

**MINUTES – REGULAR MEETING  
BOONE TOWN COUNCIL APRIL  
21, 2014**

A regular meeting of the Boone Town Council was called to order at 5:34 p.m., Monday, April 21, 2014, in the Council Chambers, 1500 Blowing Rock Road. Mayor Andy Ball presided. Council members present were Mayor Pro-Tem Rennie Brantz, Lynne Mason, and Quint David. Town Attorney Sam Furguele was also present. Staff members present were Town Manager Greg Young, Town Clerk Kimberly Brown, Finance Director Amy Davis, Assistant to the Manager Jim Byrne, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Public Utilities Director Rick Miller, Interim Public Works Director Eric Gustaveson, Planning Director Bill Bailey, Human Resources Director Peri Moretz, and Cultural Resources Director Pilar Fotta.

**ANNOUNCEMENTS**

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

**TENTATIVE AGENDA ADOPTION**

Town Manager Greg Young stated there are no changes to the agenda. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to adopt the agenda, as presented.

VOTE:       Aye – All  
              Nay – None  
              Absent – 2 (Peña, Hay)

**PUBLIC COMMENT**

There was no one signed up to speak during public comment.

**APPOINTMENT TO TOWN/GOWN COMMITTEE**

Mayor Ball noted that the Council has been asked by ASU Chancellor Kenneth Peacock to appoint a representative and an alternate to the Town/Gown Committee that was created in the spring of 2008. It was the consensus of the Council to appoint Mayor Ball to serve as liaison to this committee and to appoint Council Member David as an alternate. Additionally, Town

Manager Greg Young or his designee was also appointed to serve as a liaison to this committee. It was agreed to place this matter on the Consent Agenda.

### **DBDA CHRISTMAS DECORATION COMMITTEE**

Council Member Mason asked that town staff be appointed to the Christmas Decoration Committee, created by the DBDA to develop a cohesive theme for Christmas/Holiday decoration for the downtown area. It was the consensus of the Council to appoint Cultural Resources Director Pilar Fotta and Interim Public Works Director Eric Gustaveson, or his designee, to serve on the DBDA Christmas Decoration Committee. It was agreed to place this matter on the Consent Agenda.

### **CONSIDERATION OF TOWN CODE & UDO AMENDMENT – AFFORDABLE HOUSING TASK FORCE**

Town Attorney Sam Furgiuele stated that it was his understanding that, as a result of discussion at the Council's retreat on April 1<sup>st</sup>, he was to prepare an amendment to the Town Code or UDO to institutionalize the Affordable Housing Task Force. He stated that he would need more specific direction from the Council as to its intentions and the best way to accomplish those intentions. Council Member Mason stated that she would like to review the minutes of the April 1<sup>st</sup> meeting, but that it is her understanding that the intent of the Council is to keep this group as a task force. Planning Director Bill Bailey stated that he needs specific direction as to the mission of the group and clarification on the parameters of the task force. After further discussion, it was the consensus of the Council to consider this item during the May regular meeting.

### **CONSIDERATION OF UDO AMENDMENTS – CONDITIONAL DISTRICT ZONING**

Town Attorney Sam Furgiuele began by explaining that due to the way UDO provisions regarding the conditional district zoning process were incorporated into the UDO approximately ten years ago, an applicant for conditional district zoning must show full conformity with the UDO requirements for the underlying zoning district and must submit a site-specific development plan which binds the developer to its characteristics. He stated that this results in the possibility that a proposed project which deviates from the requirements of the underlying zoning district will have to obtain one or more variances from the Board of Adjustment, the only body empowered under State law to grant variances, and then will have to submit to the "negotiation" process which characterizes the conditional district rezoning procedure. Furthermore, he stated that the Town's approach prevents the approval of a development plan with features which may be desirable, but which does not fully comply with UDO requirements for the district in question. After discussion, Council agreed to keep this matter under Council Matters for further discussion.

### **CONSIDERATION OF TOWN CODE AMENDMENT – COUNCIL MEETING DEADLINES AND SCHEDULE**

Town Attorney Sam Furgiuele explained that recent amendments to the Municipal Code by the Council provided firm deadlines for submission of agenda items and created authorization for a process in which the Council met to establish the agenda before meeting for the actual business meeting. He stated that the adopted amendments created the unintended result that a deadline might occur a full week earlier than intended. Mr. Furgiuele stated that the proposed amendment would set the time frames for deadlines in a more flexible way that corresponds to the date of the actual business meeting. Council Member Mason emphasized that the meeting schedule for the Council should be clear to the citizens. It was agreed to place this matter on the Consent Agenda.

### **CONSIDERATION OF UDO AMENDMENTS – ETJ APPOINTMENTS**

Town Attorney Sam Furgiuele informed the Council that the proposed amendments to the UDO for ETJ appointments has been reviewed and approved by the Watauga County Commissioners and the County Attorney. He stated that if the Council is satisfied with the proposal, it should be scheduled for public hearing. It was agreed to place this matter on the Consent Agenda.

### **CONSIDERATION OF TDA EXPENDITURES**

Town Manager Greg Young stated that the list of proposed expenditures is the same as what was presented for consideration at the Council's retreat. It was discussed by the Council to schedule a meeting with the TDA for additional input on the proposed list of expenditures. Council agreed to keep this matter under Council Matters for further discussion.

### **FEE WAIVER REQUEST – WATAUGA COUNTY**

Town Manager Greg Young explained that Watauga County has requested a fee waiver for development fees in the amount of \$1,100 for greenway expansion from Brookshire Park. He noted that he has the authority to waive up to \$500 in fees. It was his recommendation to waive the development fees in the amount of \$1,100 contingent on the waiver of an equal amount of tipping fees for demolition debris from the Horn in the West project by Watauga County. It was agreed to place this matter on the Consent Agenda.

### **CONSIDERATION OF CONDITIONAL DISTRICT MAP AMENDMENT MODIFICATION – CASE 20140100 BOONE POINT**

- **Case 20140100 Boone Point Conditional District Map Amendment Modification** It was agreed by Council to keep this matter under Council Matters for further discussion.

### **P&I MONTHLY REPORT**

It was agreed by Council to keep this item under Council Matters for further discussion.

### **DISCUSSION OF PRIORITY TRANSPORTATION IMPROVEMENT PROGRAM (TIP) PROJECTS**

Planning Director Bill Bailey explained that the Town is being asked to choose a priority transportation project from a list provided by the High Country RPO. It was the consensus of the Council to forward the improvement project for the intersection of King and College Street for submission. It was agreed to place this matter on the Consent Agenda.

### **CONSIDERATION OF BICYCLE TRANSPORTATION PLAN**

Interim Public Works Director Eric Gustaveson stated that the Boone Bicycle Transportation Plan, which was presented for information at the March meeting, is before the Council for approval. It was the consensus of the Council to also consider the merging of the Boone Bicycle Plan with the existing Pedestrian Plan. It was agreed by Council to keep this item under Council Matters for further discussion.

### **TRANSPORTATION COMMITTEE RECOMMENDATION – HILL STREET CROSSWALK**

Interim Public Works Director Eric Gustaveson explained that the Transportation Committee is recommending a raised crosswalk be installed on Hill Street instead of the two existing speed humps. He noted that ASU has agreed to cover the cost of materials for the project and that brick pavers similar to that on College Street will be used for the project. It was agreed to place this matter on the Consent Agenda.

### **APPROVAL OF ENCROACHMENT AGREEMENT – CORNERSTONE CAMPUS COMMUNITIES**

Interim Public Works Director Eric Gustaveson presented an encroachment agreement for Cornerstone Campus Communities located at 241 Shadowline Drive for the placement of 15 shrubs, 2 trees, bus shelter and concrete steps in the Town's right-of-way. It was agreed to place this matter on the Consent Agenda.

