

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
April 16, 2019**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order on Tuesday, April 16, 2019 at 6:00 p.m. in the Council Chambers located at 1500 Blowing Rock Road in Boone. Mayor Rennie Brantz presided. Council members present included Mayor Pro-Tem Loretta Clawson, Lynne Mason, Sam Furgiuele, Connie Ulmer and Marshall Ashcraft. Staff present included Town Manager John Ward, Town Clerk Nicole Harmon, Public Works Director Rick Miller, Deputy Public Works Director Todd Moody, Planning Director Jane Shook, and Police Captain Andy LeBeau. Town Attorney Allison Meade was also present.

ANNOUNCEMENTS

Mayor Brantz welcomed all in attendance and asked anyone who wished to speak during public comment to sign up.

Mayor Pro-Tem Clawson announced an upcoming event hosted by the Daughters of the American Revolution and invited Council members to attend.

TENTATIVE AGENDA ADOPTION

Mr. Ward noted that there was an updated contract for consideration on Item Number 5 and that paper copies were at each member's station for their review. Upon a motion by Ms. Mason, seconded by Mayor Pro-Tem Clawson, Council voted to approve the tentative agenda.

VOTE:	Aye:	All
	Nay:	Nay

PUBLIC COMMENT

Ari Bargil with the Institute for Justice out of Fort Lauderdale, Florida spoke against the proposed amortization ordinance. Mr. Bargil felt that these types of ordinances could be constitutionally problematic if the Town decided to enact one, in that it dictated who was allowed to live with whom and where. He continued by stating that by approving an amortization ordinance, he believed Council to be avoiding their obligation to pay affected citizens a fair amount for their property and likened the situation to an eminent domain procedure.

Elizabeth Kivette of Hillcrest Circle addressed Council regarding the proposed amortization ordinance. She noted that upon the purchase of her property, she received a letter from the Town of Boone confirming that the structure was built as a three-unit dwelling in the 1960's when the property was still located in the County limits. She stated that the structure had always had three external water meters and three power boxes, and that the tenants included a graduate nursing student and a young professional. Ms. Kivette stated that she had never had a complaint on these tenants and that she relied on the income for her well-being.

Doug Belden of Silverwood Drive spoke against the amortization ordinance and stated that he and his wife purchased a quadruplex off of Stadium Drive in 2009 as an investment. He added that in 2014, he suffered from severe health issues which left him disabled and unable to work at his property management business, and that he used the income from an owner-financing agreement that he had on the quadruplex property as income in place of his former business income. Mr. Belden noted that he had never had noise issues at this property, and that if the amortization ordinance passed, it would negatively affect his family's income. He asked that Council consider leaving current legal non-conforming properties exempt from the program. Upon a question by Mr. Furgiuele, Mr. Belden confirmed that his quadruplex was built as an apartment building. Mr. Furgiuele clarified that the proposed ordinance allowed for different treatment for these types of structures.

Rob Holton of Boone spoke against the proposed amortization ordinance, expressing concern with property owners' losing the value of their property. He asked that Council reconsider the amortization program unless R-1 and R-A zoning districts were exempt, or in the alternative, legal non-conforming properties were allowed to rezone prior to the beginning of the program. Mr. Holton felt that members were vastly underestimating legal fees to the Town and to property owners if the ordinance was approved. Mr. Furgiuele felt that it would be beneficial to know where speakers lived and in what zoning district their property was located. Mr. Holton noted that he lived outside the Town limits, but that he owned a large amount of property in Town. He stated that he was concerned about the

quality of life in the neighborhoods, but felt that the Town was reversing promises made to property owners and believed that there were other ways to handle the issues which had been raised. Mr. Furgiuele was concerned for the property rights of citizens that believed the Town would enforce its zoning ordinance, but stated that he was aware that it was a problem on both sides. He added that if the General Assembly had not restricted towns' rights, that he did not believe there would be a need for this program at all.

Tammy Dunnigan of Arrowhead Court signed up, but did not wish to speak when her name was reached.

Frank "Ham" Wilson of West King Street spoke to Council against the amortization program on behalf of a client. He stated that in discussing the topic with his colleagues, they all agreed that if this program was enacted, the Town would see a rash of litigation. Mr. Wilson felt that by enacting this program, the Town would be doing the same thing that the new statute of limitations was trying to prevent. He finished by noting that he felt there was an extremely glaring void of any citizens who were speaking up in support of this change.

Liz Riddick of Lloyd Bentley Lane addressed Council as a realtor and former Affordable Housing Task Force and Town Council member. She stated that she lived in the former ETJ and owned property in Town, and felt that the proposed ordinance would affect affordable housing in Boone. Mr. Furgiuele stated that he had received comments from people who supported the idea, and asked if accessory use apartments were a good idea, why Council would not allow everyone to have them. Ms. Riddick stated that the Town attempted to do just that when she was on Council, but that the idea was shut down since the rules dictating who could live in the apartments were so strict. Ms. Riddick felt that the proposed amortization program was too strict, and asked Council to attempt to figure out how to address nuisance issues as opposed to taking property owners' rights away.

