infestation, or the like.

- iv. For purposes of this section, “clean” shall mean restoring all interior and exterior surfaces and floors of structures and facilities to a condition of cleanliness and sanitation which will allow a subsequent or intermittent licensee to utilize the structure and facilities with no more than a minimal amount of cleaning.
 - E. Licensee shall not use or knowingly permit any part of the license area to be used for any purpose which violates any law, and Licensee shall familiarize itself and comply with all Town ordinances, including the Town’s “Noise Control” ordinance, and the North Carolina State Building Code.
 - F. Licensee acknowledges that Licensor may authorize other Licensees to use portions of the license area in ways which do not unduly interfere with Licensee’s licensed use and that Licensor shall be the sole arbiter of what constitutes undue interference. Licensor itself may also use, as it deems appropriate, any portion of the License area.
 - G. During an emergency, as determined by Licensor, Licensor may utilize the License area to its full extent even if it substantially interferes with this License.
 - H. Licensee will take no action(s) which are in any way inconsistent with Licensor’s ownership interest in the property.
 - I. Licensee will take no action(s) which is not in accordance with the procedures mandated by its duly adopted by-laws.
5. **Rules for Operation:** In addition to any rules adopted by Licensor for the use of the License area, which rules shall be effective when adopted even if they are adopted during the term, Licensee shall have the right to promulgate such rules and regulations as it may deem appropriate for the behavior of its employees, participants, patrons and invitees during its authorized use of the License area so long as they are not inconsistent with any rules promulgated by Licensor and are otherwise consistent with this License. Licensee shall provide Licensor with a copy of its rules and regulations, if any, sufficiently prior to their effective date to be kept on file with the signed copy of this license agreement.
6. **Licensing Fee:** For purposes of this License, there is no license fee.
7. **Utilities:** Have not been requested, and will not be provided.
8. **Maintenance:** During and after its use of the License area, Licensee shall provide all maintenance necessary to keep and restore the license area to a good and sanitary condition as the result of its use. Such maintenance shall be performed as often as necessary to insure that any other licensee authorized to use the license area will find the license area in a sanitary and orderly state. For purposes of this section, “maintenance” shall include collection and removal of trash, garbage, and litter, regular cleaning of facilities and structures, which should be cleaned after every event, and other activities required to conserve the condition of the property while minimizing wear and tear. Should Licensee fail to properly maintain the License area, Licensor may itself provide maintenance, but if Licensor provides such maintenance, it will be at the expense of Licensee, which shall promptly reimburse Licensor for its expenses in doing so.
9. **Repairs:** Licensee must notify Licensor, in writing, of any and all conditions in need of correction or repair which it discovers, whatever the origin of the conditions (caused by Licensee, its employees, contractors, invitees, or others).

10. **Alterations:** Licensee agrees to neither make nor arrange for any alterations to the license area.
11. **Compliance with Laws:** In particular, and not by way of exclusion, in any and all its actions and activities, Licensee will comply and hereby certifies its compliance with the Americans with Disabilities Act, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Fair Labor Standards Act, as amended, the Occupational and Health Safety Act, as amended, the North Carolina Employment Security Act, as amended, and the North Carolina Worker's Compensation Act, as amended, to the extent each such law applies to Licensee or any of its activities. Should Licensee's corporate status be revoked by the North Carolina Secretary of State, this license shall immediately terminate. Licensee commits that it will act in accordance with all laws related to its status as a North Carolina Corporation.
12. **Keys and Locks:** Licensee will not need to access any locked areas for the purposes of this license.
13. **Information Required to be Furnished:** Proof of Insurance has been provided.
14. **Termination or Expiration:** This license is terminable at will by either party. Upon termination or expiration of this license, Licensee shall remove its personal property from the license area and shall surrender the license area to Licensor in good order and repair, reasonable wear and tear excepted.
15. **Abandoned Property:** Following the termination or expiration of this license, any property left by Licensee on the license area shall be considered abandoned and may be retained by or disposed of by Licensor as it sees fit. However, Licensee shall have a ten day period following the termination of this lease to remove any building(s) which it owns. Thereafter, such building(s) will be deemed donated to Licensor. Licensee shall not leave, place, or store any personal property unrelated to the scope of the License in the License area, and any such property shall be considered abandoned and may be disposed of by Licensor.
16. **Waiver and Exculpation. Indemnification:** Licensor shall not be liable for, and Licensee hereby waives all claims against Licensor for damage to its property, or for injury, illness or death of any person in, upon or about the License area arising from any act or neglect of Licensee or caused to or suffered by any person using the license area pursuant to Licensee's authority. Licensee shall indemnify, defend, protect and hold harmless Licensor from and against any and all claims, actions, loss, cost, damage, expense, and liability associated with personal injury, damage to property, or any other matter arising out of any occurrence in, upon, or at the License area, or associated with any act or omission of the Licensee, or associated with Licensee's use, occupancy or activities in the license area or access thereto by Licensee; provided, however, that the foregoing indemnity shall not be applicable to claims arising by reason of the gross neglect or willful misconduct of the Licensor. In the event that the Licensor is made a party to any litigation brought against the Licensee or by reason of or related to the Licensee's use or occupancy of the License area, the Licensee shall defend, protect and hold harmless the Licensor from any and all liability that may result therefrom, including Licensor's costs in defending itself against any claim, action, litigation or other assertion of liability.
17. **Insurance:** Licensee shall provide and maintain insurance coverage against loss, destruction, or other damage to its property located on the License area, as well as against all risks for which Licensee is required to indemnify and hold Licensor harmless, which includes injury or death of third parties and damage to the property of third parties, as more fully set out in paragraph 16. Licensee's liability insurance coverage shall provide coverage for personal injury or bodily harm occurring during the term of the license, whensoever the claim is made, in an amount no less than two million dollars (\$1,000,000.00) per occurrence, and shall insure against injuries or damages which occur as a result of Licensee's operations. Licensee shall also maintain insurance coverage for damage which Licensee itself may cause to the real or personal property of Licensor on account of Licensee's failure to discharge its maintenance responsibility; Licensee's negligence; or an intentional act of destruction by Licensee's participants, employees, patrons, invitees, agents, or contractors. Licensor, "the Town of Boone", shall be named as an additional insured on every liability insurance

policy of Licensee relating to the license area. Certificates of insurance for each policy required to be obtained by Licensee in compliance with this paragraph shall be filed and maintained with Licensor. Licensee shall immediately advise Licensor of any injury, damage, or assertion of claim or litigation that may result in a claim of liability against Licensor.

18. **Modification of License:** There shall be no modification of this License by Licensee unless the modification is in writing and signed by both parties. Licensor retains the right to modify the License as it may determine necessary.
19. **Assignments:** This license may not be assigned.
20. **Not a Lease or Estate:** The parties agree and acknowledge that in no event shall this License constitute a lease or grant or create any leasehold estate or other estate in the License area. This license is intended and shall be construed as granting a License or right of use in the License area, and Licensee's use and occupancy of the license area shall not be deemed to be a tenancy under the laws of North Carolina, and Licensee shall not enjoy, and hereby waives, any protections afforded tenants under federal, state, or local laws or regulations. Furthermore, the parties expressly disavow that this instrument creates any contractual responsibilities on the part of the Licensor.
21. **Governing Law:** This license shall be governed by and construed in accordance with the laws of the State of North Carolina. Venue concerning any dispute regarding this license shall be in Watauga County, North Carolina.
22. **Severability:** If any provision of this license or the application thereof to any person or circumstance shall, for any reason and to any extent, be held invalid or unenforceable, that provision shall be severed, and the remainder of this license and the application of that provision to other persons or circumstances shall not be affected, but rather shall be enforced to the extent permitted by law.
23. **Parties' Relationship:** Nothing contained in this License shall be deemed or construed by the parties or by any third party to create the relationship of principal and agent, employer and employee, or of partnership or joint venture or of any association whatsoever between Licensor and Licensee other than as is contained herein, it being expressly understood and agreed that none of the provisions contained in this license nor any act or acts of the parties hereto shall be deemed to create any relationship between Licensor and Licensee other than the relationship of a Licensor and Licensee.
24. **Waiver:** Licensor's failure to strictly enforce its rights under this license shall not constitute a waiver of such rights.
25. **Entire Agreement:** This License contains all of the terms and conditions concerning the licensing and use of the License area by Licensee. There are no oral terms or conditions agreed to by the parties which are not contained in this License. Licensor has not made and is not making, and Licensee, in executing and delivering this License, is not relying upon any warranties, representations, promises or statements, except those that are expressly set forth in this License. All prior verbal agreements previously made by and/or between the parties, if not contained herein, are hereby expressly null and void, and insofar as such prior agreements and understandings between the parties are included herein, the same have merged into this License, which alone fully and completely expresses the current terms of this License.