### **APPROVAL OF ENCROACHMENT AGREEMENT – MODERN REAL ESTATE INVESTORS, LLC**

Interim Public Works Director Eric Gustaveson presented an encroachment agreement for Modern Real Estate Investors, LLC on Perkinsville Drive to place 30 feet of curb and gutter in the Town's right-of-way. It was agreed to place this matter on the Consent Agenda.

### **UPDATE ON IMPROVEMENTS TO DANIEL BOONE AMPHITHEATER**

It was the consensus of the Council to keep this item under Council Matters for further discussion.

### **CRAB RECOMMENDATION – COMMUNITY BAND REQUEST TO USE AMPHITHEATER**

Cultural Resources Director Pilar Fotta presented a recommendation from the Cultural Resources Advisory Board to allow the Watauga Community Band to use the area above the amphitheater on Monday evenings during June-September 2014. It was the consensus of the Council to authorize the Mayor to sign a license agreement with the Watauga Community Band to use the area above the amphitheater on Monday evenings during June-September 2014 upon review and approval by the Town Manager and Town Attorney. It was agreed to place this matter on the Consent Agenda.

### **UPDATE ON FARMER'S MARKET REQUEST**

Cultural Resources Director Pilar Fotta updated the Council on the request from the Watauga County Farmer's Market to add an additional shed to the property. She stated that some of the details of the proposal have yet to be worked out so this will not be ready for approval this month.

### **REQUEST FOR MODIFICATION TO FARMERS MARKET LICENSE AGREEMENT**

Cultural Resources Director Pilar Fotta presented a request from the Watauga County Farmer's Market to use the site on Tuesday, April 29, 2014, from 5 p.m. to 8 p.m. for a volunteer cleanup day. WCFM staff and volunteers clean the site, cut back weeds and bushes, and clean out the storage sheds to prepare for the new season. It was the consensus of the Council to authorize the Mayor to sign an amended license agreement for the Watauga County Farmer's Market to use the site on Tuesday, April 29, 2014, from 5 p.m. to 8 p.m. for a volunteer cleanup day contingent on review and approval by the Town Manager and Town Attorney. It was agreed to place this matter on the Consent Agenda.

### **WATER COMMITTEE RECOMMENDATION**

Public Utilities Director Rick Miller presented a recommendation from the Water Committee to make changes to Ordinance #11-01. It was agreed to place this matter on the Consent Agenda.

### **MONTHLY WATER USE STATUS REPORT**

It was the consensus of the Council to keep this item under Council Matters.

### **ANNOUNCEMENT OF BOARD VACANCIES**

It was the consensus of the Council to keep this item under Council Matters.

### **BOARD APPOINTMENTS**

It was the consensus of the Council to keep this item under Council Matters.

### **CONFIRMATION OF PLANNING COMMISSION REPRESENTATIVES – AFFORDABLE HOUSING TASK FORCE AND WATER COMMITTEE**

Planning Director Bill Bailey informed the Council that the Planning Commission has made the following recommendations:

- Planning Commissioner Jon Tate to serve on the Water Committee
- Planning Commission Matt Long to serve on the Affordable Housing Task Force.

It was agreed to place this matter on the Consent Agenda.

It was agreed that Requested Appearances, Water and Sewer Requests, and Closed Session items will be heard by the Council as is done each month at the regular meetings.

### **RECESS MEETING**

Upon a motion by Council Member Mason, seconded by Council Member David, Council moved to recess the meeting at 7:16 p.m. until Thursday, April 24, 2014, at 5:30 p.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE:       Aye – All  
              Nay – None

Absent – 2 (Hay, Peña)

### **CALL TO RECONVENE**

A recessed meeting of the Boone Town Council was called to order at 5:30 p.m., Thursday, April 24, 2014, in the Council Chambers, 1500 Blowing Rock Road. Mayor Andy Ball presided. Council members present were Mayor Pro-Tem Rennie Brantz, Lynne Mason, Jennifer Peña, Quint David (arrived at 5:45 p.m.), and Fred Hay (arrived at 5:45 p.m.) Town Attorney Sam Furguele was also present. Staff members present were Town Manager Greg Young, Town Clerk Kimberly Brown, Finance Director Amy Davis, Assistant to the Manager Jim Byrne, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Public Utilities Director Rick Miller, Public Works Director Blake Brown, Planning Director Bill Bailey, Human Resources Director Peri Moretz, Cultural Resources Director Pilar Fotta, Planner Jane Shook, and Building Inspector Todd Miller.

### **ANNOUNCEMENTS**

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

Mayor Ball presented the following proclamation to Bill Moretz for “Greening My Plate Week” to create awareness of the benefits of locally produced food, to recognize the producers, and to acknowledge community events celebrating the beginning of the growing season:

#### **Greening My Plate Week Proclamation**

**Whearas**, purchasing local food supports local farm families and food producers who contribute to our community; and

**Whearas**, fresh, locally produced food is best for the health of our citizens; and

**Whearas**, building a local food system enhances the food security of our community; and

**Whearas**, supporting local family farms preserves genetic diversity, important for the future of the human race.

**Now, therefore, let it be proclaimed** that the Boone Town Council endorses the week of April 27, 2014 as Greening My Plate Week, April, 2014

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Andy Ball, Mayor

Attest:

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Kimberly S. Brown, Town Clerk

Mayor Ball announced the following:

“In conjunction with the statewide “Spring Litter Sweep 2014” campaign issued by Governor Pat McCrory for April 26<sup>th</sup> through May 10<sup>th</sup>, the Town of Boone will hold a “Spring Boone Clean-Up Day” on Saturday, April 26, 2014. Interested participants may come by the Town of Boone Public Works Department located at 321 East King Street between 9:00am – 2:00pm to pick up cleaning supplies. For more information, contact Shannon Isaacs at (828)268-6230.”

Mayor Ball announced that King Street in Boone, NC, is one of thirteen finalists in the NC APA Great Places Contest. He encouraged all citizens to vote for this distinction by the May 9<sup>th</sup> deadline.

Police Chief Dana Crawford recognized Detective Katrina Brackenridge and Master Patrol Officer Len Hagaman III, who have successfully fulfilled the requirements and obligations to acquire the Advanced Law Enforcement Certification. He noted that this is one of the highest levels of professionalism in law enforcement.

### **TENTATIVE AGENDA ADOPTION**

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

1. Deletion of Item 4.L. – CRaB Recommendation – Community Bank Request to Use Amphitheater.
2. Deletion of Item 6.D. – Consideration of Conditional District Map Amendment Modification – Case 20140100 Boone Point.
3. Addition of Item 6.M. – Approval of Sign Encroachment Agreement – Benchmark Provisions
4. Addition of Closed Session Pursuant to NCGS 143-318.11a(3):
  - A. Legal Advice – To consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council, which privilege is hereby acknowledged, to consider and give instructions to the attorney concerning the handling of a potential claims by and against the Town.

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

VOTE:           Aye – All

Nay – None

### **CONSENT AGENDA ADOPTION**

- A. Minutes: March 4, 2014 – Special Meeting.  
March 10, 2014 – Special Meeting.  
March 18 & 24, 2014 – Regular Meeting.  
March 21, 2014 – Special Meeting.  
March 26, 2014 – Special Meeting.
- B. Adoption of Proclamation – “Greening My Plate Week”
- C. Appointments to Town/Gown Committee.
- D. DBDA Christmas Decoration Committee.
- E. Consideration of Town Code Amendment – Council Meeting Deadline & Schedule.