George Fox of Fox Hill Road stated that he owned property on Watauga Drive and a duplex on Whitener Drive. Mr. Fox stated that he purchased the duplex in the 1990's and that it was zoned R-1. Before he purchased the property, Mr. Fox stated that his attorney did a deed search and was able to obtain a sworn statement from the property owner in the 1970's that they had been using the property as a duplex and that it was grandfathered in. Mr. Fox echoed the comments of previous speakers and agreed that there were problems that needed to be addressed, but felt there were other ways to deal with them. He suggested that Council involve the property owner in nuisance cases rather than changing owner's property rights.

Mayor Brantz asked if anyone else in the audience wished to speak. Stephen Phillips of Boone stated that he lived in a neighborhood zoned R-3 and hoped that Council would consider adopting regulations that addressed problem houses as opposed to occupancy and land-use regulations.

REQUESTED APPEARANCES

CARSON SAILOR - SOUTHERN APPALACHIAN HISTORICAL ASSOCIATION

Carson Sailor of the Southern Appalachian Historical Association thanked Council for their support last fiscal year and applauded the success of the 2018 season and of the museum on property. Mr. Sailor stated that finances had not fared as well in 2018 due to poor weather conditions and stated that the organization had taken precautions to attempt to keep them financially viable in case of weather anomalies. He thanked Town of Boone staff for their assistance, and stated that the 2019 season would open on June 21 and run until August 10. Mr. Sailor stated that for the previous three years, the Town had allocated \$20,000 in its budget for SAHA and asked Council to consider the same amount for the upcoming fiscal year. Mayor Pro-Tem Clawson felt that this request was reasonable and made a motion to allot \$20,000 in the FY19/20 budget to SAHA. Mr. Furgiuele seconded the motion. Mr. Ward asked that Council hold off on voting and instead consider this allocation during the budget meeting at the end of May. No vote was taken.

LAURA KRATT - APPALACHIAN THEATRE

Laura Kratt, Executive Director of the Appalachian Theatre asked Council to consider sending a letter of support to state representatives to encourage Governor Cooper to maintain one million dollars in grant funds earmarked for the Appalachian Theatre in his proposed budget. She stated that the Theatre was getting close to the finish line in terms of construction and the capital campaign, and noted that \$1.2 million was still needed to fully equip the Theatre and to subsidize the first few years of operations. Ms. Mason made a motion to direct

staff to prepare a letter of support to send to Senator Ballard and Representative Russell. Mayor Pro-Tem Clawson seconded the motion. Mr. Ward stated that he would notify the Town's lobbyists and ask that they direct their attention to help keep these funds in the State budget. Ms. Mason clarified her motion to include the direction to staff to request the lobbyists' assistance in this matter. Mayor Pro-Tem Clawson accepted this amendment.

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

COUNCIL MATTERS

CONSIDERATION OF SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT NON-CONFORMITY AMORTIZATION PROGRAM

Town Attorney Allison Meade presented Council with a proposed program which would potentially address the issue of non-conforming properties within single-family residential zoning district. Mr. Furguele asked whether other communities had adopted amortization ordinances, to which Ms. Meade responded that some towns had adopted such ordinances, and noted that some ordinances dealing with salvage yards, adult businesses and signs had been upheld in Court proceedings. Ms. Meade noted that Winston-Salem had an ordinance which amortized certain non-conforming uses in single-family structures that had been subsequently changed into multi-family structures which was mainly aimed at transitory housing in the downtown area. She added that she was not aware of West Jefferson's ordinance which was previously mentioned. Mr. Furguele stated that he did not believe the West Jefferson ordinance to be aimed at residential properties. Mr. Furguele asked when zoning was adopted in the Town of Boone, with Ms. Meade responding that she believed it to be adopted in the 1960's. Mr. Furguele asked if the Planning Department had any records which could be used to establish what a building was initially intended for and whether it was legally or illegally created. Ms. Meade answered that there may be records in some cases and others not. Ms. Meade confirmed a statement made by Mr. Furguele that the Town's current ordinance already stated that when a non-conforming use was discontinued for 180 or more days, that the use lapsed. He asked whether the Town possessed any information as to whether uses had been interrupted, with Ms. Meade responding that staff did not have a systematic way of keep track of this information. Mr. Furguele felt that it was disturbing that no one was concerned for the people who lived in conformity and obeyed the Town's zoning laws. Mayor Brantz asked how many properties would potentially be affected if this ordinance was enacted. Ms. Meade stated that since no survey had been done, she had no way to know. She added that staff was currently gathering information in response to public record requests regarding the matter. Ms. Mason asked whether staff had looked at information on occupancy violations and added that she believed there to be a number of accessory apartments in Town that coexisted nicely in neighborhoods. She expressed that she felt the matter was an affordability issue, and expressed concern with eliminating a secondary housing option for some and a source of income for the homeowner. Mr. Furguele stated that he was not against accessory apartments but questioned why the Town had zoning ordinances if they were not adhered to. He felt that the draft presented was too complicated and added that he did not want to make the rule discretionary in terms of a 20-year extension. Mr. Furguele felt that owners of non-conforming properties would be invited to apply for conditional district zoning that would allow the non-conforming use to continue until it ceased to operate as such, then the use would be completely discontinued. He further added that the standards should include whether a use was created legally and had continued on, and that the burden of proof should lie with the owner. If a use was discontinued, Mr. Furguele added that it should revert back to the original conforming use. Mr. Furguele added that although there could be spot zoning concerns if the ordinance was adopted, he had not been convinced that it would be illegal and that it would not be a good approach to the issue at hand. Mr. Ashcraft felt that the ordinance should be narrowed and that Council should instead focus on addressing nuisance issues. Discussion ensued regarding the difficulty in finding ways for staff to monitor and distinguish between legal or illegal non-conforming uses, with Mr. Furguele suggesting that Council schedule a public hearing to get input from the public. Ms. Meade stated that she did not agree with the suggestions that one could not distinguish between legal and illegal non-conforming uses. She continued by saying that, though the system may not be perfect, such distinctions can generally be drawn. The burden is put on the owners to