26. **Execution:** Licensee represents and warrants that all necessary authorizations and approvals required for execution and performance of this License have been given and that the undersigned individual is duly authorized to execute this License and bind the Licensee to the conditions set forth.
27. **Notices:** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, to the following addresses:

If to **Licensor**, to: John Ward
Town Manager
Town of Boone
P.O. Drawer 192
Boone, NC 28607

If to **Licensee**, to: Chair, Board of Directors
Mountain Alliance
P.O. Box 2854
Boone, NC 28607

IN WITNESS WHEREOF, the **Licensor** and **Licensee** have executed this License Agreement in duplicate originals, and agree to all of the terms and conditions set forth above, the day and year first above written.

Town of Boone, Licensor

John Ward, Town Manger

Attest: _____ (Seal)
Town Clerk, Town of Boone

Mountain Alliance, Licensee, by

Chair, Mountain Alliance

Attest: _____ (Seal)

ATTACHMENT "A"

1. The License area shall consist of shared use of the outdoor Grounds, and restrooms at "Daniel Boone Park", on May 26, 2018 for the time period from 6:30 am – 12:30 pm; and June 2, 2018 for the time period from 6:30 am – 12:30 pm.
2. Parking by volunteers and event organizers must be offsite except for loading and unloading, and shall not interfere with the operations of the Farmer's Market. Please follow the policies outlined in Attachment B". Parking excludes the six parking spaces reserved for the Southern Appalachian Historical Association, Inc., and four spaces reserved for the Daniel Boone Native Gardens. Participants and patrons may not park in such a manner as to interfere with access to the recycling facilities, or emergency access to the License area or other areas accessed through the License area. Upon request by Licensor, law enforcement or fire protection officer that participants or vehicles be relocated or rearranged, Licensee will ensure that its participants and patrons promptly honor the request.
3. Licensee is responsible for the cleaning of the licensed areas before, during, and after the event.
4. Licensee will provide trash and containers for the event, and will provide for the removal of all trash and trash receptacles at the conclusion of the event.
5. Please see "Attachment C" for a map outlining the license area.

“ATTACHMENT B”

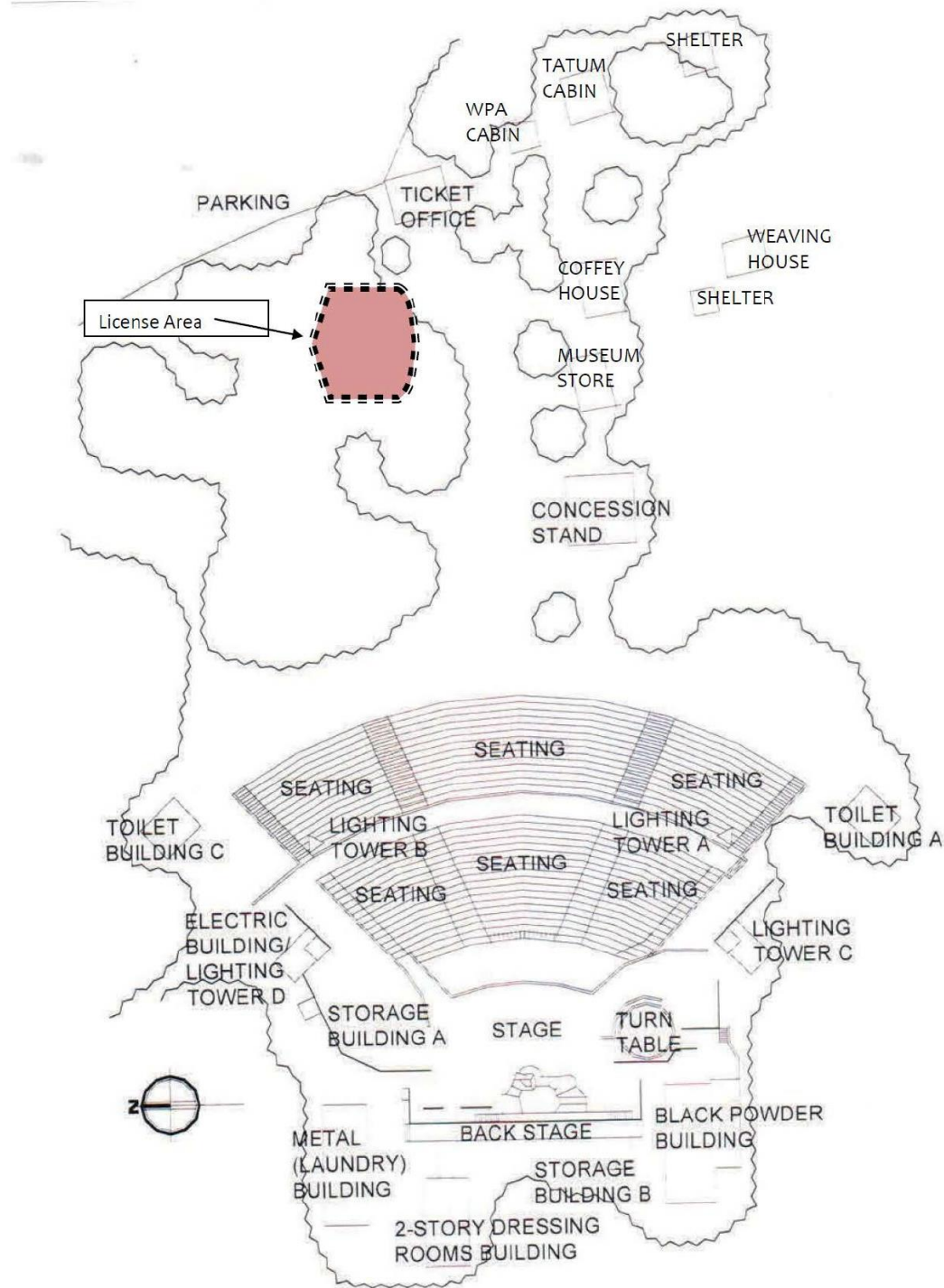


Parking in the lower lot of the Daniel Boone Park during Farmer's Market hours of operation.

The lower parking lot at the Daniel Boone Park has recently transitioned to a non-exclusive use during the hours of the Watauga Farmer's Market. This will continue to allow multiple user groups to provide parking for customers, event attendees, and guests, while preventing long term or extended parking by employees, volunteers, or contractors. This lot can be used for brief loading and unloading, but not for long term parking of trailers, equipment, tents, buses, etc.

1. Any use for the Daniel Boone Park, not already approved in an existing license agreement, would need to be approved through the Town of Boone's Special Events Application process. All events at the Daniel Boone Park need to be coordinated by the Cultural Resources Department, who manages the calendar for the Park, prior to approval.
2. The CR Department will evaluate each request for use, paying special attention to any potential impact on the current user groups. If it is determined that the proposed event can take place without negatively impacting the current user groups approved activities, the CR Department will communicate a proposed event plan to both current user groups as well as other town departments for input and consideration prior to approval.
3. Final approval will be granted after consideration by the Town Manager.