### **CHAPTER 30: TOWN COUNCIL**

#### Section

#### ***Meetings***

- 30.01 Organizational meeting
- 30.02 Regular meetings
- 30.03 Special meetings
- 30.04 Emergency meetings
- 30.05 Continued or recessed meetings
- 30.06 Agenda
- 30.07 Order of business
- 30.08 Presiding officer
- 30.09 Quorum
- 30.10 Taking official action
- 30.11 Debate
- 30.12 Voting
- 30.13 Adoption of ordinances
- 30.14 Closed sessions
- 30.15 Public hearings
- 30.16 Minutes

#### ***Motions***

- 30.30 Substantive and procedural motions

- 30.31 Motion to amend
- 30.32 Motion to dispose of issue without deciding merits
- 30.33 Motions to revive or reconsider an issue
- 30.34 Renewal of motions
- 30.35 Motion to terminate debate
- 30.36 Procedural motions

#### ***Other Council Matters***

- 30.50 Qualifications for office
- 30.51 Appointments
- 30.52 Code of Ethics
- 30.53 *Robert's Rules of Order*

## **MEETINGS**

### **§ 30.01 ORGANIZATIONAL MEETING.**

At the first regular meeting in December (at any time after the results of the municipal election have been officially determined and published) following a general election in which Council members are elected, the Mayor and Council members shall take and subscribe the oath of office as the first order of business. As the second order of business, the Council shall fill any vacancies which might have occurred as the result of the election. The Council shall next elect from its members a Mayor Pro Tempore who shall hold office at the pleasure of the Council.

### **§ 30.02 REGULAR MEETINGS.**

**(A)** The Council shall hold one or more regular meeting(s) each month. At its organizational meeting, the Town Council shall fix the time and place of its regular meetings. By ordinance, resolution or other official action, its regular meeting schedule may be changed by the Council but it shall direct that a current copy of the revised schedule, showing the time and place of regular meetings, be kept on file with the Clerk. A revised schedule shall not take effect less than seven calendar days following its adoption.

**(B)** As part of its duly adopted schedule, the Council may establish that one or more of its regularly scheduled meetings shall be held for the primary purpose of setting its agenda for a subsequent regular business meeting. Absent the unanimous vote of all members present, no other business shall be conducted as such a meeting other than to obtain information concerning proposed agenda items and adopting its final agenda for the regular business meeting.

(1) At its agenda setting meeting, should one be established, the Council shall review the preliminary agenda and supplemental requests (See §30.06) and shall organize the agenda into consent items, discussion items and action items, as well as establishing an order of business for the regular business meeting. Town staff and other individuals may be requested to attend this meeting to provide additional information regarding items. Public comment will be accepted at this meeting in accordance with the limitations described in §§30.07(F) and (G).

(C) The Town Council shall ensure that its schedule of regular meetings, including both its agenda setting meetings and regular business meetings, is posted to the town's Web site.

### § 30.03 SPECIAL MEETINGS.

(A) A **SPECIAL MEETING** is any non-emergency meeting of the Council held at any time other than that specified in §30.02. The Council acknowledges that special meetings of the Town Council, although sometimes needed for the effective governance of the town, create significant burdens on town staff and may impose significant costs on the town. Excluding quarterly public hearings, budget workshops and properly called emergency meetings under § 30.04, and recognizing the provisions of G.S. § 160A-71 regarding the calling of a special meeting, in order to control those burdens and costs, the Council shall seek to limit the number of special meetings called in any calendar year to 12 or fewer, with the goal of no more than three meetings held each calendar quarter. To facilitate this end, the Council shall ordinarily refrain from scheduling a special meeting when the item of business for which a special meeting is considered may be adequately addressed at another meeting of the Council. In general, special meetings shall be used for matters involving the following:

(1) Decisions, although not constituting an emergency, which must be made prior to another scheduled meeting of the Council;

(2) Issues of scope or complexity that they cannot be accommodated within the available times for other scheduled meetings of the Council; or

(3) Matters which, due to their nature, require the attendance of non-staff guests who are unavailable at other scheduled meetings of the Council.

(B) The Mayor, the Mayor Pro Tempore or any two members of the Council may, at any time, call a special meeting by signing a written notice stating the time and place of the meeting, and the subject to be considered.

(C) Notice of the meeting shall be given to Council members as provided in this division (C), preferably 48 hours, but not less than six hours, before the meeting:

(1) Written notice shall be delivered personally to each Council member; or

(2) If notice cannot be personally delivered, notice may be left at the Council member's usual place of dwelling. In this event, administration shall make every reasonable effort to contact the Council member by telephone.

(D) Special meetings may be held when all Council members are present and consent thereto or when those not present have signed a written waiver of notice; provided that, the notice to the media required by division (E) below is given.

(E) Administration shall give notice of a special meeting to the public and the media at least 48 hours before the meeting by:

(1) Posting a notice of the time and place of the meeting on the town's principal bulletin board;

(2) Mailing or delivering notice of the meeting to each of the media who has requested it in accordance with the Open Meetings Law; and

(3) Mailing or delivering notice of the meeting to any person who has filed with the Clerk a written request for it in accordance with the Open Meetings Law; and

(4) Posting of notice of the meeting on the town's Web site.

(F) Only those items of business specified in the notice may be transacted at a special meeting unless all members are present or have signed a written waiver of notice and all members present agree.

(G) A special meeting may also be called or scheduled by vote of the Council in open session during another duly called meeting. The motion or resolution calling or scheduling the special meeting shall specify its time, place and purpose.

(Ord. passed 6-21-2011)

#### § 30.04 EMERGENCY MEETINGS.

(A) An **EMERGENCY MEETING** is a meeting of the Council called because of generally unexpected circumstances that require immediate consideration.

(B) The Mayor, the Mayor Pro Tempore or any two members of the Council may, at any time, call an emergency meeting by signing a written statement stating the time and place of the meeting and the subjects to be considered.

(C) Notice of the meeting shall be given to Council members in the same manner as notice of special meetings.

(D) Emergency meetings may also be held when all Council members are present and consent thereto or when those not present have signed a written waiver of notice; provided that, the notice to the media required by division (E) below is given.

(E) Administration shall give notice of an emergency meeting to each of the media who has requested it in accordance with the Open Meetings Law. This notice shall be given either by telephone or by the same method used to notify Council members and shall be given immediately after the notice has been given to those members.

(F) Only business connected with the emergency may be transacted at an emergency meeting. No item may be added for action at an emergency meeting with the exception of a request for the scheduling of another emergency meeting in accordance with the provisions of this section. (Ord. passed 9-21-2010)

### § 30.05 CONTINUED OR RECESSED MEETINGS.

(A) By majority vote, the Council may continue or recess any regular, special or emergency meeting to any place and time specified in the motion to continue or recess the meeting.

(B) In the event of a continued or recessed meeting, the Council shall direct the Town Clerk to post notice of the continued or recessed meeting on the town's Web site setting out the date, time and location of the meeting. No further notice need be given of any continued or recessed session of a meeting set in accordance with division (A) above.

### § 30.06 AGENDA. (A)

Regular Meetings.

(1) *Requests to be placed on agenda.* A request to have any item of business placed on the agenda must be received by the Clerk by the second Tuesday of the calendar month in which the meeting is scheduled. A request shall include a description of the subject matter involved and an explanation of the action which is requested. When appropriate, it shall be accompanied by such materials and documents as may be needed in order to explain or understand the request. As feasible, a copy of all proposed ordinances shall be provided with a request that an ordinance be considered.

(2) *Preparation of preliminary agenda.* Administration (Manager, Clerk and/or Deputy Clerk) shall prepare the **preliminary** agenda for the meeting.

(3) *Distribution of preliminary agenda.* On or before the Friday following the second Tuesday of the calendar month in which the meeting is scheduled, the Clerk shall provide a copy of the preliminary agenda to the Mayor and each member of the Council, as well as each town department head. In addition, a copy of the preliminary agenda shall be mailed, e-mailed, or delivered to each newspaper, wire service, radio station, and television station that has filed a written request for notice with the Clerk and to any person, in addition to the representatives of the media listed above, who has filed a written request with the Clerk. Each newspaper, wire service, radio station, and television station submitting a written request for notice must renew its request annually by January 10 of each year. Persons other than the media who request a copy shall be charged a fee of ten dollars (\$10.00) per calendar year for notice other than by e-mail, for which no charge shall be made, and must renew their requests annually by January 10 of each year. A copy of the preliminary agenda shall also be posted on the town's Web site.

