MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
April 19, 2018

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order at 6:00 p.m. Thursday, April 19, 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, Public Works Director Rick Miller, Police Chief Dana Crawford, Senior Planner Christy Turner, Planner Marty Little, Fire Chief Jimmy Isaacs and Downtown Boone Development Coordinator Brittney Clark. Town Attorney Allison Meade was also in attendance.

ANNOUNCEMENTS

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

Mayor Brantz presented a proclamation declaring April 21, 2018 Autism After 21 day in the Town of Boone. Dr. Jim Taylor and Candance Lang of the KAMPN organization (Kids with Autism Making Progress in Nature), along with other members were in attendance to accept the proclamation.

Mayor Brantz presented outgoing Planning Commission Chair Connor Boyle a lapel pin and expressed his gratitude for Mr. Boyle's service during his time on the Commission.

TENTATIVE AGENDA ADOPTION

With no additions or deletions to the agenda, Council Member Clawson made a motion, which was seconded by Council Member Mason, to adopt the agenda as presented.

VOTE:	Aye:	All
	Nay:	None

PUBLIC COMMENT

Jodie Feimster of Willie Brown Road, Crumpler, signed up to speak during the public comment period, but relinquished her spot to her husband, Andy Feimster. Mr. Feimster addressed Council as president of Sarvis Properties, Inc., owner of the property located on the east side of the Appalachian Theatre. Mr. Feimster stated that while there were discussions taking place regarding egress onto their property, there was not currently an agreement with the Theatre builders. He further indicated that unless an agreement is reached by Friday, April 20, 2018, Sarvis Properties, Inc. would begin renting parking spots on the property as per their usual business. Mr. Feimster stated that Theatre representatives consistently dismissed offers brought to them, which may delay the Theatre's development.

Andy Mason of Market Hills Drive, Boone, spoke as a downtown business owner and noted that comments made by him are his own and should not be attributed to anyone else. Mr. Mason stated that the proposal presented by Planning and Inspections regarding recreation facilities in the M1 zoning district was reasonable and well done. He added that while he supported restaurants being allowed within the M1 zoning district, that there was currently not much space available in the M1 district, noting that most of the space was Town owned or was being rented. Mr. Mason asked Council to think about other low impact uses that are currently available only within the M1 district that could potentially be rezoned to the B3 district to free up space within the M1 district.

REQUESTED APPEARANCES

CRAIG HUGHES - APPALCART

Craig Hughes, director of AppalCART spoke to inform Council of the comprehensive services review currently underway at the transportation authority. Mr. Hughes stated that AppalCART would work closely with the Town and others to understand their priorities. Jim Ritchie, consultant with Whitman, Requardt and Associates, LLP who is assisting with the review introduced himself and noted that his previous connections allowed him to be involved with the requisition of the five original AppalCART buses. Quint David, Chair of the AppalCART board announced that in addition to workshops and drop-in sessions held earlier in the week, a link to the AppalCART Comprehensive Service Review survey had been posted on the Town of Boone website in addition

to the AppalCART website and asked anyone willing to participate in the survey. Council Member Mason stated that many AppalCART users were not students but work in Boone and asked AppalCART representatives to look for a creative way to provide bus service when ASU is not in session.

ANDREW TRUMP - UNC SCHOOL OF GOVERNMENT

Andrew Trump with the UNC School of Government Development Finance Initiative presented a PowerPoint presentation and received comments from Council.

Council Member Furgiuele stated that he would be in agreement with the design principals presented if sustainable and historical compatibility aspects were included in the language. Council Member Ashcraft added that the language suggested by Mr. Trump was broad with Council Member Mason adding that text should require that buildings be sympathetic and compliment each other. Council Member Furgiuele stated that he took issue with the proposed Guiding Public Interest statement in the presentation that read "Ease development pressure on the historic core of King Street by focusing new development on secondary streets". He stated that Boone was a growing community and it would be short-sighted to think that the entire network of streets in the downtown area would not be considered "downtown". He added that language should be added to reflect consistent size, massing and use requirements in regards to King Street buildings. Mr. Trump suggested that appearance standards were already addressed in the Town UDO and that the DFI would not bring projects forward if they were not compliant with the UDO. Council Member Furgiuele expressed that he believed it to be important to incorporate that language now since the DFI may be moving at a faster pace than the Town can update the UDO. Council Member Furgiuele stated that the language needed clarification as to issues of size, massing and use, with use being defined as things that serve people that live here in addition to students and tourists. Mayor Brantz added that a stable community also depended on the transient student population and that a balance was needed. Discussion ensued on the types of businesses in the downtown area which are no longer in business such as Farmers Hardware, Boone Drug and others that would draw people in from other areas of the County. Council Member Mason noted the affordability factor to having a business downtown and the challenges that come along with retaining a certain level of business to maintain the business. Mr. Trump stated that he had concern restricting what type of business was allowed and that this requirement might put too much constraint on the DFI process. Council Member Furgiuele added that this was not necessarily a mandate, but more of an encouragement. Mr. Trump responded that he was concerned that developers would be hesitant to commit to a certain type of retail use. Further discussion ensued and included concerns with the statement in the presentation "Leverage public investment to attract private investment". Council Member Furgiuele had concerns with the Town committing to funding with a limited budget. Council Member Ashcraft suggested that the language should be more conditional and could be rephrased to state that public investment could be used if necessary and appropriate to attract private investment. It was the consensus of Council to request the following revisions: 1) Add language proposed by Council Member Furgiuele to ensure that proposed development is historically compatible. 2) Target areas to expand the downtown grid and encourage development which is consistent in size and massing. 3) Rephrase original statement "Leverage public investment to attract private investment" to "Use public investment if necessary and appropriate to attract private investment".

