

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
May 18, 2021**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order electronically at 6:05 p.m. on Tuesday, May 18, 2021. Mayor Rennie Brantz presided. Council members present included Mayor Pro-Tem Connie Ulmer, Sam Furgiuele, Dustin Hicks, Nancy LaPlaca and Virginia Roseman. Staff present included Town Manager John Ward, Town Clerk Nicole Harmon, Administrative Support and Communications Officer Laney Pilkington, Finance Director Amy Davis, Human Resource Director Dale Presnell, Fire Chief Jimmy Isaacs, Public Works Director Rick Miller, Deputy Public Works Director Todd Moody, Downtown Boone Development Director Lane Moody, Program Coordinator Carrie Phillips, Police Chief Andy Le Beau, Assistant Planning Director Stacey Miller, Planning Director Jane Shook, Sustainability and Special Projects Manager George Santucci. Town Attorney Allison Meade was also in attendance.

ANNOUNCEMENTS

Public Works Director Rick Miller announced the winners of the Every Drop Counts Poster Contest, and thanked Program Coordinator Carrie Phillips for her work on the project.

TENTATIVE AGENDA ADOPTION

Upon a motion by Mayor Pro-Tem Ulmer, seconded by Ms. Roseman, Council voted unanimously to approve the agenda as presented.

PUBLIC COMMENT

Kelly Dupree on behalf of Boone Saloon spoke in support of keeping the mask mandate in the Town of Boone.

Kristen Benson signed up to speak but was not available when her name was called.

ADOPTION OF ITEMS ON CONSENT AGENDA

Mr. Furgiuele suggested that the word "are" be exchanged for the word "is" in the second to last paragraph of the proposed proclamation. Upon a motion by Mr. Furgiuele, seconded by Ms. Roseman, Council voted unanimously to approve the following items on the consent agenda (as amended):

TOURETTE AWARENESS DAY PROCLAMATION

WHEREAS, Tourette Syndrome is an inherited neurological disorder that is characterized by involuntary physical and vocal tics that occur many times a day; and

WHEREAS, Tourette Syndrome is often accompanied by other mental health disorders such as attention deficit and obsessive compulsive disorder, learning disabilities, and anxiety; and

WHEREAS, Tourette Syndrome and tic disorders affect 1 in 100 children. More than 22,800 school age children in the State of North Carolina alone are dealing with Tourette Syndrome and although some of these cases are aided by medication, there is no standard treatment or known cure for the disorder; and

WHEREAS, there is an important need for more professional help with interest and expertise to identify, counsel, and treat people with Tourette Syndrome, a disorder that is often misdiagnosed and misunderstood; and

WHEREAS, positive actions to assist children and families living with Tourette Syndrome would result from a broadening of public and professional knowledge and acceptance of Tourette Syndrome; and

WHEREAS, the Tourette Association's Greater Carolinas Group, is actively providing services to families, educating medical professionals and teachers, and supporting research to better understand the signs and treatments of TS;

NOW THEREFORE BE IT RESOLVED, that June 4, 2021, will be recognized as “Tourette Syndrome Awareness Day” in Boone, North Carolina, as a special day to promote understanding, compassion, and acceptance for all of our fellow citizens who deserve and need our support to break the stigma that surrounds Tourette Syndrome.

Rennie Brantz, Mayor

ATTEST:

_____(SEAL)
Town Clerk

COUNCIL MATTERS

FY 2021/22 OUTSIDE AGENCY FUNDING REQUESTS

Applicants gave brief presentations on their requests for funding for the 2021/22 fiscal year.