prove the legality of the nonconformity and the then law puts the burden on the Town to show discontinuance of the non-conforming use. Mr. Furgiuele felt that if Council chose to walk away from an amortization program, then zoning as a whole in the Town should be revisited since it was not being enforced. Mayor Brantz asked members to remember the impact this ordinance could potentially have on those who depend on rental income for their wellbeing. Ms. Mason suggested the Planning and Inspections department prepare a summary on common complaints to see if there were certain areas that received complaints repeatedly. Ms. Meade stated that she had talked with staff in Planning, Public Works and the Police Department and that from a perspective of noise, parking and trash, complaints were in fact concentrated to certain areas. Discussion ensued regarding the process, with Mr. Furgiuele suggesting that under the ordinance, a non-conforming property should either come into compliance or apply for conditional district zoning with the stipulation that upon the discontinuation of the non-conforming use, the property would revert back to the original zoning. Timing was questioned and whether conditional district zoning should precede the start of the clock ticking on an amortization process. Ms. Meade encouraged that rezoning should take place first, that way the ordinance would apply to the structures it was actually intended to address. Mr. Furgiuele noted that there should be considerations made for whether conditional district zoning was granted to a property in terms of how long it had existed and if it could be structurally changed. He further suggested that the Town could waive fees on conditional district zoning permits if a property owner agreed that if granted, the property would revert to the original use once a non-conforming use was discontinued. Ms. Mason expressed concern at the amount of work placed on staff. Ms. Ulmer expressed that she was torn on the idea of amortization and that it was too early for her to make a decision. Mr. Ashcraft agreed that it was too early to solve the issue in its entirety and made a motion to schedule two different public hearings on the same date but with two components, and to invite concerned residents to discuss remedies and potential concerns. Mr. Furgiuele seconded the motion, and suggested that this item be tabled until the Thursday meeting to discuss at the same time as the Airbnb matter. Mr. Ward noted that it would be helpful if Council would consider having this public hearing in time to consider budgeting additional funds for legal fees should Council choose to move forward. Ms. Mason stated that it would be helpful to get more information from staff regarding nuisance properties, and suggested that the Town should consider consolidating enforcement actions Town-wide. Mr. Furgiuele asked that once scheduled, staff get the word out about the public hearings through press releases.

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

NUISANCE PROPERTIES IN SINGLE-FAMILY NEIGHBORHOODS: RECOMMENDED CODE AND POLICY CHANGES

Town Attorney Allison Meade presented Council with proposed changes to the Town Code regarding nuisance properties in single family neighborhoods and reiterated previous conversation that there were certain addresses in Town that created issues again and again. She suggested that since many, but not all, of these nuisance calls were directed to the Police Department, additional ordinances could be adopted to give the Police Department more tools to enforce, such as a party house ordinance. She stated that this type of ordinance could give the department tools to deal with gatherings that caused a nuisance in the neighborhood and that repeat violations would result in increased penalties. Discussion turned to code enforcement, with Mr. Ward noting that police officers had done code enforcement in the past. Ms. Meade stated that she did not foresee a great deal of litigation coming along with these changes, and that she believed them to be giving staff the tools to do the right thing in nuisance situations. Mr. Furgiuele continued by saying that he was not against any of the individual suggestions offered, though he was concerned that the lack of staff could present a problem. He added that he would like to see a definition as to under what circumstances the Town would take legal action, and expressed concern with potentially spending Town resources to bring a lawsuit on nuisance matters. Ms. Meade felt that the Town should not have ordinances on the books that Council would not be willing to back in court if necessary. Following brief discussion regarding a recent nuisance matter in the Town, Mr. Furgiuele stated that he would like to see an attempt to define broad standards for nuisance enforcement that crossed departmental lines. Ms. Meade felt that the Town would never be able to enforce nuisances to 100%, but that she believed this enforcement to be a crucial element of what local government did to define and protect their citizens from