A complete copy of the PowerPoint presentation is available to view online at:
http://boonenc.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=&MeetingID=1800&MediaPosition=&ID=1789&CssClass=

RESULT:	**CONSENSUS**

CONSENT AGENDA ADOPTION

Council Members Furgiuele and Clawson stated that due to their busy schedules, they had not been able to review the minutes on the agenda for approval and asked that they be tabled until the continuation meeting.

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

7. Approval of Budget Amendments (may be viewed online at:

http://boonenc.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=&MeetingID=1800&MediaPosition=&ID=1770&CssClass=)

8. Scheduling of Boone Flood Marker Ceremony
9. Approval of Special Event Permit Application for the Annual Grandfather Mountain Marathon
10. Approval of Special Event Permit for the 2018 High Country Local First Boone Block Party

VOTE: Aye: All
Nay: None

APPROVAL OF MINUTES FOR TOWN COUNCIL RETREAT JANUARY 23, 2018

RESULT:	**TABLED [UNANIMOUS]**	**Next: 4/26/2018 4:00 PM**
MOVER:	Lynne Mason, Council Member	
SECONDER:	Loretta Clawson, Mayor Pro-Tem	
AYES:	Mason, Brantz, Clawson, Furgiuele, Ulmer, Ashcraft	

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

RESULT:	**TABLED [UNANIMOUS]**	**Next: 4/26/2018 4:00 PM**
MOVER:	Lynne Mason, Council Member	
SECONDER:	Loretta Clawson, Mayor Pro-Tem	
AYES:	Mason, Brantz, Clawson, Furgiuele, Ulmer, Ashcraft	

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

RESULT:	**TABLED [UNANIMOUS]**	**Next: 4/26/2018 4:00 PM**
MOVER:	Lynne Mason, Council Member	
SECONDER:	Loretta Clawson, Mayor Pro-Tem	
AYES:	Mason, Brantz, Clawson, Furgiuele, Ulmer, Ashcraft	

APPROVAL OF MINUTES FOR TOWN COUNCIL REGULAR MEETING MARCH 15, 2018

RESULT:	**TABLED [UNANIMOUS]**	**Next: 4/26/2018 4:00 PM**
MOVER:	Lynne Mason, Council Member	
SECONDER:	Loretta Clawson, Mayor Pro-Tem	
AYES:	Mason, Brantz, Clawson, Furgiuele, Ulmer, Ashcraft	

APPROVAL OF MINUTES OF TOWN COUNCIL SPECIAL MEETING MARCH 21, 2018

RESULT:	**TABLED [UNANIMOUS]**	**Next: 4/26/2018 4:00 PM**
MOVER:	Lynne Mason, Council Member	
SECONDER:	Loretta Clawson, Mayor Pro-Tem	
AYES:	Mason, Brantz, Clawson, Furgiuele, Ulmer, Ashcraft	

APPROVAL OF MINUTES FOR TOWN COUNCIL REGULAR MEETING MARCH 22, 2018

RESULT:	**TABLED [UNANIMOUS]**	**Next: 4/26/2018 4:00 PM**
MOVER:	Lynne Mason, Council Member	
SECONDER:	Loretta Clawson, Mayor Pro-Tem	
AYES:	Mason, Brantz, Clawson, Furgiuele, Ulmer, Ashcraft	