(4) *Supplemental Requests for items of business placed on the agenda.* A request to supplement the preliminary agenda by adding an item of business for consideration may be made to the Clerk by 10:00 a.m. on the Monday following the second Tuesday of the calendar month in which the meeting is scheduled, subject to the same requirements as those listed in subparagraph (1). Generally, only items which due to their nature or external factors were not known or could not be properly documented or submitted by the initial deadline for the preliminary agenda should be submitted as a supplemental request. As soon as practical and no later than noon of the day of the deadline for submission, the Clerk shall distribute the supplemental requests and materials to the same persons as those specified in subparagraph (3) above.

(5) *Final agenda.* At its agenda setting meeting, should one be established, the Council shall adopt the final agenda for its regular business meeting. As soon as practical thereafter and no later than the Tuesday following the agenda setting meeting and at least two days before the regular business meeting, the Clerk shall distribute the final agenda packet to the Council, shall notify those persons and organizations entitled to direct notice of the contents of the final agenda, and shall post the final agenda and accompanying materials and documents comprising the Council's meeting book on the town's Web site.

(6) *Additions.* The Council may, by unanimous vote of the Council membership present, add an item of business that is not on the final agenda for consideration at its regular business meeting. Unless otherwise specified by the Council, additions to the agenda shall be considered at the conclusion of all other regular business.

(7) *Inspection and distribution.* Copies of the agenda and attachments shall be available for public inspection as soon as they are completed. Additional copies of the agenda shall be available for the press and interested members of the public.

(B) Special and Emergency Meetings. Town administration shall prepare the agenda for any special or emergency meeting, including therein only such matters as have been included in the notice of the meeting. Distribution of the agenda shall be in accordance with the requirements of §§3.03 and 3.04.

### **§ 30.07 ORDER OF BUSINESS.**

(A) Items of business shall be taken up at a meeting in the order that they appear on the agenda, except as provided in division (D) below.

(B) Items shall be placed on the final agenda according to the "order of business" established by the Council at its agenda setting meeting or, if none is established at that meeting, in conformity with subsection (H).

(C) In establishing the "order of business", the Council may authorize broad categories of business to be included as agenda items; examples are, but are not limited to, "members of the public wishing to be heard", "matters by the Manager" or "matters by the Attorney".

(D) Items may be considered out of order by consent of all the members present or by majority vote upon a motion.

(E) Persons desiring to address the Council shall, if at all possible, call the office of the Town Clerk and give their names, addresses and subject matters to be discussed, and shall meet the deadlines established by §3.06 if they wish to appear as part of a preliminary or final agenda item. Such deadlines do not apply to a person addressing the Council as part of the "public comment" part of the meeting. Persons desiring to speak on an agenda item will be recognized to speak when the agenda item is reached if the agenda item authorizes the receipt of public comment or the Council, by majority vote, authorizes public comment in connection with a particular agenda item. No person, in addressing the Town Council, except as otherwise provided herein, shall be allowed to speak more than five minutes unless the Presiding Officer allows an extension of time. The Presiding Officer may, in his or her discretion, shorten the time for speaking when an unusually large number of persons have registered to speak.

(F) Any person wishing to address the Council at any regular meeting, who has not been authorized to address the Council as part of a preliminary or final agenda item, shall place his or

her name on a sign up sheet available for this purpose. The person shall be entitled to speak under "Public Comment," subject to the following rules and regulations:

(1) Speakers shall be recognized in the order in which they have signed up.

(2) During the public comment period, no person shall be allowed to speak for more than five minutes unless the Presiding Officer allows an extension of time. When the Mayor or other Presiding Officer determines that there are more speakers than can be reasonably heard during the 15-minute initial public comment period, the Mayor or Presiding Officer may limit each speaker's presentation to less than five minutes. Likewise, the Town Council, by motion and majority vote, may limit the time allotted to each speaker to less than five minutes and may grant a speaker more than five minutes to complete a public comment. Any person who wishes to address the Town Council, but is unable to speak during the initial 15-minute public comment period due to the number of persons offering public comment who signed up ahead of that person, shall be given an opportunity to address the Town Council at the conclusion of all business scheduled for open session, subject to the same procedures and rules which apply to the initial 15-minute public comment period.

(3) Should more than one person wish to make substantially the same comments regarding the same subject, or where a group of persons supports or opposes the same positions, the Presiding Officer may require that all persons designate a spokesperson for their group to address the Town Council, and the Presiding Officer may allot a larger amount of time for the presentation of the group position by the spokesperson.

(4) When the number of persons wishing to address the Town Council during the "public comment" period exceeds the number of people who can be safely accommodated within the Town Council chambers or other location of the meeting, the Presiding Officer may require that all persons select delegates from the groups of persons supporting or opposing the same positions to address the Town Council, and the Presiding Officer may allot a larger amount of time for the presentation of the group position by each delegate.

(5) All persons addressing the Town Council during the public comment period shall be treated respectfully by other persons in attendance at the meeting and all speakers shall conduct themselves with proper decorum. Should any person present during a public comment period substantially interfere with the ability of a person offering public comment or engage in behavior which violates norms of accepted decorum, or should a person offering public comment engage in behavior which violates norms of accepted decorum, after warning the person(s) and, except in a situations where there is a risk of harm to any person present, providing the person(s) the opportunity to alter his, her or their behavior to bring it into conformity with norms of accepted behavior, the Presiding Officer may direct that the person(s) be removed from the meeting. However, a person expressing positions which are critical of town policies or actions, or criticizing the Mayor, Town Council Members, town staff, town officials or town policies or actions shall not, on that basis alone, be considered to have engaged in behavior which violates norms of accepted decorum.

(6) Unless the agenda is amended in accordance with this section so as to allow action on an item raised during the public comment period, the matter presented by the speaker shall be for information.

(G) Unless a different order is established at the Council's agenda setting meeting, if any, or by action of the Council, items shall be placed on the agenda according to the following order of business: call to order; announcements; consent agenda adoption; public hearings (other than quasi-judicial hearings); public comment (for a period not exceeding fifteen minutes); Council matters; announcements of vacancies to boards, commissions, task forces, advisory bodies and committees; appointments to boards, commissions, task forces, advisory bodies and committees; resolutions requesting appointments by the Watauga County Commission of ETJ members to the Planning Commission and Board of Adjustment; requested appearances; quasi-judicial hearings; public comment not reached during the initial public comment period; closed session; and adjournment. By general consent of the Council or majority vote, items may be considered out of order and items not fitting into one of the named categories may be considered. The Council may, by unanimous vote of those present, add items to or subtract items from the proposed agenda, except that the Council may not add items to the proposed agenda stated in the notice of a special meeting called by the Mayor, Mayor Pro Tempore and two Council members, unless all members are present and agree, or those who are absent sign a written waiver of notice and all members who are present agree; and only business connected with an emergency may be considered at an emergency meeting. The Council shall not deliberate, vote or otherwise take action on any matter by reference to a letter, number or other designation, or other secret device or method with the intention of making it impossible for persons attending a meeting of the Council to understand what is being deliberated, voted or acted on. The Council may, however, deliberate, vote or otherwise take action by reference to an agenda, if copies of the agenda, sufficiently worded to enable the public to understand what is being deliberated, voted or acted on, are available for public inspection at the meeting.

(Ord. passed 4-20-2006; Ord. passed 6-19-2008; Ord. passed 1-15-2009)

...

### § 30.15 PUBLIC HEARINGS.

(A) (1) Public hearings required by law or deemed advisable by the Council shall be organized by a special order, adopted by a majority vote, that sets forth the subject, date, place and time of the hearing as well as any rules regarding the length of time for each speaker, and other pertinent matters.