things that degraded their quality of living. Ms. Mason agreed that neighborhoods were looking for consistency in enforcement, and that it did not make sense to have ordinances if they would never be looked at or enforced. Mr. Furgiuele suggested that an umbrella policy be drafted for nuisance issues that would include what standards the Council would consider in order to take action to abate a nuisance. Ms. Meade stated that she did not present information on this since staff felt they would have the tools in place to abate nuisances and that if these enhanced penalties worked, issues would never reach the point of legal action. Mr. Furgiuele felt that without standards there was no consistency, and argued that the Town did not have the tools in place to deal with the Blanwood situation since it did not fit into any of the previously defined categories in a way that allowed enforcement that would cure the neighbors' problem. Ms. Mason suggested that Ms. Meade add needed clarification in the existing ordinances and then reevaluate in the future if needed. Mr. Ashcraft further suggested that graduated penalties across the board be added. Mr. Furgiuele stated that he was against the first section presented within the action item in that it was too broad and too vague. Ms. Meade read the definition within the first section aloud, and expressed that she believed it to be clear, though it was broad and general. In response to a point made by Mr. Furgiuele, Ms. Meade stated that she did not believe the noise ordinance would entirely capture all nuisances, with Mr. Ashcraft agreeing. Discussion turned to the sample graffiti ordinance presented, with Mr. Furgiuele expressing concern with the Town paying to clean up graffiti, as well as fining landlords who did not take measures to clean it up. Property owner Rob Holton expressed that he took issue with the Town encouraging the person who created the graffiti to remove it from the property, since this could result in damage to the property if removed in the incorrect manner, though he believed they should have to pay the cost. Mr. Furgiuele agreed with this statement. Police Captain Andy LeBeau stated that it often took court cases at least a year to go through the court system and to receive payment for issues such as this. Mr. Furgiuele emphasized that he believed the Town should give property owners every opportunity to remedy the non-conformity. After brief discussion, Ms. Mason added that she would be interested in seeing a refined concept for item number one in the example ordinance presented. Ms. Mason made a motion to direct staff to work on item numbers 2-5 in the example ordinance and to further refine the concept in item number 1 and to bring back to Council at a later date. Ms. Ulmer seconded the motion.

Mayor Brantz declared a break at 8:40 p.m. Council reconvened at 8:51 p.m.

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

REQUEST FOR AUTHORIZATION FOR FURTHER ENGAGEMENT WITH WITHERSRAVENEL - BOLICK SITE CONCEPT DESIGN

Public Works Director Rick Miller asked Council for authorization to allow staff to further discuss proposed plans for the Bolick site concept design proposed by WithersRavenel. Mr. Furgiuele stated that he was pleased that the Town was able to identify a firm with so much experience, and made a motion to approve the request. Mayor Pro-Tem Clawson seconded the motion. Mr. Ashcraft confirmed with WithersRavenel representatives that this proposal would not go as far as to include construction drawings. Mr. Furgiuele asked whether the firm could make its proposal climate neutral to adhere to recently adopted Town guidelines. Representatives confirmed that this could be done, and noted that a rough estimate for the cost of the design was around \$10,000, but could be higher or lower depending on how in depth Council wanted it to be.

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

REQUEST FOR DIRECTION REGARDING CONSERVATION EASEMENT ON BOLICK PROPERTY

Town Manager John Ward, with assistance from George Santucci of the New River Conservancy, asked for Council's input and direction regarding the possible designation of land on the Bolick Farm that could be reforested and used for a conservation easement. He stated that the building could not be designed without impact to the trees on the property. Mr. Furgiuele asked whether the proposed conservation easement would have any negative impact on the ability to complete the project, with Mr. Ward answering that the project could impact the operations staging area. In response to a question by Mayor Pro-Tem Clawson, Mr. Ward indicated that there was a chance that the historic apple tree on the property could be impacted at some point during construction. Public Works Director Rick Miller stated that there was a part of the pink colored portion on the map that would not be utilized for operations staging. Mr. Ward suggested that a portion of the pink colored area be delineated for a conservation easement, which could be used in turn for a future grant match. He also stated that he would like to maintain the ability to cross the river to connect the municipal complex property to the Greenway, and wanted to make sure that the proposed conservation easement included language to allow for trails on the property. Mr. Furgiuele asked what the benefit was of including the yellow portion on the map and as much of the pink as could be identified in terms of stormwater. Mr. Santucci responded that the more forested area there was on the property, the more protection of the river and the less erosion. He added that the financial benefit to this option was the possibility of additional grant funding. Mr. Furgiuele made a motion to approve a conservation easement for the green (50'), blue (100') and yellow (300') portions of the map presented, and that once areas needed for operations were identified, the unneeded area of the pink portion (bottom area) of the map be committed to the conservation easement. Ms. Meade stated that if Council committed to a buffer in the yellow area on the map, that would likely prohibit recreational uses and parking in that area in the future. Ms. Mason seconded the motion. Mr. Ward noted that the agreement with New River Light and Power was not finalized, and asked Mr. Santucci if the Town committed this area to reforestation whether there were other options as far as accessing funds to replant the area. Mr. Santucci responded that the Town could apply to the National Forestry Service for assistance. Mr. Furgiuele stated that the historic apple tree should be saved if possible.