"ATTACHMENT C"



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

COUNCIL MATTERS

CONSIDERATION OF CASES HEARD AT THE FEB. 26, 2018 PUBLIC HEARING

Council Member Furgiuele asked that he be recused due to the fact that he owned property near the property being discussed. Upon a motion by Council Member Mason, seconded by Council Member Clawson, Council voted to recuse Council Member Furgiuele.

VOTE: Aye: Mason, Clawson, Ashcraft, Ulmer
 Nay: None

CASE PL01240-122217: General Use Zoning Map Amendment

Planning Director Jane Shook presented a request for a general use zoning map amendment to rezone the properties located at 483 West King Street from Planned Development Marketplace to B1 Central Business. Ms. Shook noted that the Planning Commission recommended Council approve the request to rezone the property back to B1 Central Business.

VOTE #1

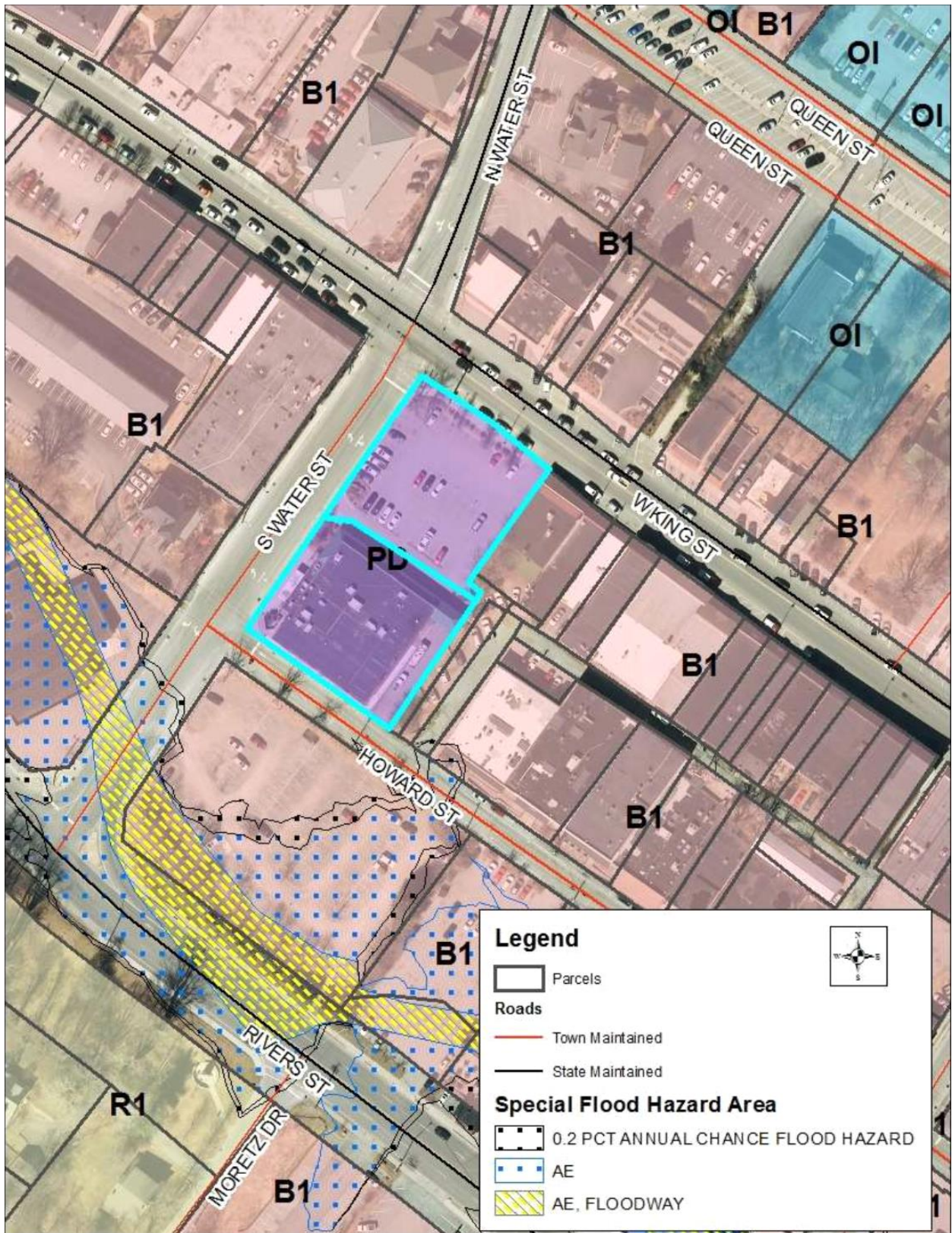
Council Member Mason made a motion to approve that the proposed amendment to the Town's zoning map and that it is consistent with the Town's Comprehensive Plan and other adopted plans of the Town as the UDO specifies that should the property fail to be developed in accordance with the terms and conditions of the Planned Development approval and also use of the property shall be permitted without a new petition for zoning map amendment being filed. This property was previously zoned B1 Central Business and all properties surrounding this parcel are zoned B1 according to the Town's zoning map and staff report. Comprehensive Plan section 2.15 Downtown (f) states the maintenance and revitalization of Downtown Boone as well as planning for its future development will reflect the realities and qualities befitting its geographical setting and function as a center of 1- commercial and service activities 2- educational/cultural activities and events 3- public services which are included in the B1 zone. Council Member Ashcraft seconded the motion.

VOTE: Aye - Mason, Clawson, Ashcraft, Ulmer
 Nay- None
 Furgiuele (Recused)

VOTE #2

Council Member Mason made a second motion to approve the proposed amendment to the Town's zoning map and that approval is in the public interest because the property is located in Downtown Boone, the Town's central business district and reverts to its former zoning district which is the same zoning district as all adjoining properties. Council Member Ashcraft seconded the motion.

VOTE: Aye - Mason, Clawson, Ashcraft, Ulmer
 Nay - None
 Furgiuele (Recused)



Upon a motion by Council Member Clawson, seconded by Council Member Mason, Council voted to bring Council Member Furgiuele back into the meeting.

VOTE: Aye - All
 Nay - None

CASE PL00981-092517: UDO Modification - Honeybee Hives

Ms. Shook explained to Council that in 2015 the North Carolina General Assembly modified the General Statute regarding limitations of local government regulation of bee hives and that the text presented to Council would bring the UDO into compliance with the update. Council Member Mason noted that with honeybees becoming more endangered this amendment would be a positive step.

VOTE #1

Council Member Mason made a motion to approve the proposed amendment to the Town's zoning ordinance and that it is consistent with the Town's Comprehensive Plan and other adopted plans of the Town. As noted in the "Helping Agriculture's Helpful Honeybees" post on the US Food and Drug Administration's website, which was shared by staff in their report, explaining the importance of honeybees: "Honey bees are big money makers for US Agriculture. These social and hardworking insects produce six hive products: honey, pollen, royal jelly, beeswax, propolis and venom - all collected and used by people for various nutritional and medicinal purposes." This aligns with the Comprehensive Plan Policy 2.1.1 Economic Development Sections (a) and (e) and 2.14 Agricultural and Rural Development Section (a). Council Member Clawson seconded the motion.

VOTE: Aye - All
 Nay - None

VOTE #2

Council Member Mason made a second motion to approve the proposed amendment to the Town's zoning ordinance and believes approval is in the public interest because honeybees are critical to agriculture as crop pollinators and this ordinance sets standards for beehives in Town with requirements on how the hives should be maintained and allows for the removal of hives that are not maintained and allows removal if necessary to protect the health, safety and welfare of the public. Council Member Clawson seconded the motion.