APPROVAL OF BUDGET AMENDMENTS

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

SCHEDULING OF BOONE FLOOD MARKER CEREMONY

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

APPROVAL OF SPECIAL EVENT PERMIT APPLICATION FOR THE ANNUAL GRANDFATHER MOUNTAIN MARATHON

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

APPROVAL OF SPECIAL EVENT PERMIT FOR THE 2018 HIGH COUNTRY LOCAL FIRST

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

COUNCIL MATTERS

TOWN MANAGER UPDATE

Town Manager John Ward updated Council on the following topics:

-Glendale Sanitary Sewer Improvements update
-ASU Earth Day event on April 20th
-Boone Clean-up Day on April 21st
-Free Flower Day at Public Works on April 23rd
-Watauga High School Earth Day event on April 24th
-Enviroscape Day at Hardin Park School on April 25th
-Hardin Park 4th Grade Earth Day Presentation on April 26th
-Boone Water Conservation Program Poster Contest
-Notice Prior to Construction: Tracy Circle/Edgewood Drive; Wood Circle/Old NC 60 Roadbed; 603 New Market Hills Drive Area
-Completion of foundation removal and filling on Town property located at 2239 421 South (Bolick Farm)
-Possible government funding to assist in the mitigation of flooding issues from the US Army Corps. of Engineers (Boone Creek Area)
-State Forestry Office began process of planting plan
-RFP to be published next week for solid waste pick-up including new recycling and container options
-A written analysis and proposal by Raftelis Financial with respect to proposed new system development fees has been posted on the Town website and written comment solicited as required by state law, and the Town had issued press releases regarding the same.
-Planning Commission member update: with recent resignations and announcement from one member that she does not wish to seek reappointment, the Planning Commission will not meet quorum requirements after the May meeting.
-Water Intake update

Mayor Brantz declared a break at 7:58 p.m. Council reconvened at 8:08 p.m.

REQUEST TO SCHEDULE SECOND REGULAR TOWN COUNCIL MEETING IN APRIL

Town Manager John Ward asked that Council schedule the April continuation meeting. After brief discussion and upon a motion by Council Member Mason, seconded by Council Member Clawson, Council voted to schedule the April continuation meeting for 4:00 p.m. on Thursday, April 26, 2018 at Council Chambers located at 1500 Blowing Rock Road and that Council would take into consideration Council Member Furgiuele's travel schedule and may need to rearrange agenda items accordingly.

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

REQUEST TO SCHEDULE FY 2018/19 BUDGET WORKSHOPS

Town Manager John Ward presented a request for Council to schedule budget workshops. Upon a motion by Council Member Mason, seconded by Council Member Clawson, Council voted to schedule budget workshops for FY 2018/19 for Monday, June 4 and Wednesday, June 6, 2018 from 9:00 a.m. until 5:00 p.m. at Council Chambers located at 1500 Blowing Rock Road.

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

REQUEST TO SET SECOND MEETING DATE FOR TOWN COUNCIL REGULAR MEETINGS

Council Member Clawson presented a request for Council to schedule a set date for its second regular monthly meeting. Council Member Clawson also noted that it was her opinion that quarterly Public Hearings worked better than the monthly schedule currently being used. Council Member Furgiuele expressed concern with the size of the Planning Commission and in instances when the full Planning Commission was not in attendance at meetings, the low number of members being able to speak for the entire Town. He asked why the meeting schedule changed, to which Mayor Brantz answered the schedule change was to allow for quicker feedback on hearing items. Council Member Mason added her opinion that Council could begin by recruiting Planning Commission members who would be active in meetings. Discussion ensued regarding the pros and cons of one meeting per month as opposed to meeting quarterly. Council Member Furgiuele proposed that during the review of the Planning Commission that Council consider changing the quorum requirement and add a rule stating that if the Commission does not meet quorum requirements they would be unable to make recommendations. Council Member Mason added that Council may consider limiting the number of items on the Public Hearing/Planning Commission agenda. Discussion turned back to regular Town Council meetings, with Council Member Clawson moving that beginning in May, regular Town Council meetings will take place on the third Thursday and the immediate preceding Tuesday of each month beginning at 6:00 p.m. each night at the Council Chambers located at 1500 Blowing Rock Road and to amend the annual meeting notice to reflect this change. Council Member Furgiuele seconded the motion.

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

REQUEST TO RESCHEDULE MAY PUBLIC HEARING/PLANNING COMMISSION MEETING

Upon a motion by Council Member Ashcraft, seconded by Council Member Ulmer, Council voted to reschedule the Public Hearing/Planning Commission Meeting scheduled for May 28 to May 21, 2018 to avoid conflict with the Memorial Day holiday. The meeting will begin at 6:00 p.m. at Town Council Chambers located at 1500 Blowing Rock Road.