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

CONSIDERATION OF APPROVAL OF AGREEMENT - CENTER FOR WATERSHED PROTECTION

Town Manager John Ward presented Council with a draft agreement between the Town of Boone and the Center for Watershed Protection in Maryland for a code and ordinance review involving stormwater management and watershed protection. Ms. Meade noted that the changes she made to the agreement had not yet been approved by the Center for Watershed Protection. In response to a question raised by Council member Furgiuele, New River Conservancy representatives stated that they had a positive take on the Center for Watershed Protection, and that the center could tailor its work to meet the needs of the Town. Ms. Mason asked whether the center would address stormwater retention facilities as well as enforcement, to which Mr. Santucci responded that the center would be able to help with enforcement. Mr. Furgiuele made a motion to approve the agreement as presented. Mr. Ashcraft seconded the motion. Mr. Furgiuele amended his motion to state that there should not be any offsite work done by the Center for Watershed Protection. Mr. Ashcraft accepted the amendment. Mr. Ward suggested that Ms. Meade work directly with the Center for Watershed Protection to work out the details in the agreement.

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

REQUEST FOR CONSIDERATION OF AGREEMENT - KINGSWOOD CONDOMINIUMS, INC.

Public Works Director Rick Miller asked for Council's consideration on an agreement between Kingswood Condominiums, Inc. and the Town of Boone for property located at 229 East King Street. Mr. Miller explained that the Town leased the parking lot behind the Public Works center and sub-leased 24 parking spaces in that lot for tenant parking. Ms. Meade pointed out a mistake on the dates that should begin April 1 and run through March 30 instead of July 1 as listed in the presented contract. She clarified that she changed the dates to line up with the lease with Bonnie Brown who owns the parking lot. In response to a question by Mr. Furgiuele, Mr. Miller stated that there had never been any issues, other than occasionally new students will have to be told to obtain parking stickers before utilizing the lot. He added that there was adequate parking to facilitate the lease as well as Town employees, and that there had never been issues with damage to cars. Upon a motion by Ms. Mason, seconded by Mr. Ashcraft, Council voted to approve the agreement with the amendment as noted above.

STATE OF NORTH CAROLINA

PARKING LICENSE

COUNTY OF WATAUGA

THIS PARKING LICENSE is made as of the 1st day of July, 2019 by and between Town of Boone, a North Carolina Municipal Corporation, as Licensor (hereinafter referred to as "Town") and Kingswood Condominiums, Inc., as Licensee (hereinafter referred to as "Kingswood") collectively referred to as the "parties." Town reserves all rights not specifically granted hereunder.

1. **Parking Areas Provided:** For the term of this License, Town shall make available to Kingswood, and Kingswood shall have the right to use, twenty-four parking spaces (hereafter, the "premises") in Town's parking lot behind the "Brown Building," Town's Public Works building located at 321 East King Street, Boone, North Carolina, to wit: that certain parking lot (hereafter the "Brown Lot") leased by Town from Bonnie Jean Brown pursuant to a certain lease agreement dated April 1, 2019, and ending March 31, 2022 (hereafter, the "Brown Lease"), the Brown Lot being a 1.004 acre tract of land, more or less, lying on the north side of Tracy Circle and being a portion of the Council Grove Subdivision. Town is free to designate any of the spaces it chooses within the Brown Lot for Kingswood's use.
2. **Term:** The term of this License shall be for the period commencing July 1, 2019, and extending through March 31, 2022; *provided, however*, that upon giving 30 days written notice, the Town shall have the right to terminate this license (i) at the end of each payment period noted at section (3) below, or (ii) upon the termination of the Brown Lease should that occur prior to expiration of the term of this License. Licensee understands and acknowledges that the Brown Lease is terminable as of March 30 of each of the next three years.
3. **License Payment:** License payments shall payable in advance on an annual basis, and subject to an increase of \$150 per year, as follows:
 - a. Prorated for the 9 month period , July 1, 2019 through March 30, 2020: the sum of \$5,300 * 9/12 = \$3,975
 - b. For April 1, 2020 through March 30, 2021: the sum of \$5,450
 - c. For April1, 2021 through March 30, 2022: the sum of \$5,600

Kingswood's failure to timely pay the license payment prior to the first day of each one year period shall constitute a forfeiture of this License. Should the License be terminated prior to the end of the License term per paragraph 2 above, Licensee shall be entitled to refund of a prorated portion of the license payment made, based upon application of a factor with the number of days of licensed use during the term as the numerator and the total number of days of the license period as the denominator, multiplied by the amount of the full payment made for the period.