VOTE: Aye - All
 Nay – None

§ 15.64 BEES (ACCESSORY).

15.64.01 The keeping of bees as an accessory use does not require a zoning permit.

15.64.02 No lot may contain more than ~~four~~ five hives.

15.64.03 Hives must be screened with an opaque fence at least six feet high and must provide adequate security and signage to prevent inadvertent entry.

15.64.04 A water source must be provided.

15.64.05 A bait hive placed ten (10') to ~~thirty~~ 30 feet (30') away and at least ten feet (10') above the hives shall be provided.

15.64.06 The hive shall be placed at ground level or securely attached to an anchor or stand.

15.64.07 The hive shall be removed if the owner no longer maintains the hive or if removal is necessary to protect the health, safety, and welfare of the public.

(Ord. passed 12-16-2013)

...

Article 34 Definitions

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Bees

Insects of the superfamily Apoidea; in particular, the honeybees, Apis mellifera (L). It includes all life stages of such insects, their genetic material, and dead remains.

Hive

Any receptacle or container, or part of receptacle or container, which is made or prepared for the use of bees, or which is inhabited by bees.

CASE PL01298-020218: UDO Modification - Repeal the Planned Development Zoning Map Amendment Process

Ms. Shook stated that during the January Planning Retreat, Council asked staff to draft text which would remove the Planned Development process from the UDO due to concerns including how the neighborhood meetings were conducted, as well as the types of projects the process was used for. In response to questions raised by Council Member Furguele, Ms. Shook stated that the Planned Development process had been in use for approximately three years and that three projects had applied using the process with two being approved and one being rejected. Ms. Shook confirmed Council Member Furguele's statement that the Planned Development process allowed for the creation of a one of a kind zoning district, save for certain environmental requirements, if Council approves them. Council Member Furguele noted that the Planning Commission recommended that the repeal of the Planned Development process be denied by Council and confirmed with Ms. Shook that only three members of the Planning Commission gave the recommendation. Council Member Furguele expressed concern with the Planned Development process and the neighborhood meeting aspect in particular. Council Member Clawson added that the meetings she had attended were complete chaos. Council Member Mason indicated that while there were problematic areas, she leaned toward amending the process rather than repealing it altogether. Council Member Ashcraft added that he believed the process was flawed, but that it could be remedied fairly easily. Council Member Ulmer stated that she had concerns with the process and agreed with Council Member Ashcraft that there were ways to fix the process.

VOTE #1

Council Member Furguele made a motion that the proposed amendment to the Town's zoning ordinance is consistent with the Town's Comprehensive Plan and other adopted plans of the Town because the PD process promotes random development through the Town without adequate controls and makes zoning much less predictable than when applying only the UDO citing specific criteria within the Comprehensive Plan: "Section 2.1.2 (h) The encroachment of incompatible scaled and designed commercial or office uses in divided or existing or planned residential areas shall be prohibited. Section 2.1.5 a compatible design character for the downtown are drawing upon the locality's original High Country small town features, shall be identified, reinforced and supported to put forth a quality image and sense of place. 2.3.3 (h) The overall housing unit density for proposed infill residential development or redevelopment should be compatible with the average density of existing areas. 2.3.4 (a) Public involvement shall be encouraged in decisions concerning land use and development by making the public aware of proposed developments at the earliest opportunity, as well as fostering communication among developers, the Town, the County, the University and the general public. 2.1.1 (e)(1) Continue to look for ways to make development regulations and permit procedures more predictable and timely. Evaluate opportunities for administrative review and permit issuance for development projects, which due to their small size or relatively minor impacts, may not require review by a formal public commission or board." Council Member Clawson seconded the motion. Council Member Mason stated that in the past Council has amended sections of the UDO rather than repealing and stated that she believed the same could be done in this situation. Council Member Furguele added that while an attempt was made to utilize the process, the process did not work the way it was expected. Council Member Clawson seconded the motion.

VOTE: Aye: Furguele, Clawson, Ulmer
 Nay: Mason
 Ashcraft (Abstain)

VOTE #2

Council Member Furguele made a motion to approve the proposed amendment to the Town's zoning ordinance based on the belief that approval is reasonable and in the public interest because as the Planned Development process is designed, the process could lead to potentially incompatible development which is out of character for the area and the Town as a whole and because the process facilitates development where uses not related to each other can be approved and based upon the Comprehensive Plan policies which are cited above in motion number one. Council Member Clawson seconded the motion.

VOTE: Aye: Furguele, Clawson
 Nay: Mason
 Ashcraft, Ulmer (Abstain)

Article 4 Permits

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§ 4.06 STAFF CONSULTATION AFTER APPLICATION SUBMITTED.

4.06.01 Upon receipt of an application and all necessary supplemental documentation and materials, the Administrator shall:

A. review the application and confer with the applicant regarding staff's interpretation of the applicable requirements of this ordinance; and

B. that the applicant has submitted all of the information that the applicant intends to submit; and

C. that the application represents precisely and completely what the applicant proposes to do.

4.06.02 Applications requiring hearings. The Administrator shall place an application on the agenda of the appropriate Board or Commission as soon as feasible after the applicant has provided all information requested by the Administrator or the applicant, in writing, refuses to provide requested information and demands the application be forwarded to the appropriate Board or Commission for action.

A. If the Administrator believes that the application is incomplete, the Administrator shall recommend to the appropriate Board or commission that the application be denied on that basis, and shall provide detailed information to the appropriate Board or commission as to the elements, supplemental documentation or materials which the Administrator believes are lacking.

B. Except for an application for conditional district rezoning, if an application is submitted for zoning approval and the site specific development plan or accompanying details of the plan are materially different from the site specific development plan or accompanying details presented to Council in connection with an application for an allocation of vested rights to connect to the town's water or sewer system, the Administrator must treat the application as an application for a special use permit. This provision does not apply with respect to CD ~~and PD~~ applications.

1. A "material" difference shall consist of any "minor modification", if the modification relates to a detail or characteristic of the UDO the application which was specifically discussed in the hearing before the Council, or any "major modification."

(Ord. passed 12-16-2013)

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§ 4.14 VESTED RIGHTS.

4.14.01 A vested right shall be deemed established upon proper and lawful approval of a site specific development plan by the Board of Adjustment (in the case of an application for a special use permit or major subdivision) or by the Council (in the case of an application for a Conditional District ~~or Planned Development district~~).

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Article 7 Nonconformities

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§ 7.03 NONCONFORMING USE.

7.03.04 Change of use.

- A. Any change of use may only be to a permissible use.
- B. A change of use for an existing development which does not trigger transitional zone standards to a use which does trigger transitional zone standards may only be initiated by a special use permit or a conditional district ~~or planned development~~ zoning map amendment.
- C. All other changes of use that do not involve any new development do not require increased compliance with current ordinance standards.
- D. All changes of use that involves new development are governed by Section 7.05.

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Article 9 Amendments

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§ 9.02 INITIATION OF AMENDMENTS.

9.02.01 Text and map amendment.

A. Any person may request the Council to set a public hearing to consider a text amendment, ~~or~~ a general map amendment, or a Conditional District map amendment ~~or Planned Development map amendment~~ (the latter ~~three~~ two being collectively referred to as “map amendments” or “rezonings”).

- 1. Such petition shall be heard by Council at the next available regularly-scheduled Council meeting.
- B. The petition shall be filed with the Administrator and shall include at a minimum:
 - 1. The name, address, and phone number of the applicant; and
 - 2. In the case of a proposed text amendment, a summary of the specific objective of any proposed change in the text of this ordinance.
 - 3. In the case of a proposed general use map amendment:
 - a. A description of the land affected by the proposed amendment; and
 - b. A description of the proposed map change.