(2) The rules may include, but are not limited to, rules fixing the maximum time allotted to each speaker; providing for the designation of spokespersons for groups of persons supporting or opposing the same positions; providing for the selection of delegates from groups of persons

supporting or opposing the same positions when a number of persons wishing to attend the hearing exceed the capacity of the hall (so long as arrangements are made for those excluded from the hall to listen to the hearing); and providing for the maintenance of order and a quorum and the conduct of the hearing.

(3) All notice and other requirements of the Open Meetings Law applicable to Council meetings shall also apply to public hearings at which a majority of the Council is present. A public hearing for which any notices required by the Open Meetings Law or other provisions of law have been given may be continued to a time and place certain without further advertisement.

(4) The requirements of adjourned (or recessed) meetings shall be followed and continuing a hearing at which a majority of the Council is present.

**(B)** (1) At the appointed time for the hearing, the Mayor or his or her designee shall call the hearing to order and then preside over it.

(2) When the allotted time expires or when no one wishes to speak that has not done so, the Presiding Officer shall declare the hearing ended.

**(C)** A quorum of the Council shall be required at all public hearings required by state law. If a quorum is not present at a hearing, the hearing shall be continued until the next regular Council meeting without further advertisement or may be scheduled for a special hearing of the Council without further notice so long as the date, time and location of the special hearing is announced.

#### F. Consideration of UDO Amendments – ETJ Appointments.

### **Board of Adjustment**

**2.01.01** The Board is a quasi-judicial body which acts on specified appeals, variances, and major subdivision preliminary plat approval and special use permit requests. Except for major subdivision preliminary plat approval, the decisions by the Board represent the final decision by the Town.

#### **2.01.02 Appointment and Terms of Board of Adjustment**

**1. Number of Members:** There shall be a Board of Adjustment consisting of eight (8) regular members and eight (8) alternates. Alternates shall serve on the Board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Each alternate, while attending any regular or special meeting of the Board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member.

(1) **Number of Town Members:** Five (5) regular members of the Board of Adjustment and five (5) alternates shall reside within the Town (hereafter, “resident members”).

(2) **Number of ETJ Members:** Three (3) regular members and three (3) alternates shall reside within the Town's ETJ. Should the Town's ETJ be expanded or the ratio of the population of the ETJ relative to the population

of the Town increase or decrease, in accordance with N. C. Gen. Stat. §160A-362 and as specified herein, the Town will adjust the number of members from the ETJ in order to maintain proportional representation based on population for residents of the ETJ relative to the Town. However, the resident members may never number fewer than five (5) regular members and five (5) alternates, so if necessary to maintain proportionality, the full size of the Board shall be increased. **So long as the Town exercises extraterritorial jurisdiction,** there shall be at all times at least one representative of the ETJ on the Board of Adjustment.

**2. Adjustment of Ratio of Town and ETJ Members:** Within six months of the publication of the decennial census information for the Town of Boone and Watauga County, conducted by the United States Census Bureau, the Administrator shall inform the Town Council of any change in the ratio of Town population to ETJ population which requires a modification in the number of Town and ETJ members. Thereafter, as positions open by resignation, removal for cause or absence, or expiration of term, the number of members shall be adjusted through the appointment process to achieve the required balance between Town and ETJ members. An ETJ position shall be created or the number of ETJ positions reduced on the Board of Adjustment when the population of the entire ETJ constitutes a full fraction of the Town's population divided by the total membership of the Board of Adjustment or when the population of the ETJ falls below a full fraction of the Town's population divided by the total membership of the Board of Adjustment, respectively.

**3. Appointment of Members to the Board of Adjustment**

**1. Town Appointments:** All Town members of the Board of Adjustment shall be appointed by the Town Council following the procedures of Section 35.01 of the Municipal Code.

**a. Qualifications:** The Council shall select appointees only from those who apply for the position and are otherwise qualified. A qualified person is one who lives in the Town, who expresses a willingness to familiarize herself with the Town's UDO, Comprehensive Plan and all other duly adopted plans and Ordinances relating to the regulation of development within the Town planning jurisdiction, who agrees to apply in good faith the Town's Unified Development Ordinance and Comprehensive Plan, and who expresses a willingness to serve on the Board of Adjustment.

**2. ETJ Appointments:** When an ETJ member vacancy exists as the result of the expiration of a term, resignation, or because a new area is brought into the ETJ and the increased population requires that a new ETJ member be appointed, the following procedures shall be followed:

**a. Council Town Procedure:** When an ETJ member vacancy exists as the result of the expiration of a term, resignation, or because a new area is brought into the ETJ and the increased population requires that a new ETJ member be appointed, the following procedures shall be followed:-

- i. By January 15 of each calendar year, the Town Clerk shall forward to the County Clerk a list of the current members of the Board, designating the ETJ members and the expiration date of their terms.
- ii. When a vacancy occurs in an ETJ position prior to the end of a term or due to increased population which requires that a new ETJ member be appointed, the Town Clerk will notify the County Clerk, in writing, of the vacancy or position, including, as applicable, the name of the person who has vacated the position and the date the vacancy is effective, with vacancies which have already occurred at the time of the notification labeled "immediate."
- iii. At least sixty (60) days before a vacancy occurs due to the expiration of a term; or in the case of a vacancy prior to the end of a term, at the next meeting of the Council after the Town Clerk becomes aware of the vacancy; the Town Clerk shall inform the Town Council of the vacancy. The Council will announce the vacancy at the meeting at which it is so informed by the Town Clerk and solicit applications for the vacancy. The Town Clerk shall promptly post notice of the vacancy on the Town's website.
- iv. At its next regular meeting after it has announced a vacancy, the ~~Town~~ Council shall adopt a resolution requesting that the Watauga County Board of Commissions appoint a qualified person ~~as a member~~ to the position and it shall direct the Town Clerk to forward the resolution to the County Clerk, along with the names of such persons who have applied through the Town for the position and who the Council recommend for appointment. ~~Prior to adopting the resolution, when it pertains to positions created by vacancy due to the expiration of a term or resignation of a member, the Town Council may itself solicit applications for the position, and it may transmit its two top choices for each position to the Board of Commissioners. If, after a protracted time, the Council has received a single application or no applications, it may nevertheless request that the Board of Commissioners proceed with an appointment.~~
- v. If the Board of County Commissioners fails to make an appointment within ninety (90) days after receiving a resolution from the Town Council requesting that it be made,

the Council may make the appointment, but the person appointed shall reside in the ETJ and be otherwise qualified.

b. Board of Commissioners Procedure:

i. The Board of Commissioners shall have ninety (90) days after the County Clerk receives the Town Council's resolution requesting the Board of Commissioners to appoint a person to fill an ETJ member vacancy. If it does not make an appointment within that time, the power of appointment shall revert to the Council.

ii. The Board of Commissioners shall only appoint a person to the Board to fill a term which has expired on or after date of expiration and only after it has received the resolution from the Council requesting the appointment.

iii. The Board of Commissioners shall only appoint a person to fill a vacancy that occurs prior to the end of a term, or which has been created due to increased population which requires that a new ETJ member be appointed, after thirty days have elapsed from the receipt by the County Clerk of the Council's resolution requesting the appointment.

iv. Should the Council fail to adopt a resolution in compliance with 2.01.02(C)(2)(a), the Board of Commissioners may make an appointment without first receiving a resolution from the Town, but shall wait sixty days from the date of notice of the vacancy by the Clerk before doing so.

v. ~~Before making an appointment, the Board of Commissioners shall make its appointments in accordance with N.C. Gen. Stat. § 153A-45. —announce the vacancy at a regularly scheduled meeting and solicit applications for the position, and the County Clerk shall post notice of the vacancy on the Watauga County Website.~~

~~v. —The Board of Commissioners shall not make an appointment until its next regularly scheduled meeting after it has announced the vacancy.~~

~~vi.~~ v. The Board of Commissioners shall consider the choices directed to it ~~it~~ person(s) recommended by the Council for the position. If the Board of Commissioners is unwilling to appoint either any of the two applicants submitted by the Town Council, it may appoint a person of its own choosing. However, before appointing a new person to the Board of Adjustment, the Watauga County Board of Commissioners must hold a public hearing on the selection.