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

SELECTION OF PRIORITY STIP PROJECTS FOR NC DEPARTMENT OF TRANSPORTATION

Town Manager John Ward outlined a request from the High Country Rural Planning Organization to rank recommended State Transportation Improvement Program projects to be considered for grant funding. Council Member Furgiuele made a motion to rank the projects in the following order: 1) #B170742 BikePed described as "extend the existing sidewalk network one mile east, connecting residential apartment dwellers and greenway users to businesses along US 421/E. King Street and downtown Boone 2) #H170838 Highway described as

"construction freeway on new location south of the City of Boone"). Council Member Clawson seconded the motion.

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

PEG CHANNEL AGREEMENT WITH APPALACHIAN STATE UNIVERSITY

Town Manager John Ward presented Council with a proposed agreement between the Town of Boone and Appalachian State University for the creation of a Public Access, Education and Government (PEG) channel for the Town of Boone. Council Member Furgiuele expressed disappointment that there wasn't a broader range of content on the recent broadcasting that he viewed. Town Attorney Allison Meade noted that language in the agreement should include Town events. After expressing his support of the contract and the cooperation between the Town and ASU, Council Member Furgiuele made a motion to approve the proposed agreement with the understanding that language pertaining to Town events would be inserted. Council Member Mason seconded the motion.

DESIGNATION AND CERTIFICATION OF APPTV AS A PEG CHANNEL AGREEMENT
BETWEEN APPALACHIAN STATE UNIVERSITY AND THE TOWN OF BOONE

THIS AGREEMENT, made and entered into this the day of April 2018, by and between the Town of Boone, a political subdivision of the state of North Carolina, ("Town"), and Appalachian State University, a constituent institution of the University of North Carolina, ("University");

WHEREAS, University seeks to partner with the Town to provide Appalachian's television channel, 198 on Spectrum (AppTV) as a Public Access, Education or Government Channel (PEG);

WHEREAS, University seeks to make AppTV the educational television station for the western area of North Carolina including the areas of the Town of Boone, Watauga County and the surrounding counties;

WHEREAS, AppTV is a 24/7 noncommercial television channel providing a vast array of scholarly, scientific, arts, sports and entertainment programming;

WHEREAS, Town desires to support University in this endeavor and is willing to request designation and certification of Channel 198 from the cable service provider as the town's designated PEG channel so that AppTV on Channel 198 will be preserved as a PEG channel and able to benefit from the distribution of funds for the operation of a PEG channel from the North Carolina Department of Revenue;

WHEREAS, in exchange for Town seeking a PEG channel for University's AppTV, University agrees that AppTV will provide regular access to the Town for the broadcasting of items of interest to the Town and its residents, including but not limited to Town event calendars, Town events, public service announcements, and local emergency announcements.

NOW, THEREFORE, for and in consideration of the mutual benefits, covenants, and promises contained herein, the Town and University agree as follows:

Request of and Designation of University as the PEG Channel Operator for the Town:

1. Pursuant to North Carolina General Statute 66-357, Town will make a written request to

Spectrum Cable, the local cable service provider, for additional PEG channel capacity to accommodate AppTV on channel 198 and to designate AppTV on channel 198 as an educational PEG channel.

2. University shall provide a statement describing its plan to operate and program AppTV, to accompany the Town's request for additional capacity for AppTV on channel 198.

Certification of AppTV for State funding:

1. Pursuant to North Carolina General Statute 105-164.44J(b), Town shall certify AppTV to the Secretary of the North Carolina Department of Revenue ("Secretary of Revenue") by July 15 of each year as a qualifying PEG channel with University listed as the operator of such channel, so long as this agreement remains in effect and the programming remains eligible for such designation.
2. University shall cooperate in providing information or records requested by Town to verify and support the certification process, or any other information that may be required by the Secretary of Revenue.
3. University shall designate a person as the PEG channel operator for AppTV.

Supplemental PEG Channel Support Funds:

1. Pursuant to and in accordance with North Carolina General Statute 105-164.44J(c), Town shall distribute PEG channel support funds received for AppTV to University within 30 days of receipt of the funds from the Department of Revenue. Town shall serve only as the pass through entity between the State of North Carolina and University.
2. University shall use all funds received in accordance with the law for operation and support of the qualifying PEG channel.

Programming and Content:

1. University shall be responsible for all programming and content on Channel 198, AppTV, except as specifically provided herein
2. University shall operate the PEG channel for educational programming purposes only.
3. University shall develop written policies and procedures for the use and operation of the PEG channel and shall file such policies and procedures with the Town.
4. University shall administer the PEG channel in compliance with all applicable laws, rules and regulations.