4. In the case of a Conditional District ~~or Planned Development~~ map amendments, those items described at Subsection 9.02.02 below.

9.02.02 Conditional District (CD) ~~and Planned Development (PD)~~ map amendments.

A. A property may be placed in a CD ~~or in a PD~~ only in response to a petition by the owners of all property to be included.

1. No State owned property may be placed in a CD ~~or in a PD~~ without prior approval by the Council of State.

B. The petition shall be filed with the Administrator and shall include at a minimum:

1. The name, address, and phone number of the applicant;
2. A description of the land affected by the proposed amendment; and
3. A description of the proposed map change; and
4. A site specific development plan and supporting documentation that specifies the actual use or uses intended for the property and any rules, regulations and conditions that, in addition to all predetermined ordinance requirements, will govern the development and use of the property.

9.02.03 Council consideration of proposed amendments.

A. Upon consideration of a proposal to amend the UDO text or zoning map, Council may take any one or more of the following actions:

1. Direct further consideration and/or development of the amendment by Staff and/or the Planning Commission;
2. Authorize drafting of a proposed amendment if such has not already been drafted;
3. Set the proposed amendment for public hearing and consideration by the Planning Commission; and/or
4. Decline to authorize further consideration of the proposed amendment.

B. In the event Council directs a proposed amendment to be considered at a public hearing, such hearing may be scheduled at any such date, time and location as will allow proper notice to issue in advance of the hearing.

C. No later than seven days prior to the date set for the public hearing, the Administrator shall prepare an analysis of the proposed amendment to assist the Planning Commission and Council in determining the conformity of the draft amendment with this ordinance, the Comprehensive Plan and any other officially adopted plan of the town that relates to the proposed amendment. ~~In the case of a proposed PD district, the Administrator shall specifically advise and comment as to whether the proposed district is in keeping with the purpose and intent of the Council for creating such PD districts, as set forth at Subsection 14.05.01 herein.~~

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§ 9.03 HEARING REQUIRED: CONDUCT OF HEARING; NOTICE OF HEARING.

9.03.01 Hearing required.

A. Text, general, and conditional district ~~and planned development~~ map amendments are a legislative processes subject to judicial review.

B. No action that amends or repeals any of the provisions of this ordinance may be adopted until a public hearing has been held on such.

9.03.03 Hearing notice.

A. Legal ad. For all amendments, the Administrator shall publish a notice of the public hearing no less than once a week for two successive weeks in a newspaper having general circulation in the area.

1. The notice shall be published for the first time not less than ten days nor more than 25 days before the date fixed for the hearing.

2. In computing this period, the date of publication shall not be counted but the date of the hearing shall be.

B. Adjacent property owner notification. With respect to general- ~~and~~ conditional district ~~and~~ ~~planned development~~ map amendments, the Administrator shall mail written notice of the public hearing by first class mail to the owners, as shown on the listings of the Watauga County Tax Administration, of all properties whose zoning classification will be changed by the proposed amendment and owners of properties for which any portion is within 150 feet of the subject property.

1. Each notice shall be deposited in the mail at least ten but not more than 25 days prior to the date of the public hearing.

2. The person mailing such notices shall certify to the Council that fact, and such certificate shall be deemed conclusive in the absence of fraud. The certificate of mailing shall be included in the Administrator's analysis of the proposed petition to the Council and Commission.

a. However, if the proposed zoning map amendment directly affects more than 50 properties owned by a total of at least 50 different property owners, the Council may direct notification, instead of by the aforesaid individually mailed notices, by publication of the notice described above, supra, alone, but the notice must be not less than one-half a newspaper page in size and must be supplemented by individual notices by first class mail to property owners who reside outside the newspaper circulation area, according to the addressees listed on the most recent property tax listing for each affected property.

C. Posting. With respect to ~~general, conditional district and planned development~~ map amendments, the Administrator shall also post notices of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right of way within at least ten but not more than 25 days prior to the date of the public hearing.

1. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the Administrator shall post sufficient notices to provide reasonable notice to interested persons.

2. In addition, the Administrator shall take any other action deemed by the Council or Administrator to be useful or appropriate or desirable to give notice of the public hearing.

D. Every notice required by this section shall:

1. State the date, time, and place of the public hearing; and

2. Summarize the nature and character of the proposed change; and

3. Reasonably identify the property whose zoning classification would be affected by the amendment if the proposed amendment involves a change in zoning district classification; and

4. State that the full text of the proposed amendment can be obtained from the Town Clerk; and

5. State that substantial and insubstantial changes in the proposed amendment may be made following the public hearing.

(Ord. passed 12-16-2013)

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§ 9.10 PLANNED DEVELOPMENT (PD), Reserved

~~— 9.10.01 — The authorization of a Planned Development (“PD”) for any use which is permitted only as a special use in this ordinance shall preclude any requirement for obtaining a special use permit for such use.~~

~~— 9.10.02 — Specific conditions applicable to a PD may be proposed by the petitioner or the town or its agencies, but only those conditions mutually agreed upon by the town and the petitioner may be incorporated into the permit requirements.~~

~~— A. Conditions and site-specific standards imposed in a PD shall be limited to those that address (i) the conformance of the development and use of the site to town ordinances and the comprehensive plan or other plan and (ii) the impacts reasonably expected to be generated by the development or use of the site.~~

~~— B. After the town has published the notice of public hearing for the application, the applicant shall make no changes to the conditions or site specific standards that are less restrictive than those stated in the application, including but not limited to smaller setbacks, more dwelling units, greater height, more access ways, new uses, and fewer improvements. More restrictive conditions or additional conditions may be added to the application if such conditions are received by the Planning Department in writing and signed by all owners of the property at least ten business days before the date scheduled for final Town Council action on the application. For purposes of this section, “business day” refers to a day that the Town’s Planning Department is open for business.~~

~~— 9.10.03 — A PD may only be proposed for one of the following:~~

~~— A. A development site containing three or more acres;~~

~~— B. A proposed development which includes both commercial and residential uses.~~

~~— 9.10.04 — The authorization of a PD shall preclude any requirement for obtaining a variance from the Board of Adjustment unless it is a variance to Article 29 Watershed Protection and Article 30 Flood Damage Prevention. Any such variances must be obtained before a public hearing is held on the proposed PD.~~

~~— 9.10.05 — Because the PD is not tied to a designated primary zoning district, specific procedural steps not generally applicable are mandated and more detailed information must be submitted by the petitioner before the petition may be acted upon.~~

~~— A. Specific procedural requirements include:~~

~~— 1. One or more pre-petition consultations with the Administrator, in which the petitioner identifies the development site, its natural features, and the nature of the proposed development.~~

~~—— 2. Before submitting the petition, the petitioner must schedule a meeting with owners of property located within 300 feet of the development site.~~

~~—— a. The petitioner must provide notice at least 21 days prior to the meeting in accordance with Subsection 1.13.02 herein.~~

~~—— b. The meeting must be held at an accessible and convenient location in light of available options. Upon coordination through the Planning Department, the meeting may be held at Town Council Chambers if that location is available.~~

~~—— c. The petitioner must record the names and addresses of all attendees at the meeting.~~

~~—— d. At the meeting, the petitioner, at a minimum, shall present all the following information:~~

~~—— i. Contact information of the parties involved in the ownership, design, and development of the property;~~

~~—— ii. The location of the property and general information on the current conditions of the site;~~

~~—— iii. Proposed use(s) and site development;~~

~~—— iv. Any preliminary plans or renderings, if available; and~~

~~—— v. Any other information deemed pertinent by the Administrator.~~

~~—— e. The petitioner shall provide the Administrator with a report which details the meeting including any concerns expressed by attendees and any commitments made by the petitioner. This report shall be included in the staff report.~~