~~vii.~~ **vi.** In the event of an extension of the ETJ by the Town which creates new positions on the Board, the County shall follow the procedures mandated by N.C. Gen. Stat. §160A-362.

- i. ~~Notice:~~ Notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area.

~~viii.~~ **vii.** **Qualifications:** The Watauga County Board of Commissioners shall **appoint a qualified person as defined by N.C. Gen. Stat. §160A-362.** ~~select appointees only from those who apply at or before the public hearing for the position and are otherwise qualified. A qualified person is one who lives in the ETJ, who expresses a willingness to familiarize herself with the Town's UDO, Comprehensive Plan and all other duly adopted plans and Ordinances relating to the regulation of development within the Town planning jurisdiction, who agrees to apply in good faith the Town's Unified Development Ordinance and Comprehensive Plan, and who expresses a willingness to serve on the Board of Adjustment. If, despite good faith efforts, enough qualified residents of the ETJ cannot be found to fill the seats reserved for residents of such area, then the Watauga County Board of Commissioners may appoint other residents of the county who are otherwise qualified, including residents of the Town, to fill these seats.~~

- ii. ~~The Commissioners shall make the appointment within forty five days following the public hearing. If the Watauga County Board of Commissioners fails to make an appointment within ninety (90) days after receiving a resolution from the Town Council requesting that it be made, the Council may make the appointment, but the person appointed shall reside in the ETJ.~~

## **Planning Commission**

### **2.02.01 Appointment and Terms of Planning Commission Members**

**A. Number of Members:** There shall be a Planning Commission consisting of thirteen (13) members.

1. Number of Town Members: Eight (8) members of the Planning Commission shall reside within the Town. To the extent a qualified person can be found, one of the Town members shall be a resident of Boone and a full-time student of Appalachian State University.
2. Number of ETJ Members: Five (5) members shall reside within the Town's extraterritorial planning area (hereafter "ETJ"). Should the Town's ETJ be expanded or the ratio of the population of the ETJ relative to the population of the Town increase or decrease, in accordance with N. C. Gen. Stat. §160A-362 and as specified herein, the Town will adjust the number of members from the ETJ in order to maintain proportional representation based on

population for residents of the ETJ. **So long as the Town exercises extraterritorial jurisdiction,** there shall be at all times at least one representative of the ETJ on the Planning Commission.

**B. Adjustment of Ratio of Town and ETJ Members:** Within six months of the publication of the decennial census information for the Town of Boone and Watauga County, conducted by the United States Census Bureau, the Administrator shall inform the Town Council of any change in the ratio of Town population to ETJ population which requires a modification in the number of Town and ETJ members. Thereafter, as positions open by resignation, removal for cause or absence, or expiration of term, the number of members shall be adjusted through the appointment process to achieve the required balance between Town and ETJ members. An ETJ position shall be created or the number of ETJ positions reduced on the Planning Commission when the population of the entire ETJ constitutes a full fraction of the Town's population divided by the total membership of the Planning Commission or when the population of the ETJ falls below a full fraction of the Town's population divided by the total membership of the Planning Commission, respectively.

**C. Appointment of Members to the Planning Commission:**

1. **Town Appointments:** All Town members of the Planning Commission shall be appointed by the Town Council following the procedures of Section 35.01 of the Municipal Code.

a. **Qualifications:** The Council shall select appointees only from those who apply for the position and are otherwise qualified. A qualified person is one who lives in the Town, who expresses a willingness to familiarize herself with the Town's UDO, Comprehensive Plan and all other duly adopted plans and Ordinances relating to the regulation of development within the Town planning jurisdiction, and who expresses a willingness to serve on the Planning Commission.

2. **ETJ Appointments:** When an ETJ member vacancy exists as the result of the expiration of a term, resignation, or because a new area is brought into the ETJ and the increased population requires that a new ETJ member be appointed, the following procedures shall be followed:

a. **Council Town Procedure:** ~~When an ETJ member vacancy exists as the result of the expiration of a term, resignation, or because a new area is brought into the ETJ and the increased population requires that a new ETJ member be appointed, the following procedures shall be followed:-~~

i. **By January 15 of each calendar year, the Town Clerk shall forward to the County Clerk a list of the current members of the Commission, designating the ETJ members and the expiration date of their terms.**

- ii. When a vacancy occurs in an ETJ position prior to the end of a term or due to increased population which requires that a new ETJ member be appointed, the Town Clerk will notify the County Clerk, in writing, of the vacancy or position, including, as applicable, the name of the person who has vacated the position and the date the vacancy is effective, with vacancies which have already occurred at the time of the notification labeled "immediate."
- iii. At least sixty (60) days before a vacancy occurs due to the expiration of a term; or in the case of a vacancy prior to the end of a term, at the next meeting of the Council after the Town Clerk becomes aware of the vacancy; the Town Clerk shall inform the Town Council of the vacancy. The Council will announce the vacancy at the meeting at which it is so informed by the Town Clerk and solicit applications for the vacancy. The Town Clerk shall promptly post notice of the vacancy on the Town's website.
- iv. At its next regular meeting after it has announced a vacancy, whether it is due to the expiration of a term, a vacancy prior to the end of a term, or increased population which requires that a new ETJ member be appointed, the Town Council shall adopt a resolution requesting that the Watauga County Board of Commissioners appoint a qualified person as a member to the position and it shall direct the Town Clerk to forward the resolution to the County Clerk, along with the names of such persons who have applied through the Town for the position and who the Council recommend for appointment. ~~Prior to adopting the resolution, when it pertains to positions created by vacancy due to the expiration of a term or resignation of a member, the Town Council may itself solicit applications for the position, and it may transmit its two top choices for each position to the Board of Commissioners. If, after a protracted time, the Council has received a single application or no applications, it may nevertheless request that the Board of Commissioners proceed with an appointment.~~
- v. If the Board of County Commissioners fails to make an appointment within ninety (90) days after receiving a resolution from the Town Council requesting that it be made, the Council may make the appointment, but the person appointed shall reside in the ETJ and be otherwise qualified.
- b. Board of Commissioners Procedure:

- i. The Board of Commissioners shall have ninety (90) days after the County Clerk receives the Town Council's resolution requesting the Board of Commissioners to appoint a person to fill an ETJ member vacancy. If it does not make an appointment within that time, the power of appointment shall revert to the Council.
- ii. The Board of Commissioners shall only appoint a person to the Commission to fill a term which has expired on or after date of expiration and only after it has received the resolution from the Council requesting the appointment.
- iii. The Board of Commissioners shall only appoint a person to fill a vacancy that occurs prior to the end of a term, or which has been created due to increased population which requires that a new ETJ member be appointed, after thirty days have elapsed from the receipt by the County Clerk of the Council's resolution requesting the appointment.
- iv. Should the Council fail to adopt a resolution in compliance with 2.02.02(C)(2)(a), the Board of Commissioners may make an appointment without first receiving a resolution from the Town, but shall wait sixty days from the date of notice of the vacancy by the Clerk before doing so.
- ~~iv. Before making an appointment, the Board of Commissioners shall announce the vacancy at a regularly scheduled meeting and solicit applications for the position, and the County Clerk shall post notice of the vacancy on the Watauga County Website.~~
- ~~v. The Board of Commissioners shall not make an appointment until its next regularly scheduled meeting after it has announced the vacancy.~~
- ~~vi.~~ v. The Board of Commissioners shall consider the choices directed to it **person(s) recommended** by the Council **for the position**. If the Board of Commissioners is unwilling to appoint ~~either~~ **any** of the ~~two~~ applicants submitted by the Town Council, it may appoint a person of its own choosing. ~~However, before appointing a new person to the Board of Adjustment, the Watauga County Board of Commissioners must hold a public hearing on the selection.~~
- ~~vii.~~ vi. In the event of an extension of the ETJ by the Town which creates new positions on the Commission, the County shall follow the procedures mandated by N.C. Gen. Stat. §160A-362.