4. **Repairs and Maintenance:** Kingswood shall be responsible for all damages to the premises which result from the activities of its invitees or licensees. Kingswood will undertake no repairs to the premises without first notifying Town in writing, at least ten days in advance, of its intention to undertake or make such repairs and will undertake no repairs without approval of Town Manager. Any approved repairs made to the premises by Kingswood shall be done in a workmanlike manner. In making any repairs, Kingswood shall comply with all ordinances of Town of Boone and Watauga County, and any relevant federal and State laws. Town shall be entitled, at its sole option and whether or not requested to do so by Kingswood, to make any repairs to the premises and conduct any maintenance to the premises as it deems necessary or expedient.
5. **Alterations:** Kingswood shall make no alterations to the premises.
6. **Assignments, Subleases and Licenses:** Kingswood shall not assign its rights to this License to another party without the prior written consent of Town. The parking spaces provided herein may only be used by Kingswood, its licensees and invitees.
7. **Town's Right to Enter and Use Premises:** Town reserves the right and may enter the premises at any time for any purpose, including inspecting the premises, making such repairs as it, in its sole discretion, desire to make, maintaining the premises, removing snow from the premises, keeping the premises secure, and for any other purpose Town may have in carrying out its responsibilities under the Brown lease or may otherwise deem necessary.
8. **Indemnity by Kingswood:** Kingswood shall defend, indemnify, and hold harmless Town from any and all claims, actions, damages, and liability associated with personal injury and/or damage to property and/or any other matter arising out of any occurrence in, upon or at the premises, associated with any act or omission by Kingswood, its agents, employees, licensees or invitees, or associated with Kingswood's, or its licensees or invitees use of the premises. In the event that Town is made a party to any litigation brought against Kingswood related to Kingswood's use or occupancy of the premises, Kingswood shall defend, protect and hold Town harmless from any and all liability that may result therefrom, including Town's costs in defending itself against any claim, action, litigation or other assertion of liability.
9. **Indemnity by Town:** Town shall defend, indemnify and hold harmless Kingswood from any and all claims, actions, damages, and liability associated with personal injury and/or damage to property and/or any other matter arising out of any occurrence in, upon or at the premises, associated with any act or omission by Town, its agents, employees, licensees or invitees, or associated with Town's use of the premises. In the event that Kingswood is made a party to any litigation brought against Town related to Town's use or occupancy of the premises, Town shall defend, protect and hold Kingswood harmless from any and all liability that may result therefrom, including Kingswood's costs in defending itself against any claim, action, litigation or other assertion of liability.
10. **Kingswood's Use of Premises:** The License is for the sole purpose during the term of this License of allowing Kingswood to use the designated parking spaces for himself, his employees and his invitees. Kingswood shall provide the Town's Public Works Director (hereafter, the "Director") with such information as may be acceptable to him to be able to determine whether people parked in the

designated spaces have parked with the proper authority to do so. Persons who wrongfully park in said spaces, or for whom the required information is not provided to the Director may be cited for violation of Town's parking ordinances, and Town may undertake its normal procedures for violation, including immobilization and towing.

11. **Modification:** This License contains all of the terms and conditions agreed to by Town and Kingswood concerning the use of the above-described premises. There are no oral terms or conditions agreed to by the parties which are not contained herein. There shall be no modification of this License unless the modification is in writing and signed by both parties, and it cannot be extended beyond the stated term without approval by the Boone Town Council.
12. **Waiver:** Town's failure to strictly enforce its rights under this License shall not constitute a waiver of such rights with respect to any violation of the terms, and the parties agreed that this provision may itself not be waived by the conduct of the parties.
13. **Governing Law and Venue:** This License shall be governed by and construed in accordance with the laws of the State of North Carolina, and venue of any dispute between the parties shall be in Watauga County, North Carolina.
14. **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 Town, to: John Ward III
Town Manager
Town of Boone
P.O. Drawer 192
Boone, NC 28607

If to Kingswood, to: Harold C. Tilley
768 W. King Street
Boone, NC 28607

IN WITNESS WHEREOF, Town and Kingswood have executed this License 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

BY: _____
Rennie Brantz, Mayor

Attest:

_____(Seal)
Town Clerk, Town of Boone

Kingswood Condominiums, Inc.

BY: _____
Roy Donnoe, President

Attest:

_____(Seal)
Glenda Andrews, Secretary Kingswood Condominiums, Inc.

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

REQUEST FOR APPROVAL OF LETTER TO NCDOT - LETTER OF SUPPORT FOR PROJECT EB-5983

Town Manager John Ward presented Council with a draft letter of support to the NCDOT for STIP project EB-5983 - Grove Street to Brookshire Road Multi-Use Path. He stated that at the end of each budget year, end of year savings would be delineated to fund the Town's match for this project, and added that he was confident that the funds would be available to do so. Mr. Ward noted that this project would be approximately two miles in length and would reach to Grove Street. He added that staff was making progress on 194 Sidewalk improvements, and that he believed that there would be separation between bike paths and the highway. Mr. Miller noted that these improvements would have to meet NCDOT standards, since the work would be performed in their own right of way. Upon a motion by Mayor Pro-Tem Clawson, seconded by Mr. Ulmer, Council voted to approve the letter as presented.