~~—— B. Specific information which must be submitted:~~

~~—— 1. A site specific development plan that (i) includes all information required per Appendix A and (ii) identifies all elements of the proposed development that deviate from the standards of this ordinance.~~

~~—— 2. Written analysis, tailored to specifically address the characteristics of the particular location, addressing how the planned development will effectively and to the greatest degree reasonably possible, mitigate the impacts of the proposed development on the surrounding area, including but not limited to:~~

~~—— a. Noise impacts;~~

~~—— b. Light impacts; and~~

~~—— c. Any other predictable negative effect, including but not limited to:~~

~~—— i. Negative visual effects;~~

~~—— ii. Negative traffic effects; and~~

~~—— iii. Negative health effects.~~

~~—— 3. Information to demonstrate compliance with all mandatory requirements of this ordinance, including:~~

~~—— a. Article 5 Subdivisions (for purposes of this Section the Town Council is the approval authority for major subdivision preliminary plats);~~

- ~~—— b. Article 8 Historic Preservation;~~
- ~~—— c. Article 19 Grading;~~
- ~~—— d. Article 20 Soil Erosion and Sediment Control;~~
- ~~—— e. Article 21 Stormwater Management;~~
- ~~—— f. Article 22 Utilities;~~
- ~~—— g. Article 29 Watershed Protection;~~
- ~~—— h. Article 30 Flood Damage Prevention;~~
- ~~—— 4. Other information which may be required by the Administrator to fully evaluate the proposed development and its potential impacts on the surrounding area. Such information may include but is not limited to: traffic impact analysis, community impact analysis, additional engineering, and legal information.~~
- ~~—— 5. The petition shall also include an affidavit stating that:~~
 - ~~—— a. All zoning conditions and provisions are freely offered as proposed zoning laws, based solely on the petitioner's independent judgment; and~~
 - ~~—— b. The petitioner is not relying upon any statement by the town staff or any member of the Town Council in connection with the decision to offer any zoning conditions or provisions; and~~
 - ~~—— c. The petitioner understands that other parties that have standing in the rezoning proceeding are relying on the validity of the zoning conditions and provisions; and~~
 - ~~—— d. The petitioner intends for all future owners of the property to be bound by the zoning conditions and provisions should the Town Council adopt them as part of the rezoning.~~
- ~~—— 9.10.06 Except for minor modifications, changes to an approved petition or to conditions attached to the approved petition shall be treated the same as amendments to this ordinance or to the zoning map and shall be processed as a new application.~~
- ~~—— A. Except for a proposed minor modification to a previously approved PD, no proposal to amend or change may be accepted nor considered within 12 months of the date of the original approval of the PD or within 12 months of a hearing upon any previous proposal to amend or change the PD.~~
- ~~—— B. A minor modification is one which does not significantly change the essential character of the use or activity that has been previously authorized through the PD approval.~~
- ~~—— C. The Administrator shall determine whether a proposed modification to a previously approved PD is a minor modification, and the determination of the Administrator shall constitute the final decision of the town and is not appealable.~~
- ~~—— 9.10.07 If a petition for a PD is approved, a copy of the approval and all conditions relative to the approval, including site specific development plan(s), shall be kept on file in the Planning and Inspections Department office. A copy of the approval will also be recorded with the Watauga County Register of Deeds.~~
- ~~—— 9.10.08 Should the property fail to be developed in accordance with the terms and conditions of the PD approval, no subsequent use of the property shall be permitted without a new petition for zoning map amendment being filed.~~

~~—9.10.09— Should a petition for a PD be denied, no new petition for making similar use of the same property shall be considered within 12 months of the date of the original denial.~~

~~—9.10.10— If for any reason any condition imposed pursuant to these regulations is found to be illegal or invalid, or if the applicant should fail to construct an approved site specific development plan in accordance with any condition agreed upon in the rezoning process, the authorization of the PD shall be null and void and of no effect and proceedings shall be instituted to rezone the property.~~

~~—9.10.11— Except as expressly provided otherwise in the PD plan documents, a planned development district is subject to and must comply with all applicable standards, procedures, and regulations set forth in this ordinance.~~

~~—9.10.12— Approval of a PD shall only be granted if the petitioner can provide sufficient information to address the findings found in Subsection 14.05.01(B).~~

~~—9.10.13— The approval of a PD application shall not become effective until the petitioner has submitted to the Planning Department and the Administrator has officially approved a copy of the plan documents incorporating all changes that were required as conditions to Town Council approval and such additional information as the Town Council may have required as a condition of PD approval.~~

(Ord. passed 12-16-2013)

Article 14 Zoning Districts and Zoning Maps

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§ 14.03 EDUCATIONAL DISTRICTS ESTABLISHED.

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14.03.05 The E-3 Educational District is established to provide for planning and appropriate expansion of trade schools and public or private elementary and secondary educational institutions. Such uses shall not include residential uses unless such are approved through a CD ~~or PD~~ process. The owner of a property zoned E-3 must be a public or private educational institution. In the event that a property or portion of property zoned E-3 is sold to a third party that is not such an educational institution, the property must be rezoned. The third-party property owner shall submit a petition to rezone the property within six months of closing on its purchase of the property.

(Ord. passed 12-16-2013; Ord. passed --; Ord. passed --)

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§ 14.05 ~~CONDITIONAL AND PLANNED DEVELOPMENT~~ DISTRICTS ESTABLISHED.

14.05.01 A Conditional District (CD) ~~and a Planned Development (PD) are~~ is a zoning districts in which the use and development of a property pursuant to a site specific development plan is approved through the legislative process pursuant to Article 9 of this ordinance.

A. A CD utilizes the existing zoning district, is limited to the authorized uses and the development standards mandated within that district, and may be subjected to conditions that make the development plan more desirable.

~~—B. A PD creates a sui generis (unique) zoning district not limited to the authorized uses and the development standards of a specific existing zoning district and may be subjected to conditions that make the development plan more desirable. A PD is intended to permit the establishment of areas in which diverse uses may be combined and integrated through careful planning to provide a unified and compatible development which is consistent with adopted plans, and which may reasonably be expected to result in a quality of living environment which is more closely in keeping with the purposes of zoning than would otherwise likely be obtained. It is not the intent of the Town Council that the PD district become a “loophole” designed to permit otherwise illegal contract, conditional or spot zoning, or clandestine institution of an unlawful use variance. Rather the PD district is intended to permit further refinement and more detailed expression of adopted plans in situations where the owners of the property present a development plan which is found to be in the public interest and consistent with adopted plans.~~

~~—1. A PD should only be approved upon the following findings:~~

~~——a. That the proposed PD will produce a development of equal or higher quality than otherwise required by the strict application of district regulations that would otherwise govern;~~

~~——b. That the proposed PD will encourage innovative arrangement of buildings and open spaces to provide efficient, attractive, flexible, and environmentally sensitive design;~~

~~——c. That the proposed PD will produce a development functioning as a cohesive, unified project; and~~

~~——d. That the proposed PD will not substantially injure or damage the use, value, and enjoyment of surrounding property nor hinder or prevent the development of surrounding property in accordance with the adopted plans and policies of the town.~~

(Ord. passed 12-16-2013)

Article 15 District Use Requirements

§ 15.01 TYPES OF USES.

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15.01.06 Transitional zones. Transitional zones attach to each R1, R1A, RR, R2, and RA district and are designed to address the predictable negative impacts of certain uses and therefore have additional standards which must be met. A proposed use subject to a transitional zone must be approved by a special use permit or in a Conditional District ~~or PD~~. A superscript “Tn” in the Table of Principal Uses, Table of Accessory Uses or the Table of Temporary Uses denotes the specified use in the specified district is subject to a transitional zone, where “n” represents the size, in feet, of the transitional zone, measured from the boundary of the protected district. However, in any of the protected districts, the distance is measured from the protected lot rather than the protected zone. See Subsection 6.02.02 for full transitional zone requirements.