COVID-19 OPERATIONS/PROGRAMMING/EVENTS

Mr. Ward gave an update on Covid-19 statistics in the area and asked for direction regarding public meetings. He recommended that Council vote to repeal Town of Boone Ordinance Numbers 20-05 and 20-07 to remove the local state of emergency, and to adhere to the State executive order. Mr. Furgiuele asked how the residents of the Hospitality House who had recently tested positive for Covid-19 were being counted in terms of residency. Mr. Carter stated that they were all being counted as residents of Watauga County, and noted that six of the residents who were positive had been vaccinated. Mr. Furgiuele felt that the CDC acted too quickly in removing the mask mandate. He felt that conditions were not completely safe and that the Governor also acted too soon. Mr. Furgiuele believed that if the mask regulation was not enforceable, there was no reason to have it, and supported withdrawing the emergency orders. Ms. LaPlaca agreed that the ordinances should be repealed and suggested that the possibility of in-person meetings be discussed at the next meeting. Ms. Meade agreed that the states of emergency should be terminated instead of repealed, and that the Mayor should issue a statement to that effect. Mayor Pro-Tem Ulmer was hesitant to terminate the orders knowing that ASU students were coming back to in-person classes next semester. Ms. Roseman wondered if there was a way to support businesses who chose to continue with the mask mandate voluntarily. She wanted to make sure that this was properly articulated if Council chose to move forward in this way, and Mr. Furgiuele asked that the Police Department was clear on how to enforce situations where a business owner wanted an un-masked person removed from their property. Chief Le Beau stated that these situations would be handled as a regular trespassing call. Mr. Hicks wondered if there was a way to use the vaccination cards as an enforcement tool. Ms. Meade felt that the press release should include information that informed business owners they could have their own mask policy. Mr. Furgiuele suggested that the press release also include information regarding the enforcement aspect of a voluntary mask policy. Ms. LaPlaca made a motion to terminate Town of Boone state of emergency ordinances 20-05 and 20-07, to discuss in-person public meetings at a future date, and to direct staff to issue a press release as discussed. Mayor Pro-Tem Ulmer seconded the motion which carried unanimously.

Mayor Brantz declared a break at 8:05 p.m. Council reconvened at 8:18 p.m.

CONSIDERATION OF RESOLUTION AUTHORIZING PARTICIPATION IN THE NC HEALTH INSURANCE POOL

Mr. Ward presented a resolution authorizing the participation in the North Carolina Health Insurance Pool due to a 30% increase in cost of the current insurance plan. Mr. Ward noted that the Town was 10% behind in pay compared to the County, so now was not the time to make cuts in benefits and urged members to approve the proposed resolution. Mr. Furgiuele made a motion, which was seconded by Mayor Pro-Tem Ulmer to approve the resolution as presented. The motion carried unanimously.

**RESOLUTIONS AUTHORIZING THE
PARTICIPATION IN THE
NORTH CAROLINA HEALTH INSURANCE POOL**

WHEREAS, North Carolina local governments, including any North Carolina county, city, or housing authority, may enter into contracts or agreements under Article 23 of Chapter 58 of the North Carolina General Statutes (the “Local Government Risk Pool Act”) to establish pools providing for life or accident and health insurance for their employees on a cooperative or contract basis with one another;

WHEREAS, the North Carolina Health Insurance Pool (NCHIP) is a pool providing for accident and health insurance for employees of North Carolina local governments in accordance with the Local Government Risk Pool Act; and

WHEREAS, this local government wishes to become a member of the NCHIP;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BOONE as follows:

SECTION 1 As of July 1, 2021, this local government will become a Member of the North Carolina Health Insurance Pool (NCHIP), an intergovernmental cooperative to pool health insurance risks with other North Carolina local governments. The terms and conditions of membership in NCHIP will be such terms and conditions as are imposed by the board of trustees of NCHIP and pursuant the terms of applicable contracts and by-laws of NCHIP, as such may be amended from time to time.

SECTION 2 In accordance with N.C.G.S. § 58-23-5(e), the Town Manager of this local government, or such other officer, as shall be authorized, is directed to give notice (or cause notice to be given) to the North Carolina

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Commissioner of Insurance no later than June 1, 2021, in a form prescribed by the Commissioner that this local government intends to participate in NCHIP as of July 1, 2021.

SECTION 3 The Town Manager of this local government, or such other officer, as shall be authorized, is directed to execute any documents necessary to complete the membership of the local government in NCHIP.

SECTION 4 This Resolution shall be in full force and effect upon its passage, approval and publication in pamphlet form, if required by law.

PASSED this 18th day of May, 2021.

AYES: 5

NAYS: 0

ABSENT: 0

Rennie Brantz, Mayor
Town of Boone

ATTEST:
Clerk

REQUEST TO APPROVE FY 2020/2021 FINANCING PROPOSAL

Upon a motion by Mr. Furguele, seconded by Ms. Roseman, Council voted unanimously to approve the proposal as presented.