CONSIDERATION OF RESOLUTION REGARDING THE PROPOSED ASPHALT PLANT ON RAINBOW TRAIL

Council member Lynne Mason presented for Council's consideration a resolution against the proposed asphalt plant on Rainbow Trail just outside of Boone Town limits. She noted that the proposed location for the asphalt plant was located in a ravine with multiple streams and a perennial stream headwaters that connected to the New River, and believed that the parcel was not suitable for an asphalt plant. Mr. Furguele asked about the information regarding the 2-mile radius, with Ms. Mason stating that the information came directly from the WATCH group. She confirmed Mr. Furguele's statement that the area exposed ultimately depended on the wind pattern. Mr. Furguele stated that he was a bit surprised by a few of the facts in the resolution, and asked what action the County could take. Ms. Meade stated that it was her understanding that the case was back in front of the County planning director who had rejected it initially on a number of grounds, and that if denied, it could potentially be appealed to the County Board of Adjustment. Mr. Furguele asked whether the Town had ever approached the property owner about purchasing the property, to which Mr. Ward responded that they had not. Ms. Mason stated that the property was contiguous to the Town limits, with Andy Mason clarifying from the audience that the property abutted the Town in two different locations, and that the property was approximately 8 acres. Ms. Mason stated that the case was on the Watauga County Commissioner's closed session agenda for the night. Ms. Meade stated that she was unsure if a determination would be made at the County's meeting in closed session, but suggested that Commissioners and their attorney could be looking at the legal aspect of the case during the meeting. She added that there was no reason to think that the legal process could not start all over again, since the only issue addressed in the court ruling was the educational facility aspect. Mr. Furguele asked whether the Town's recently passed resolution regarding the Turner House had any impact on the County, and whether any resolutions or action by the Town would have any effect on the County Commissioners. Mr. Ward stated that he believed Historic Preservation Commission Chair Eric Plaag was still working to get on the Commissioner's agenda, and that the matter had not been resolved. Ms. Mason noted that the property was purchased by the applicant in 2013 for approximately \$52,000. She stated that concerned citizens had talked about attempting to buy the property and preserve it as a park. Ms. Mason noted there was a small error on the last "Whereas" clause in the resolution. Mr. Furguele stated that certain things included in the resolution gave him discomfort, with Ms. Mason offering to remove the information provided by the WATCH program. After brief discussion, Mr. Ashcraft made a motion, which was seconded by Ms. Mason to

approve the resolution as presented, with the stipulation that the error on page 56 be corrected.

Resolution Regarding the Proposed Asphalt Plant on Rainbow Trail

WHEREAS, Appalachian Materials, LLC submitted an application to Watauga County on June 15, 2015 to construct an asphalt plant on Rainbow Trail; and,

WHEREAS, Watauga County Department of Planning and Inspections denied the application on June 22, 2015; and,

WHEREAS, Appalachian Materials, LLC appealed the decision to deny the permit with the Court of Appeals remanding the appeal back to Superior Court in Watauga County on November 6, 2018; and,

WHEREAS, on March 27, 2019 the NC Supreme Court refused to hear a requested appeal by Watauga County; and,

WHEREAS, the proposed Rainbow Trail Radford Quarry site is adjacent to the Town of Boone Corporate Town limits; and,

WHEREAS, toxins from asphalt plants are deposited over two miles away; and,

WHEREAS, the following are within a 1-mile radius of the proposed asphalt plant:

- Hardin Park Elementary School;
- Mt. Pathways Montessori School;
- Grace Academy at Boone United Methodist Church;
- Boone United Methodist Preschool;
- ASU Lake (water source to ASU);
- Howard's Knob;
- Large number of private homes;
- Large number of multifamily residences
- Boone United Trail;
- Churches;
- Shopping Center;
- Farms; and,

WHEREAS, the following are within the 2-mile radius of the proposed asphalt plant:

- Watauga High School;
- South Fork of the New River;
- The Greenway Trail;
- Downtown Boone
- Appalachian State University; and,

WHEREAS, the two-mile radius of the 105 plant and the proposed Rainbow Trail plant overlap is in the middle of ASU campus including Kidd Brewer Stadium, so they will get double the pollution; and,

WHEREAS, asphalt plants mix aggregate with petroleum products to make asphalt. The process releases tons of toxic chemicals into the air each year, including volatile organic compounds, polycyclic aromatic hydrocarbons, and very fine condensed particulates (soot and even heavy metals); and,

WHEREAS, many of these are highly toxic and/or known carcinogens, e.g. benzene, formaldehyde, hydrogen sulfide, mercury, and cadmium; and,

WHEREAS, adverse health effects increase with long-term exposure; and,

WHEREAS, citizens with asthma and other respiratory ailments including known individuals living close to the site will suffer most; and,

WHEREAS, asphalt emissions significantly degrade air quality, but also degrade the water quality of our beautiful rivers, creeks, and streams including a perennial stream that originates on the Rainbow Trail property that goes to the South Fork of the New River; and,

WHEREAS, the mountain climate has more inversions and fog than the piedmont and that has not been considered in the past weather modeling by DENR. Fog + Smoke = Smog, which is a much more intense, acidic way to take in the many toxins produced in the asphalt production process; and,

WHEREAS, a study by the Blue Ridge Environmental Defense League (BREDL) looked at property prices before and after the Maymead Asphalt plant was built in Avery County revealed homeowners suffered an average drop of 27% in property values (as assessed by the county); and,

WHEREAS, studies have shown that:

- Home values within 1/4 mile of a quarry will drop by about 30%
- Homes 1 mile away will decrease by about 13% in value
- Homes as far as 3 miles away drop by 6% in value; and

WHEREAS, a decrease in property value will result in a decrease in revenue of property taxes for both the Town of Boone and Watauga County; and

WHEREAS, the Rainbow Trail location goes against everything in the Citizens Plan for Watauga County.