5. University shall provide to the Town regular programming opportunities for the broadcasting of items of interest to the Town and its residents, including but not limited to Town event calendars, Town meetings and other events, public service announcements, and local emergency announcements. University and Town shall work together to reach mutually-agreeable arrangements as to Town-related content to be broadcast on AppTV.

Indemnification:

To the extent permitted by North Carolina law, the University shall indemnify and hold harmless the Town, its officers, agents and employees from and against any claims, losses, liabilities or damages arising out of or resulting from the performance of this Agreement related to the programming provided by AppTV and/or arising directly or indirectly from the acts or omissions of the University or its employees. Notwithstanding any other provision of this Agreement, the liability of the University, as an agent of the State of North Carolina, for any injury or damage arising out of this Agreement or the University's performance thereof is subject to the limitations of the North Carolina State Tort Claims Act, NCGS § 143-291, et seq, ("Act").

Copyright and Ownership**:**

University shall own any and all intellectual property rights and derivative rights in any and all programs which University may choose from time to time to produce. Any and all intellectual property rights and derivative rights in any and all programs produced by the public shall be held by such person who produces such programming, unless such rights have been transferred to the University.

Annual Report:

Prior to February 1 of each year, University shall submit to Town an annual report for the preceding calendar year (January 1 – December 31) relating to AppTV. This report shall contain, at a minimum, the following information:

1. Statistics on programming and services provided including but not limited to the following:

   a. Amount of programming (number of programs and total time);
   b. Types of programming with a breakdown of the numbers and percentages of each; and

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   c. Breakdown of programming by source type (citizens, nonprofit entities, and location).

Term and Termination:

This Agreement shall begin on January 1, 2018, and shall remain in effect until June 30, 2018 unless earlier terminated as provided hereafter. After the initial 6-month term, this Agreement shall automatically renew for additional one year terms, beginning July 1st and ending on June 30th until terminated by either party.

Either party may terminate this Agreement due to breach by the other party if after providing written notice of such breach, the breach remains uncured for thirty (30) days. In addition, either party may terminate this Agreement without cause by giving written notice to the other party at least sixty (60) days prior to the expiration of the then-current term.

In the event of continued breach by either party, the other party's sole remedy shall be termination of the Agreement.

Cooperation:

Each party agrees to execute all documents and complete all tasks necessary and appropriate to carry out the provision of this Agreement.

Notices:

All notices and other communications to be given by either party may be given in writing, depositing the same in the United States mail, postage prepaid and addressed to the appropriate party as follows:

If to Appalachian State University:

Appalachian State University
Department of
Communication
Attn: Rob Gelber, General Manager, AppTV
920 Rivers Street
ASU Box 32039
Boone, NC 28608

With a copy to:
Appalachian State
University Office of
General Counsel Attn:
General Counsel
438 Academy Street, BB Dougherty Admin Bldg, 3rd Floor

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Boone, NC

28608 If to the Town

of Boone:

Town of
Boone Attn:
John Ward
567 West King
Street Boone, NC
28607

Addresses for the purpose of this section can be changed by written notice to the other party.

Availability of State Funds:

Pursuant to North Carolina General Statutes, § 143C-6-8, performance of any and all obligations under this Agreement by either party is dependent upon and subject to the availability of funds for the purposes set forth in this Agreement.

Access to Persons and Records:

Town shall allow the State Auditor of North Carolina or Appalachian State University to access, inspect, examine and reproduce any and all contract, financial records or other records related to this Agreement in the custody or control of Town during normal business hours or at any other time deemed reasonable by the Parties, and otherwise as required by law, including, but not limited to, North Carolina General Statutes, § 147-64.7.

Use of Name/Marks:

Neither Party shall use the name or any marks of the other Party for any purposes, including but not limited to, advertising materials, marketing materials, customer lists, presentations or on websites, without the prior written consent for such use from an authorized representative of the Party.

No Third Party Beneficiary Rights

This Agreement is not intended to and shall not be construed to give any third party any interest or rights (including, without limitation, any third party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby. The University does not waive its sovereign immunity or any other rights or defense under the Act.

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Entire Agreement:

This Agreement is the entire agreement of the parties and supersedes all prior negotiations and agreements whether written or oral. This agreement may be amended only by written agreement and no purported oral amendment to this Agreement shall be valid.

Appalachian State University	**Town of Boone**
By:	**By:**
Name:	**Name:**
Title:	**Title:**
Date:	**Date:**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate originals as of the day and year first above written.