- i. ~~Notice:~~ Notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area.

~~viii.~~ **vii. Qualifications:** The Watauga County Board of Commissioners shall **appoint a qualified person as defined by N.C. Gen. Stat. §160A-362.** ~~select appointees only from those who apply at or before the public hearing for the position and are otherwise qualified. A qualified person is one who lives in the ETJ, who expresses a willingness to familiarize herself with the Town's UDO, Comprehensive Plan and all other duly adopted plans and Ordinances relating to the regulation of development within the Town planning jurisdiction, and who expresses a willingness to serve on the Planning Commission. If, despite good faith efforts, enough qualified residents of the ETJ cannot be found to fill the seats reserved for residents of such area, then the Watauga County Board of Commissioners may appoint other residents of the county who are otherwise qualified, including residents of the Town to fill these seats.~~

- ~~ii.~~ The Commissioners shall make the appointment within forty five days following the public hearing. If the Watauga County Board of Commissioners fails to make an appointment within ninety (90) days after receiving a resolution from the Town Council requesting that it be made, the Council may make the appointment, but the person appointed shall reside in the ETJ

G. Fee Waiver Request – Watauga County.

H. Approval of Priority Transportation Improvement Program (TIP) Project.

I. Transportation Committee Recommendation – Hill Street Crosswalk.

J. Approval of Encroachment Agreement – Cornerstone Campus Communities. **(Copy permanently on file at Boone Town Hall.)**

K. Approval of Encroachment Agreement – Modern Real Estate Investors, LLC. **(Copy permanently on file at Boone Town Hall.)**

L. Farmer's Market Request – Amend License to Add Structure. **(Copy permanently on file at Boone Town Hall.)**

M. Request Modification of Farmer's Market License Agreement. **(Copy permanently on file at Boone Town Hall.)**

N. Water Committee Recommendation – Amendments to Ordinance #11-01.  
**(Permanently on file at Boone Town Hall.)**

O. Confirmation of Planning Commission Representatives – Water Committee and Affordable Housing Task Force.

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to adopt the Consent Agenda.

VOTE:       Aye – All  
              Nay – None

### **PUBLIC COMMENT**

There was no one signed up to speak during public comment.

### **CONSIDERATION OF UDO AMENDMENTS – CONDITIONAL DISTRICT ZONING**

Rich Crepeau, chair of the Board of Adjustment, asked Council to amend the conditional district zoning provisions to allow for as much flexibility as the law will allow. Town Attorney Sam Furguele stated that it is very difficult for the Board of Adjustment to consider a variance request in the abstract without referencing the entire project. He stated that the process at this point can be confusing to the applicant and others involved. Upon a motion by Council Member Peña, seconded by Council Member Brantz, Council moved to direct the Town Attorney and Planning Staff to continue research for a new amendment to the UDO for conditional district zoning to allow for flexibility for both commercial and mixed-use projects and for parcels three acres or more.

VOTE:       Aye – All  
              Nay – None

### **CONSIDERATION OF TDA EXPENDITURES**

Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to recommend the following for TDA expenditures:

**(INSERT TDA EXPENDITURES)**

VOTE:       Aye – All

Nay – None

### **SCHEDULING OF SPECIAL MEETING – TDA BOARD**

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to propose the following dates to meet in the late afternoon or evening with the TDA Board to discuss the TDA expenditures:

Wednesday, June 11, 2014

Wednesday, June 18, 2014.

VOTE:           Aye – All  
                      Nay – None

### **P&I MONTHLY REPORT**

Planning Director Bill Bailey presented the P & I Monthly report. **(Permanently on file in the April 2014 Town Council meeting packet.)**

### **CONSIDERATION OF BICYCLE TRANSPORTATION PLAN**

Interim Public Works Director Eric Gustaveson relayed the recommendation of the Bicycle Plan Steering Committee for the Council to approve the Boone Bicycle Transportation Plan as presented by Alta/Greenways, Inc. Upon a motion by Council Member Mason, seconded by Council Member Peña, Council moved to adopt the Boone Bicycle Transportation Plan **(Copy of plan permanently on file at Boone Town Hall.)**

VOTE:           Aye – All  
                      Nay –None

### **APPROVAL & IMPLEMENTATION OF TOWN OF BOONE PEDESTRIAN AND BICYCLE TRANSPORTATION PLANS**

Upon a motion by Council Member Mason, seconded by Council Member David, Council moved to approve the merging of the Town of Boone Pedestrian Plan and the Boone Bicycle Transportation Plan and to approve the implementation of the merged plans.

VOTE:           Aye – All  
                      Nay – None

### **UPDATE ON IMPROVEMENTS TO DANIEL BOONE AMPHITHEATER**

Cultural Resources Director Pilar Fotta presented a power-point presentation on improvements to the Daniel Boone Amphitheater. **(Copy of power-point presentation permanently on file at the Cultural Resources Department.)**

### **MONTHLY WATER USE STATUS REPORT**

Public Utilities Director Rick Miller presented the monthly water status report. **(Copy of report permanently on file in the April 2014 Town Council meeting packet.)**

### **APPROVAL OF BUDGET AMENDMENTS**

Upon a motion by Council Member Mason, seconded by Council Member Peña, Council moved to approve the following budget amendments:

|                                                       |                    |           |             |
|-------------------------------------------------------|--------------------|-----------|-------------|
| WATAUGA COUNTY<br>COORDINATION OF<br>ELECTIONS        | 010-405-000-577111 | \$1,466   |             |
| APPROPRIATED FUND<br>BALANCE – GENERAL FUND           | 010-000-000-499900 |           | (\$1,466)   |
| NC DOT PROJECT U4020                                  | 010-411-000-549121 | \$109,278 |             |
| APPROPRIATED FUND<br>BALANCE-GENERAL FUND             | 010-000-000-499900 |           | (\$109,278) |
| UNIFORM EQUIPMENT                                     | 010-500-300-511220 | \$2,606   |             |
| DOJ BULLET PROOF VEST<br>GRANT                        | 010-000-000-461517 |           | (\$2,606)   |
| MAINTENANCE-VEHICLES<br>(POLICE DEPT.)                | 010-500-300-525301 | \$2,733   |             |
| MISCELLANEOUS REVENUE                                 | 010-000-000-489900 |           | (\$2,733)   |
| TRANSFER TO LAW<br>ENFORCEMENT SEP ALLOW<br>TRUST     | 010-500-000-598042 | \$6,831   |             |
| APPROPRIATED FUND<br>BALANCE-GENERAL FUND             | 010-000-000-499900 |           | (\$6,831)   |
| CAPITAL OUTLAY-OTHER<br>EQUIPMENT (NARCOTICS<br>FUND) | 012-500-303-574000 | \$11,888  |             |
| MISCELLANEOUS SUPPLIES<br>(NARCOTICS FUND)            | 012-500-303-519900 | \$7,433   |             |
| APPROPRIATED FUND<br>BALANCE-NARCOTICS FUND           | 012-500-303-499900 |           | (\$19,321)  |

VOTE:       Aye – All  
              Nay - None

### **ANNOUNCEMENT OF BOARD VACANCIES**

Mayor Ball announced the following board vacancies:

**Board of Adjustment** – Three (3) positions expire on June 30, 2014:

- One resident position.
- Two alternate resident positions.

**Community Appearance Commission** – Two (2) positions expire on June 30, 2014.

**Planning Commission** – Two (2) positions expire on June 30, 2014:

- Two resident positions.

### **BOARD APPOINTMENTS**

#### **Board of Adjustment**

Council Member Brantz nominated Dr. Robert Goddard to serve as a regular ETJ member on the Board of Adjustment. With no other nominations, Mayor Ball called for a vote:

VOTE:       Aye – All  
              Nay- None

The Council directed the Clerk to forward Dr. Goddard's nomination to the Watauga County Board of Commissioners.