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§ 15.10 1.07 DUPLEX; 1.08-1.10 TOWNHOUSE; 1.11-1.13 MULTI-FAMILY DWELLING; 1.14-1.16 MULTI-FAMILY DWELLING IN MIXED USE (UNLESS SPECIFICALLY EXCLUDED).

15.10.01 Applicable standards described in this section are required for uses 1.07-1.16 and apply to all of the following:

- A. New construction, whether such construction constitutes a new development or an expansion of an existing development;
- B. Multi-family dwelling units created by a change in use of a portion or all of an existing development to multi-family use; and
- C. Renovation or replacement of a portion or all of an existing multi-family development when the costs of renovation or replacement trigger the requirements of Article 7 for compliance with this ordinance.

15.10.02 This section shall not apply to:

- A. Multi-family dwelling units in mixed-use building(s) constructed pursuant to and in accordance with the requirements of Section 15.11;
- B. Multi-family dwelling units in single use buildings within a mixed use project constructed pursuant to and in accordance with the requirements of Section 15.11, if:
 - 1. The development is approved through a Conditional District B-1 General Business, B-2 Neighborhood Business, B3 General Business ~~or PD~~-rezoning process; and
 - 2. No phasing of construction is proposed or approved unless:
 - a. The commercial portions of the development will be constructed as part of the initial phase; or
 - b. All phases approved prior to the construction of the phase in which the commercial portions of the development are completed, together allow the construction of no more than one-third the number of multi-family dwelling units which are approved for the development as a whole; or
 - c. The applicant provides adequate assurances in the form of financial commitments which will guarantee that all commercial portions of the development will be completed within the approved vesting period. For purposes of this alternative, by example only and not by way of exclusion, an irrevocable letter of credit from an appropriate financial institution in favor of the Town in a sufficient amount to cover 125% of the projected costs of construction, said projection sealed by a North Carolina licensed engineer, is considered such a guarantee.

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CASE PL01298-020218: UDO Modification - Remove all references to the Boone 2030 Land Use Plan

This item was not discussed due to the Planning Commission tabling the item.

CHANGES FOR M1 MANUFACTURING ZONING DISTRICTS & BREWERY/RESTAURANT

Mayor Brantz declared a break at 7:58 p.m. Council reconvened at 8:10 p.m.

Planning Director Jane Shook reminded Council that at their February meeting, members were presented with a request by Carson Coatney of Boonshine Brewing Company regarding potentially allowing restaurants with outdoor dining within the M1 Manufacturing Zoning District. She presented Council with a staff prepared analysis of the M1 Manufacturing Zoning District and brewery/restaurant uses and outlined the staff recommendations included therein. Brief discussion ensued regarding the criteria which was initially included in the UDO. Council Member Furgiuele expressed concern with allowing incremental changes based on one person's request and stated that the matter should be reviewed in a comprehensive way to achieve goals within the community. Mayor Brantz noted that he viewed the change as an opportunity to support local business.

Council Member Ashcraft stated that he was satisfied with the presentation of information by staff and made a motion to approve the language as proposed and to authorize the addition of 1,000 square feet to the current restaurant size cap of 2,500 square feet. Council Member Ulmer seconded the motion. Before a vote was taken, Council Member Furgiuele asked to hear from Mr. Coatney regarding potential time restraints related to this matter in particular. Mr. Coatney responded that the size issue was more pressing, as was the allowance of outdoor dining. He added that if these issues were addressed, that the business would not use the brewpub definition and that the brewpub definition did not serve a purpose in his opinion. Ms. Shook noted that it could potentially present a problem for staff if Council chose to leave the brewpub listing. Town Attorney Allison Meade indicated that staff could feel constrained due to ambiguity of the definition of "brewpub" in the UDO. After some members expressed confusion with the initial motion, Council Member Ashcraft accepted an amendment suggested by Council Member Furgiuele to eliminate the definition of "brewpub" only within the M1 District at the current time and that Council revisit the issue in other settings in the near future and make changes outlined by staff to raise the current restaurant size cap by 1,000 square feet to 3,500 square feet and to increase the transitional zone in the case of outdoor dining. Council Member Mason brought to Council's attention that there was not currently an industry standard definition for brewpub and other communities do not differentiate between microbreweries and brewpubs. Town Manager John Ward asked that Council afford Ms. Shook and her staff consideration due to the large workload she already had.

VOTE: Aye: All
 Nay: None

PRESENTATION OF B1 HEIGHT ANALYSIS

Planning Director Jane Shook thanked staff involved in the creation of the Height Analysis being presented tonight. Planner Marty Little gave a brief summary of the analysis and noted that the Turchin Center and the First Baptist Church were excluded from the analysis, since staff was not able to obtain measurements for those buildings. Council Member Furgiuele stated that he was surprised at the low height of the buildings downtown, with only a few being three stories or higher. He added that he believed that when people think of Downtown Boone, they think of buildings such as the Mast Store instead of apartment buildings and that he would like to limit building heights on King Street to 30 feet, excluding government buildings. Council Member Furgiuele continued to say that building heights on Howard Street should be limited to 35 feet including parapets, but excluding elevator shafts and applauded Blowing Rock for maintaining more of a small town look. Council Member Ulmer expressed concern with raising building heights due to blocking trees. Ms. Shook noted challenges due to the topographical changes in King and Howard Street. Council Member Mason voiced that she believed Council needed time to process the information presented, adding that she did not want to see the buildings Downtown become monolithic and that she would like to incentivize keeping existing buildings as opposed to tearing them down and rebuilding. Discussion ensued regarding the extension of the B1 zoning district, with Council Member Furgiuele stating that he believed the Downtown Boone Historic District should have a building height limit of 30 feet with other areas having a 35 foot limit. Council Member Mason indicated that she believed parapets should be excluded from these height restrictions while Council Member Furgiuele disagreed. She voiced her opinion that a 30 foot height limit would be acceptable for a two-story building, but that a 35 foot limit could potentially be problematic for a three-story building, unless parapets were excluded from height restrictions. Discussion ensued, with Council Member Furgiuele stating that he would not be against a parapet of 2-4 feet on a building up to 33 feet in height on Howard Street. Council Member Furgiuele made a motion, which was seconded by Council Member Clawson that B1 height limits be placed on the agendas for the April Public Hearing and Council meeting at a rate of 30 feet height limit on King Street including parapets and 33 feet height limit with parapets no more than 4 feet on Howard Street depending on the vantage point determined. Council Member Furgiuele further clarified that the term "King Street" referred to the Downtown Boone Historic District. A complete copy of the B1 Height Analysis is available to view online at http://boonenc.iqm2.com/Citizens/Detail_Legifile.aspx?Frame=&MeetingID=1854&MediaPosition=&ID=1763&CssClass=

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

RESULT:	ADOPTED [4 TO 1]
MOVER:	Sam Furguele, Councilman
SECONDER:	Loretta Clawson, Mayor Pro- Tem
AYES:	Mason, Clawson, Furguele, Ulmer
NAYS:	Ashcraft

CONSIDERATION OF UPDATED SIDEWALK PRIORITY LIST

Public Works Director Rick Miller presented Council with a list of sidewalk priorities for the upcoming fiscal year and added that the list was circulated through both the Transportation Committee and the Alternative Transportation Sub-Committee before being presented to Council. Mr. Miller stated that the goal of staff was to get as far down the list as funding allowed, and noted that in addition to Town funds, vehicle tax collected also contributed to sidewalk repairs. Upon a motion by Council Member Mason, seconded by Council Member Ashcraft, Council voted to approve the sidewalk priorities list as presented.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Council Member
SECONDER:	Marshall Ashcraft, Councilman
AYES:	Mason, Clawson, Furguele, Ulmer, Ashcraft

HOWARD STREET ADDENDUM

Public Works Director Rick Miller presented an addendum to the contract with Davenport Engineering for added services on the Howard Street Enhancement Project which included additional geotechnical and photometry work, as well as additional engineering fees associated with the same. Upon a motion by Council Member Furguele, seconded by Council Member Clawson, Council voted to approve the addendum dated Feb. 26, 2018 from Davenport Engineering.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sam Furguele, Councilman
SECONDER:	Loretta Clawson, Mayor Pro- Tem
AYES:	Mason, Clawson, Furguele, Ulmer, Ashcraft

SUSTAINABILITY FORUM

Planning Director Jane Shook presented a request on behalf of the Sustainability, Economics and Environment Committee to hold a Sustainability Forum in the fall of 2018 to promote sustainable programs within the Town. Council Member Furguele, who is a liaison to the SEEC, stated that he estimated the cost for the forum to be around \$1,500 and noted that an annual event was a part of the SEEC mandate. Council Member Ulmer made a motion, which was seconded by Council Member Clawson to direct staff to move forward with the planning and preparation for a Sustainability Forum to be held in the fall of 2018.