APPROVAL OF CONTRACT WITH ARTISAN CONCRETE SERVICES, INC. FOR BOONE GREENWAY SKATE PARK

Mr. Miller presented a contract with Artisan Concrete Services, Inc. for the Boone Greenway Skate Park. Mr. Furguele was confused about the terms "Sourcewell" and "Design Team" being used throughout the contract. Mr. Moody stated that the Sourcewell was a cooperative purchasing contract, but that the Town would have a contract directly with Artisan. Ms. Meade confirmed that "design team" referred to part of Artisan's team. Mr. Furguele made a motion which was seconded by Mayor Pro-Tem Ulmer. The motion carried unanimously.

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PROPOSED SCOPE OF WORK FOR SKATEPARK CONSTRUCTION SERVICES

Artisan Concrete Services, Inc. dba Artisan Skateparks (Artisan) have prepared this scope of work to summarize our build process and to aid in the clarification of project responsibilities. Accordingly, Artisan is providing the Town of Boone (CLIENT) with this scope of work for build services for the Skate project. The proposed scope of work for this project shall include but not limited to the following:

- Build Services
 - a. Construct a concrete Skatepark within established budget

PHASE I – Construction Services

Objectives:

- To construct the skatepark per plan and within budget, while maintaining high quality standards.

I.a – Pre-Construction Meeting (phone conference)

- Design Team will meet with the Skatepark construction manager, Client and any other necessary team members to review and go over the design intent, construction documents and or specifications.

I.b – Shop Drawing and Product Samples Submission

- Design Team's Lead Designer will review and approve or reject shop drawings, samples and any other submission.

I.c – Permitting

- Assist the Town with permitting process, if applicable.

I.d – Turnkey Construction

- a. Mobilization
- b. Site layout and necessary surveying, this will establish project limits and erosion control measures, if necessary.
- c. Grading will begin, to the survey layout.
- d. Installation of all shotcrete.
- e. Installation of all flatwork.
 - 1. The construction process will be managed daily and the schedule will be reviewed weekly by the Project Manager, ensuring all parties are apprised of all stages of construction.

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SOURCEWELL CONTRACT # 112420-ART

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ARTISAN RESPONSIBILITIES.

- a. Cooperation: Artisan will cooperate with the Owner during the life of the Project. Artisan will also take all reasonably necessary precautions to protect the Work of Owner and other contractors from damage that may be caused by Artisan's or sub-consultants of Artisan's Work.
- b. Payment of Employees, Subcontractors, and Suppliers. Artisan agrees to pay its employees, Subcontractors, and suppliers for all labor, services, and materials supplied in connection with the Project. Artisan will indemnify and hold Owner harmless from any claims made by Artisan's employees, subcontractors, and suppliers, providing Design Team has been paid for the Work that is the subject of the Claim.
- c. Safety: Artisan will comply with all safety laws, regulations, and/or ordinances applicable to the Project that are set forth by any governmental agency with jurisdiction over the Project. Artisan will maintain a safe workplace at all times and will immediately report any injuries or safety problems to Owner.
- d. Clean up: Artisan will maintain a clean work site and will keep the premises free from accumulated waste.
- e. Warranty: Our team guarantees that the highest qualitative standards be utilized in both planning and execution of the construction of each concrete Skatepark. We guarantee that all approved materials in the construction of all skateparks are new and free from defect. We offer the Owner a one year unconditional warranty from defects in workmanship and material quality not caused by the normal wear and tear of the Skatepark facility.

PROJECT ASSUMPTIONS:

The following assumptions shall apply to the proposed scope of work and submitted fees:

- a. All written documents will be generated using Microsoft Word, version 2016.
- b. All spreadsheet documents will be generated using, Microsoft Excel, version 2016.
- c. All Autocad files will be generated with Autocad2020.
- d. Cost of any landscaping, fencing, lighting, electrical or other amenities is not included in the fee below.
 - The Town will waive any permitting costs associated with the construction.
 - Artisan will provide all necessary tools and equipment necessary to complete the job, including any equipment rental, and shotcrete air compressor rental.
 - Artisan is not responsible for any grass seed or sod.