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

CHANGE ORDER #3 - HARPER CORPORATION

Public Works Director Rick Miller presented project Change Order #3 from Harper Corporation for a contract price increase in the amount of $275,856.18. Mr. Miller explained that this change order was due primarily to unanticipated circumstances encountered during construction at the water treatment plant, adding that this change order would not result in additional days. He presented a list of 11 additional improvements included in this change order that still needed to be completed at the water treatment plant. Mr. Miller noted that staff anticipated completing item number 4 in-house, but was advised otherwise by the financing agent. He also added that item number 6 on the list of improvements included the replacement of 15 incompatible existing actuators, three of which had already been purchased, and that he expected reimbursement from the USDA. Town Attorney Allison Meade noted that most of the items on the list were unforeseen, but not entirely unanticipated. Mr. Miller confirmed this statement and added that he expected more change orders in the future. Ms. Meade noted that some items on the list were attributable to the original "as-built" water treatment plant building plans being inaccurate, as well as the fact that there was equipment that needed replacement parts that were no longer being manufactured. Discussion ensued regarding items tied to the repair of a leak found in the high service pump station at the water treatment plant. Council Member Furgiuele asked whether the leak at the high service pump station could be linked to the Town's unaccounted for water. Mr. Miller stated that it could be linked, but that it would be a small amount. Mr. Miller stated that the USDA had reviewed and approved the proposed change order. Town Manager John Ward added that the project was still well under budget with contingency funds remaining to fund items which were previously cut due to cost. WK Dickson engineer Ryan Hager stated that the projected savings amounted to approximately $400,000 on the Garney Construction contract and that contingency funds in the amount of approximately $80,000 would be used to cover the Harper Corporation contract. After brief discussion, Council Member Mason made a motion to approve Change Order #3 with the Harper Corporation for the amount of $275,856.18 and noted that this amount was well within the project contingency fund. Council Member Ulmer seconded the motion.

A complete copy of Change Order #3 with the Harper Corporation may be viewed online at http://boonenc.iqm2.com/Citizens/Detail_Meeting.aspx?ID=1800

RESULT:	**APPROVED [3 TO 2]**
MOVER:	Lynne Mason, Council Member
SECONDER:	Connie Ulmer, Councilwoman
AYES:	Mason, Ulmer, Ashcraft
NAYS:	Clawson, Furgiuele

CHANGE ORDER #6 - WK DICKSON

Public Works Director Rick Miller read a memo to Council giving a history of the engineering agreement between the Town and WK Dickson, as well as details on the proposed Change Order #6 which would modify the "Scope of Services" section and the "Schedule for Rendering Services" section in the agreement. Council Member Furgiuele expressed his concern with what he viewed as errors by the engineering firm and that he felt like before Council approved the additional funds being incorporated into the agreement, that the Town receive a legal opinion in closed session regarding what rights the Town had, if any, as a result of an engineering mistake. Town Attorney Allison Meade stated that she would draw a distinction in that there may be an issue whether there are rights with WK Dickson's past performance and opinions, but that the services presented to Council in the proposed change order were mandated by the USDA and the agreements held with them. She added that the Town could face many consequences if construction stopped and that contract law distinguished between terminating an agreement and services versus continuing a contract and seeking damages after the

contract has been completed. Council Member Furgiuele asked if Council approved the proposed change order if they would not be waiving recourse against WK Dickson to which Ms. Meade answered that she could not guarantee it, but believed that to be the case and that in any event, the Town would be in breach of its agreements with the USDA if Council chose not to proceed and pay for services required by the USDA. Town Manager John Ward added that the closing on the bonds for USDA bonds was scheduled for July. Council Member Furgiuele expressed his frustration with stepping in during the middle of the situation and what all has happened in terms of cost and what he believed might be viewed as errors costing the Town extra money. Council Member Ulmer added that action needed to be taken after the contract has been completed. Council Member Mason asked members to keep in mind that the request was contractual and that the original contract was approved in 2008. Mr. Ward noted that in speaking with the USDA, he was told that in relation to engineering services as a percentage of the project total, the Boone water intake project was multiple percentage points lower than most other contracts. He added that it was difficult that several staff and Council Members were brought into the project in the middle, but that there were contractual obligations. Council Member Clawson stated that she believed Council made a mistake when the project was initially approved. Council Member Mason stated that she believed Council made the best decisions based on the information that was presented to Council at the time. She continued to say that Council had a fiscal and legal responsibility to fulfill the terms of the contract. Upon a motion by Council Member Ulmer, seconded by Council Member Ashcraft, Council voted to approve Change Order #6 with WK Dickson for the amount of $140,700.