#### **Community Appearance Commission**

There were no applications submitted for consideration for this committee.

#### **Outside Agency Funding Committee**

There were no applications submitted for consideration for this committee.

#### **Planning Commission**

Council Member Mason nominated Tom Purpur to serve as an ETJ representative to the Planning Commission. With no other nominations, Mayor Ball called for a vote:

VOTE:       Aye – All  
              Nay - None

The Council directed the Clerk to forward Dr. Goddard's nomination to the Watauga County Board of Commissioners.

### **Water Committee**

Council Member Hay nominated Jim Buchanan to serve on the Water Committee. Mayor Ball called for a vote on the nomination.

VOTE:       Aye – All  
              Nay – None

Council Member David nominated Kristan Cockerill to serve on the Water Committee. Mayor Ball called for a vote on the nomination.

VOTE:       Aye – All  
              Nay – None

Council Member Brantz nominated Pam Williamson to serve on the Water Committee. Mayor Ball called for a vote on the nomination.

VOTE:       Aye – All  
              Nay - None

### **APPROVAL OF SIGN ENCROACHMENT AGREEMENT – BENCHMARK PROVISIONS**

Upon a motion by Council Member Peña, seconded by Council Member Brantz, Council moved to approve an encroachment agreement with Benchmark Provisions for a projecting sign and awning at 122 South Depot Street. **(Copy of agreement permanently on file at Boone Town Hall.)**

VOTE:       Aye – All  
              Nay – None

Mayor Ball called for a break at 7:02 p.m. Council reconvened at 7:18 p.m.

### **REQUESTED APPEARANCE – GEORGE SANTUCCI**

George Santucci appeared before the Council to request \$135,000 from the Town of Boone as a match for a \$250,000 grant received by the National Committee for the New River for the New River Restoration Project. Town Attorney Sam Furgiuele asked that the Council delay action on this request until after Closed Session. It was the consensus of the Council to consider this request after Closed Session.

Before deliberating on the quasi-judicial requests, Town Attorney Sam Furgiuele questioned the members of Council on whether or not they had contact with any of the applicants regarding the requests. All Council members stated that they had not had any significant contact with any of the applicants for any of the requests.

### **WATER & SEWER REQUEST – JOHN WINKLER**

Town Attorney Sam Furgiuele opened a public hearing at 7:23 p.m. to hear sworn testimony on a request for water and sewer service to property located at the intersection of US Highway 321 and Clement Street. Public Utilities Director Rick Miller informed the Council that the applicant has requested that the application for water and sewer service for property located at the intersection of US Highway 321 and Clement Street be withdrawn completely from the agenda. He stated that the applicant can reapply at a later date. With no other testimony offered, Mr. Furgiuele closed the public hearing at 7:25 p.m. Council took no action on the matter.

### **WATER & SEWER REQUEST – PAUL CRITCHER DRIVE APPLICANTS**

Town Attorney Sam Furgiuele opened a public hearing at 7:25 p.m. to hear sworn testimony on six requests for water and sewer service to property located on Paul Critcher Drive from the following persons:

- Wyatt and Rita Wells
- Thomas and Sallie Swift
- John D. Cole
- Lisa Combs (Randy Combs)
- Sidney Triplett
- James G. Pittman, Jr.

He asked each applicant to affirm that it is their desire to allow James G. Pittman Jr. to speak to the situation and the service requests. Each applicant indicated, under oath, that James G. Pittman, Jr. is the spokesperson and is to speak to the water and sewer requests. James Pittman, being duly sworn, explained the request for water service. He stated that the properties share a well on a piece of vacant property that is currently up for sale. He informed the council that the

applicants have been out of water three times since the middle of March and that the residents are drinking bottled water. Mr. Pittman indicated that his opinion is that the deeds do not protect any rights to the well for the residents. Public Utilities Director Rick Miller stated that the properties are adjacent to an area where the wells had been contaminated. He stated that there are town water lines already there near the properties. With no other testimony, Mr. Furguele closed the public hearing at 7:43 p.m. Council discussed annexation of the properties. Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to reopen the public hearing at 7:46 p.m.

VOTE:           Aye – All  
                    Nay – None

Planning Director Bill Bailey stated that the properties appear to be part of a larger subdivision and that the entire subdivision would have to be annexed. He stated further information from the applicants' attorneys would have to be submitted for examination. Mr. Miller stated that there are no sewer lines in that area. Mr. Pittman stated that he did not have any additional information regarding the issue of being part of a larger subdivision. With no other testimony, Mr. Furguele closed the public hearing at 7:54 p.m. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to approve the request for water for Wyatt and Rita Wells, Thomas and Sallie Swift, John D. Cole, Lisa Combs, Sidney Triplett, and James G. Pittman, Jr. and that the water allocation is to be used only for residential development.

VOTE:           Aye – All  
                    Nay – None

#### **REQUESTED APPEARANCE – JOLYNNE MAHONEY**

JoLynne Mahoney appeared before the Council to request approval of a special event permit for Cyclo.Via 2014 on Sunday, July 27, 2014, from 11 a.m. until 4 p.m. She also requested waiver of the \$1,500 event fee. Police Chief Dana Crawford stated that he had no concerns with the event. Upon a motion by Council Member Mason, seconded by Council Member Peña, Council moved to approve the special event permit for the Boone Cyclo.Via 2014 to be held on Sunday, July 27, 2014, from 11 a.m. until 4 p.m. and to waive the event fee.

VOTE:           Aye – All  
                    Nay – None

#### **CLOSED SESSION**

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to enter Closed Session at 8:00 p.m. pursuant to NCGS 143-318-11a(1)(3)(5) to hear the following items:

- A. Pursuant to N.C. Gen. Stat. § 143-318.11(a)(1) and (a)(3), to prevent the disclosure of information that is not considered a public record within the meaning of Chapter 132 of the General Statutes and to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council, which privilege is hereby acknowledged, and to consider and give instructions to the attorney concerning the handling or settlement of a claim by the Town.
- B. Pursuant to N.C. Gen. Stat. § 143-318.11(a)(1) and (a)(5), to prevent the disclosure of information that is not considered a public record within the meaning of Chapter 132 of the General Statutes and to establish, or to instruct Town staff and negotiating agents concerning the position to be taken by or on behalf of the Town in negotiating the price and other material terms of a proposed acquisition of easements in real property.
- C. Pursuant to N.C. Gen. Stat. § 143-318.11(a)(5), to establish, or to instruct Town staff and negotiating agents concerning the position to be taken by or on behalf of the Town in negotiating with Appalachian Theatre of the High Country, Inc., the price and other material terms of a proposed contract for the acquisition of real property involving a portion of the Town Hall parking lot.
- D. Pursuant to N.C. Gen. Stat. § 143-318.11(a)(5), to establish, or to instruct Town staff and negotiating agents concerning the position to be taken by or on behalf of the Town in negotiating the price and other material terms of a proposed contract for the acquisition of real property in the ETJ.
- E. Pursuant to N.C. Gen. Stat. § 143-318.11(a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council, which privilege is hereby acknowledged, and to consider and give instructions to the attorney concerning the handling of a potential claims by and against the Town.

VOTE:       Aye – All  
              Nay – None

Upon a motion by Council Member Brantz, seconded by Council Member David, Council moved to exit Closed Session at 10:45 p.m.

VOTE:       Aye – All

Nay – None

**POSSIBLE ACTION FOLLOWING CLOSED SESSION**

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to approve a contract with the National Committee for the New River in the amount of \$135,000 for the New River Restoration Project. **(Copy of contract permanently on file at Boone Town Hall.)**

VOTE:       Aye – All  
              Nay – None

**ADJOURNMENT**

Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to adjourn at 10:46 p.m.

VOTE:       Aye – All  
              Nay – None

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Kimberly S. Brown, Town Clerk

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Andy Ball, Mayor