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

DRAFT LANGUAGE TO ALLOW NON-MOTORIZED TRANSPORTATION

Public Works Director Rick Miller presented Council with draft language for an ordinance allowing for non-motorized wheeled alternative transportation on Town sidewalks. Mr. Miller noted that the language was

prepared by the Alternative Transportation Sub-Committee and the Cruzin' Committee, then sent back to the Transportation Committee and that it had not yet been reviewed by Town Attorney Allison Meade. Mr. Miller added that language pertaining to bicycles was not included in the draft presented, to which Council Member Mason added that the Transportation Committee felt like since bicycles were recognized by the DOT as vehicles, the topic warranted more discussion. Council Member Furguele stated that he supported the proposal except for the exclusion of bicycles. Nathan Godwin, member of the Cruzin' Committee clarified that the goal of the proposed language was not only to allow skateboards on Town sidewalks, but also inline and roller skates. He continued to say that the Boone Area Cyclists group did not encourage bicycles on sidewalks due to safety issues for the rider. Council Member Furguele reiterated that he supported the proposed plan, but wanted to revise the language to include bicycles on sidewalks, provided riders followed safety requirements. Council Member Mason expressed her view that the language should be sent to the Town Attorney for review and/or revisions, then to hold a public hearing. Council Member Furguele made a motion to direct the Town Attorney to review and/or revise the proposed draft ordinance language with the inclusion of bicycles, and once the review is complete a public comment period would be held at the beginning of the Council meeting at which the revised ordinance was presented. Mayor Brantz and Council Member Ulmer inquired about the Town's liability should the ordinance take effect. Ms. Meade stated her opinion was that the proposed ordinance would not increase the Town's liability.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sam Furguele, Councilman
SECONDER:	Lynne Mason, Council Member
AYES:	Mason, Clawson, Furguele, Ulmer, Ashcraft

ANALYSIS REGARDING GUN CONTROL IN TOWN LIMITS

Council Member Furguele announced that he requested the Town Attorney prepare an analysis regarding gun control so that the public could understand what authority municipalities had on gun control and that the item was not on the agenda for Council action. Town Attorney Allison Meade presented her analysis which had two main points: authority on gun control is limited; and the Town was already exercising gun control to the extent that it could.

AUTHORIZATION TO APPLY FOR GRANT FUNDING

Police Chief Dana Crawford presented a request for Council's permission to apply for grant funding for the financing of two patrol officers. Chief Crawford explained that the grant would fund two entry-level officers along with two vehicles and equipment for three years, with the Town supplying funding in the amount of \$156,959. He continued to add that the department desperately needed officers due to increased workload and noted the department's lack of resources in its overtime fund. Town Manager John Ward noted that the deadline for applications was prior to budget discussions.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sam Furguele, Councilman
SECONDER:	Loretta Clawson, Mayor Pro- Tem
AYES:	Mason, Clawson, Furguele, Ulmer, Ashcraft

REVIEW OF APPALCART BOARD ORGANIZATION

Town Attorney Allison Meade presented her review of the structure of the AppalCART Board. She stated that the board was established in 1980 and currently had eight members, including one Town Council representative.

REVIEW OF TOWN COUNCIL LIAISON POLICY

Council Member Furguele presented a request for Council to review the large number of Town committees and what he believed to be issues with Council Members serving as liaisons to Town boards and committees. He referenced a recent lack of members at meetings of the Planning Commission and the Community Appearance Commission, which would result in a low quorum tasked with decision making. Council Member Furguele continued to add that it was his belief that Council member liaisons often had undue influence on boards and committees due to their position, and expressed concern about public perception. He stated that he would like to have standing committees that were staff specific and that did not have a set meeting schedule. Upon a motion by Council Member Furguele, seconded by Council Member Clawson, Council voted to examine one board or committee per regular Council meeting and have the staff representative for that committee present for questions and discussion.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sam Furguele, Councilman
SECONDER:	Loretta Clawson, Mayor Pro- Tem
AYES:	Mason, Clawson, Furguele, Ulmer, Ashcraft

PROPERTY TRANSFER - 131 MORNINGSIDE DRIVE

Council Member Mason made a motion, which was seconded by Council Member Furguele to amend the agenda to include action for agenda item number 12 under Council Matters.

Town Manager John Ward explained to Council that Watauga County had offered property located at 131 Morningside Drive to the Town of Boone, which would create a continuous stretch of Town-owned greenspace. Upon a motion by Council Member Furguele, seconded by Council Member Clawson, Council moved to proceed with the transfer of property located at 131 Morningside Drive from Watauga County to the Town of Boone.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sam Furguele, Councilman
SECONDER:	Loretta Clawson, Mayor Pro- Tem
AYES:	Mason, Clawson, Furguele, Ulmer, Ashcraft

TOWN MANAGER UPDATE

Town Manager John Ward updated Council on the following topics:

- Public Hearing/Planning Commission meeting on March 26, 2018
- Bike and Pedestrian Plan Stakeholders meeting on April 18, 2018
- Wellness Center Greenway connector easements have been recorded, with construction expected to begin in April
- Appointment of two local residents to the state Board of Elections
- Chamber-sponsored meet and greet for federal, state and local elections candidates to be held on April 23, 2018
- Clean-up crews on the site of a fuel spill at Blue Ridge Energies
- Noise complaints have been addressed at the water intake construction site

APPOINTMENT TO TDA

Council Member Mason nominated Lenny Cottom for re-appointment to the Tourism Development Authority.

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

Mr. Cottom's term will expire on March 22, 2021.

APPOINTMENT TO COMMUNITY APPEARANCE COMMISSION

Council Member Furguele nominated Karyn Reid to the Community Appearance Commission. Brief discussion followed regarding the commitment level of students who wish to serve on Town committees.

VOTE: Aye: All
 Nay: None

APPOINTMENT TO WATER ADVISORY COMMITTEE

Council Member Clawson nominated Pam Williamson and Dr. Jim Buchanan to serve on the newly formed Water Advisory Committee. Council Member Furguele added that if another month goes by with few applications, Council should consider paring the committee down in size.

VOTE: Aye: All
 Nay: None

Ms. Williamson and Dr. Buchanan's terms will expire on March 22, 2021.

CLOSED SESSION**Entering Closed Session**

Council Member Clawson made a motion, which was seconded by Council Member Furguele, to enter closed session at 10:30 p.m.

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.

Exiting Closed Session

Upon a motion by Council Member Clawson, seconded by Council Member Furguele, Council voted to exit closed session at 11:23 p.m.

ADJOURNMENT

Upon a motion by Council Member Mason, seconded by Council Member Ashcraft, Council voted to adjourn the meeting at 11:25 p.m.

Nicole Worley, Town Clerk

Rennie Brantz, Mayor