A complete copy of Change Order #6 may be viewed online at http://boonenc.iqm2.com/Citizens/Detail_Meeting.aspx?ID=1800

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

PRESENTATION OF INFORMATION ON METER REQUIREMENTS

Public Works Director Rick Miller presented staff's findings in response to a request for information concerning the current provision in the Town Code regarding metering requirements for multi-family and mixed-use developments. Council Member Furgiuele stated that this issue would be a perfect topic for the newly formed Water Committee. Council Member Mason inquired as to what other communities do in terms of metering to which Mr. Miller responded that it varied, but that most smaller systems allowed one meter and did not separate commercial and residential. Council Member Ashcraft suggested that in May Council schedule a special meeting to discuss this matter. Council Member Furgiuele added that whether the Council or the Water Committee, that extended discussion needed to take place.

CONSIDERATION OF CASES HEARD AT THE MARCH 26, 2018 PUBLIC HEARING/PLANNING COMMISSION

Senior Planner Christy Turner presented the following cases for Council's consideration:

1) Case PL01298-020218 - Removal of Boone 2030 Land Use Plan References in the UDO

Ms. Turner noted that the Planning Commission did not take action on this item at their March 26, 2018 meeting.

2) Case PL01340-022718 Setback & Height Modifications

Ms. Turner noted that the Planning Commission tabled this item until their April 23, 2018 meeting to allow the Planning Commission additional time to review the case.

3) Case PL01341-022718 Government Use Recreation Facilities in the M1

Ms. Turner noted that the Planning Commission recommended approval of this item.

Case PL01298-020218 - Removal of Boone 2030 Land Use Plan References in the UDO

Council Member Furgiuele expressed disappointment with the actions by the Planning Commission. Council Member Furgiuele made a motion to approve the proposed amendment to the Town's zoning ordinance in that it is consistent with the Town's Comprehensive Plan and other adopted plans of the Town that are applicable because references to the 2030 Plan should be removed due to the repeal of the 2030 Plan and that several of the overall objectives of the Comprehensive Plan, for example, under "Economic Development" the plan says that the Town must acknowledge the area's natural beauty as one of the Town's three greatest assets for economic development and by promoting high density development, the 2030 Plan was not protecting the natural beauty. Under the "Environmental Quality" section, the Comprehensive Plan says that the Town must address and monitor growth factors and activities that contribute to water, air, light and noise pollution. By promoting high density development, the 2030 Plan did not accomplish this. The "Downtown" section of the Comprehensive Plan, states that the Town should enhance the cultural and historic significance of downtown Boone, but the 2030 Plan has been used to justify high density developments in the downtown area, some of which have not yet been built, that do not enhance the historic significance of the downtown area, they detract from it. The "Neighborhoods" section of the Comprehensive Plan promotes the livability of neighborhoods through land use planning, but the 2030 Plan did not work to accomplish those things. Under section 2.1.1 (a) of the Comprehensive Plan, the Town is required to protect and enhance a high quality of life and the natural beauty as the one of the three most effective, long term components of an economic development strategy, and the 2030 Plan did not do that. In section 2.3.3 (a), the Comprehensive Plan stated that the protection and rehabilitation of viable neighborhoods shall be encouraged to insure their continued existence as a major housing source and as a reflection of the area's image as an attractive, highly livable community. Emphasizing high density within a frame-work plan in areas that are adjacent to, and in some cases overlap with the low density, viable neighborhoods, the 2030 Plan was counter to that. Comprehensive Plan section 2.3.3 (h) provides that the overall housing unit density for proposed infill residential development or redevelopment should be compatible with the average density of existing areas. The 2030 Plan did not provide that and actually allowed and supported the opposite of that. Council Member Furgiuele concluded his motion by saying that since the 2030 Plan has been repealed all references based upon the aforementioned Comprehensive Plan policies should also be removed. Council Member Clawson seconded the motion. Council Member Ashcraft stated that he continued to strongly oppose the repeal of the 2030 Plan and believed that it had a lot of virtues and minimal flaws which could have been readily corrected. He added that he would support this motion because it is upon the entire group to implement the decisions we make as a Council. Council Member Mason added that she also remained opposed to the repeal of the 2030 Plan and that the things mentioned in Council Member Furgiuele's motion were also things that she believed could be debated. She continued that Council was ultimately responsible for the repeal and that Council was responsible to get rid of the references to the 2030 Plan. She added that she still heard almost on a daily basis people's disappointment with the way Council repealed the 2030 Plan and that the bigger problem would be to get rid of the standards in the UDO that allow for high density development. Council Member Ulmer stated that she was not sure that Council accomplished what they set out to solve by repealing the 2030 Plan.

VOTE #1: Aye: All
Nay: None

Council Member Furgiuele made a second motion that the Town Council approves the proposed amendment to the Town's zoning ordinance and that approval is reasonable and in the public interest because along with the points taken from the Comprehensive Plan mentioned in the first motion above, it would not make sense to reference a plan which has been repealed. Council Member Clawson seconded. Council Member Furgiuele added that with the new definition under state law, the Comprehensive Plan is defined to include any adopted plan, whether or not it had been repealed.