NOW, THEREFORE, BE IT RESOLVED that the Town Council for the Town of Boone requests that the Watauga County Commissioners protect the health, safety and general welfare of the citizens of the Town of Boone and Watauga County; and

NOW, THEREFORE, BE IT RESOLVED that the Town Council for the Town of Boone requests that the Watauga County Commissioners pursue any and all measures within their power and authority to prevent an asphalt plant at the Rainbow Trail site which is adjacent to the Town of Boone Corporate Town limits; situated in the middle of a residential area; a use not compatible with other uses in the surrounding area which is a more densely populated area of the county; located less than one mile from 3 schools; proposed for a site that is a ravine with multiple streams, which is a site not appropriate for this use; and will deposit toxins over a two miles radius compromising the health and wellbeing of many Town of Boone and Watauga County citizens; and

BE IT FURTHER RESOLVED that a copy of this resolution shall be sent to the Watauga County Commissioners and County Manager; State Senator Deanna Ballard; State Representative Ray Russell and North Carolina Department of Environmental Quality.

Adopted by a unanimous vote of the Town Council on the 16th day of April, 2019



Rennie Brantz, Mayor

ATTEST:

 (SEAL)
Nicole Harmon, Town Clerk



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

DISCUSSION OF AND POSSIBLE AMENDMENT TO CODE OF ETHICS

Mr. Furguele presented a request for discussion of the Town's Code of Ethics due in part to an email received by himself and another Council member from a third Council member demanding that he disclose the contents of conversations and identities of private citizens who had spoken with him or contacted him concerning the proposed reconstruction of Highway 105 and threatening what he perceived to be legal action if the information was not turned over. He added that the Council member indicated that if he did not comply, that the member would make a formal open records request to the Town. Mr. Furguele felt that the email in question was hostile in nature and that he believed the email violated some of the principles in the Town's Code of Ethics. He believed that it was disrespectful of the Council member to demand the information which was beyond what was required to be disclosed to anyone and attached to the threat of legal action. Mr. Furguele asked whether the Town Attorney concurred that the email violated any mandates, and asked whether or not the information requested was required to be made available through the North Carolina public records law. Mayor Pro-Tem Clawson stated that she was the other Council member who received the email in question and had the same reaction as Mr. Furguele. She stated that it upset her to the point that she cried. Ms. Meade stated that she was sorry to be drawn into the situation, since it would upset one of the parties no matter what her opinion was. She stated that she agreed with Mr. Furguele that a request for things that were not written records was outside the scope of the public records law. Ms. Meade stated that she did not read the email as a threat of formal legal action, and continued by saying that any person could file a public record request. She further stated that the issue was not mandated in the Town's Code of Ethics. Mr. Furguele stated that he believed this behavior was bad practice and asked that Council consider amending the Code of Ethics to address matters such as this. He stated that after he responded to the email, the person responded back that they were unaware that unwritten information was not covered as a public records request, though he stated he had a difficult time believing this statement. Mr. Furguele added that he believed this behavior set a dangerous precedent and that he believed it to be disrespectful to treat fellow Council members this way. He stated that he believed it would have been acceptable for the member to ask others to share the needed information, and that he might have responded differently without the presence of a threat. He added that he may consider making similar requests to other Council members concerning their conversations with private citizens, particularly when it appears that they are responding directly to demands from influential members of the community with respect to positions they take, if the Code of Ethics was not amended. Ms. Meade felt that it would be against state policy, as well as the First Amendment to forbid Council members from making public record requests against other Council members. Mr. Furguele disagreed that members could not voluntarily give up the right to do so, and pointed out that there were many items in the Code of Ethics, such as being rude to another Council member, which were legally permitted but that the Council had chose to prohibit. He then made a motion to amend the Town's Code of Ethics to direct that Town Council or committee members should not demand information from other Town Council or committee members to which they were not legally entitled by threatening to take formal legal action, including a public records request, against the other if the Council or committee member refused to provide the information demanded. Mayor Pro-Tem Clawson seconded the motion. Ms. Mason stated that she was the Council member that wrote the email, and that she was sorry that Mr. Furguele and the other member considered it to be a threat, since that was not her intent. She added that she did try to convey that it was not meant to be a threat and invited members to sit down and discuss the matter. Ms. Mason felt that the Highway 105 issue was a major issue for the Town and that she wanted to be transparent as per Code of Ethics Principle 5. She added that it was her practice to tell anyone she talked with to contact other Council members in order for the entire Council to have the same information on a matter so that Council as a whole could make good decisions and that she tried to share the sources of information she was relying on for the positions she takes. Ms. Mason continued by stating that she did not perceive the request to be legal action and that she was unaware what was covered in a public record request. Mr. Furguele added that he also encouraged people to

contact other members of Council directly as well, but he believed it was his business as to what he did with the information gathered and that he would never feel comfortable disclosing a conversation with a citizen without the person's permission. He noted a previous meeting during which he nominated a person to serve on a vacant position on the Downtown Boone Development Association. Mr. Furguele stated that three members opposed the nomination, though no one disclosed that their votes were influenced by a prominent community figure persuading them to vote against the nominee. Mr. Ashcraft called the question. Ms. Ulmer stated that she did not get the sense that the initial email was threatening and agreed with Ms. Meade's interpretation of the language in the code.

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

ADJOURNMENT

Upon a motion by Mayor Pro-Tem Clawson, seconded by Mr. Ashcraft, Council voted to adjourn the meeting at 10:26 p.m.

VOTE: Aye: All
 Nay: None

Nicole Harmon, Town Clerk

Rennie Brantz, Mayor