VOTE #2: Aye: Furgiuele, Clawson, Mason, Ashcraft
Nay: None
Ulmer (Abstain)

Case PL01340-022718 Setback & Height Modifications

Upon a motion by Council Member Furgiuele, seconded by Council Member Ashcraft, Council voted to table this matter until the April 26, 2018 continuation meeting

VOTE: Aye: All
Nay: None

Case PL01341-022718 Government Use Recreation Facilities in the M1

Council Member Mason 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 that are applicable because it is consistent with various recreation activities set forth on the Comprehensive Plan policy 2.2.3 "Parks, Recreation and Open Space" sub-section (a). Council Member Furgiuele seconded the motion.

VOTE #1: Aye: All
Nay: None

Council Member Mason made a second motion that the Town Council approves the proposed amendment to the Town's zoning ordinance and that approval is reasonable and in the public interest because it will provide additional recreational space which is supported by the community. Council Member Furgiuele seconded the motion.

VOTE: #2 Aye: All
Nay: None

UDO TEXT AMENDMENT - HEIGHTS IN B1 CENTRAL BUSINESS DISTRICT

Planner Marty Little presented text for Council's information to modify height restrictions in the B1 Central Business District and outlined the revisions proposed by staff, noting that this matter would go to Public Hearing on April 23rd. Town Attorney Allison Meade noted that for the sake of clarity the first change on page one should read "Except as otherwise expressed herein". Council Member Furgiuele expressed concern with Section 16.08.04A(1)(c) and asked if it would be more clear to readers to add the word "horizontally" with the last sentence reading "The building height limitation for the King Street elevation may extend *horizontally* from the building frontage on King Street...". Council Member Furgiuele expressed confusion on Section 16.08.04B(1) because there were parts in the proposed text where 30' was not the maximum and would not fit with areas that the allowed height was 33' and added that the use of the word "lesser" was confusing. Ms. Meade asked for clarification as to whether Council felt that 30' or 33' was the appropriate height limitation adding that a separate standard of 25% may also be confusing. She noted that it may make more sense to revise the text to read "The *greater* of 25% more than the average or 30'" rather than the *lesser* of...". Council Member Furgiuele added that he would like to see this section retained as an option, but that it wasn't necessary if the remainder of the ordinance was adopted as-is. Council Member Mason asked whether the proposed text amendments would impact plans for a parking garage on King Street. Town Manager John Ward stated that the text could restrict a parking deck. Council Member Furgiuele suggested that the parcel could be rezoned to accommodate a deck in the future if that came to fruition, but that Council should work to protect the buildings that already exist. Council Member Furgiuele stated that the height restrictions presented were acceptable to him. Council Member Ashcraft stated he thought they were still too low, with Council Member Ulmer agreeing. Council Member Ashcraft stated that he believed the height limitations were too low and suggested that Council hold off on action until they received more public input. Council Member Furgiuele suggested that in Section 16.08.08A revisions should be made to read "...not intended *or used* as places of storage or occupancy; and". Ms. Meade indicated a need for clarification in Section 16.08.08 to reflect a change across the article, except for the distinction regarding parapets. She stated that her interpretation of Council's intent was that parapets up to 4' would not be counted toward a building's height and outside of the downtown area, parapets up to 5' would not be counted, with anything over those two limits being counted toward a building's height limitations.

UDO TEXT AMENDMENT - RESTAURANT USES AND OUTDOOR DINING IN M1 MANUFACTURING DISTRICT

Senior Planner Christy Turner presented text for Council's information to allow restaurant uses and outdoor dining in the M1 manufacturing district and outlined the revisions proposed by staff, noting that this matter would go to Public Hearing on April 23rd. Council Member Furgiuele expressed that he was reluctant to not have three use categories and noted that it should be discussed in the future how differentiation is maintained between categories.

STATUS OF THE UPDATE OF THE 2006 COMPREHENSIVE PLAN

RESULT:	**TABLED [UNANIMOUS]**	**Next: 4/26/2018 4:00 PM**
AYES:	Mason, Brantz, Clawson, Furgiuele, Ulmer, Ashcraft	

ADJOURNMENT

Upon a motion by Council Member Furgiuele, seconded by Council Member Clawson, council voted at 11:05 p.m. to recess the meeting until 4:00 on Thursday, April 26, 2018 in Council Chambers located at 1500 Blowing Rock Road.

Nicole Worley, Town Clerk

Rennie Brantz, Mayor