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Project Fees

Fees for the Services detailed in the proposed scope of work are outlined below. Reimbursable expenses are included in the fee below.

Lump Sum Turnkey Construction Services

Turnkey Construction \$145,000.00

NOTES:

1. ARTISAN understands and agrees that funds for this project are limited to the amount indicated above. Construction of the accepted design plans must be within budget and may not be increased by change order under any circumstances.
2. The quoted lump sum price reflects the 8% discount negotiated with Sourcewell per referenced Contract #112420-ART.

Contract Provisions

1. The compensation due Artisan for the work to be performed hereunder shall be set forth in Fees above. The parties understand and agree that all work not specifically delineated within the scope of work described herein shall be billed on a time and materials basis, and shall be in addition to any budget, bid, or maximum price agreement for the above described scope of work. Wherever practical, changes, additions, or modifications to the scope of work shall be authorized by written change request; however, the absence of such a written change order shall not act as a bar to payment of fees due Artisan hereunder, provided the change was in fact approved and ordered by the Client. Client accepts that signing this form shall be construed as authorization by the Client for Artisan to proceed with the work.
2. All fees, commissions, product charges and expenses billed shall be due within fifteen (15) calendar days of the date of billing. Artisan will provide Bi-Weekly pay applications. Pay applications will accurately depict the progress of the Artisan's Work and the percentage of the Work performed to date or will reflect the payment schedule agreed upon by the parties.
3. Interest on unpaid or late bills shall accrue at 1/2 percent (0.5%) interest per month (6.0% A.P.R.). Client agrees that all statements not objected to in writing within 15 calendar days of receipt are agreed to be final and binding upon the parties as to the amounts due, the adequacy of Artisan's performance and the value of the services provided to Client.
4. Should the project be published in a book, magazine, newspaper, or publication for public circulation, or if a job sign is erected, Artisan should be listed as the Skate Park Builder (as applicable). In addition, this contract represents non-exclusive approval by the Client for publication of the project by Artisan.
5. The client shall be permitted to retain and use copies of drawings and

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specifications for information and reference in connection with the Client's use and occupancy of the project. The drawings and specifications shall not be used by the Client on another project, or for completion of this project by others, provided Artisan is not in default under this agreement, except by agreement in writing with appropriate compensation.

6. Notwithstanding any provision herein to the contrary which requires safekeeping of documents or obligates Artisan to safe keep or provide documents to Client, Artisan shall not be responsible or liable for any direct, actual or consequential damages which occur as the result of its inability to produce such documents by reason of the casualty, destruction or loss of documents held by Artisan unless such casualty, destruction or loss shall be the result of the intentional and wrongful act or the gross negligence of Artisan.
7. If the project is suspended or abandoned, in whole or in part, for a period of ninety (90) days or more at the request of Client, Artisan may deem the project terminated. If the project is thus deemed terminated, or if Client terminates the project, Artisan shall cease activity on the project and shall be compensated for all services performed prior to the date of suspension of activity, together with all reimbursable expenses due. If the project is resumed after such termination, the Agreement between Client and Artisan shall be re-negotiated prior to resumption of work by Artisan. For purposes of this Agreement, "suspended" or "abandoned" shall mean substantial discontinuance of labor, work, services, and furnishings.
8. If any provision of this Agreement is for any reason held invalid or unenforceable, such provision shall be deemed separate and shall not affect the validity of the remaining portions thereof.
9. In the event of a default of any provision of this Agreement, after ten (10) calendar days notice to cure is delivered, this Contract shall be deemed terminated by the non-defaulting party by reason of default. For purpose hereof, any failure to pay sums due under Paragraph 2, above, for a period of ninety- (90) days shall be deemed justifiable grounds for declaration of default. Moreover, Artisan's failure to substantially perform under this Agreement shall be deemed justifiable grounds for declaration of default.
10. Client may terminate the Agreement with respect to part or all of the services for its own convenience upon providing written notice of the same. After receipt of a notice of termination, except as otherwise directed, Artisan shall stop work on the date of receipt of notice of termination or other date specified in the notice and place no further order or subcontracts for materials, services, or facilities except as necessary for completion of such portion of the work as is not terminated. Upon termination in part, Artisan agrees to complete such services as are directed by Client.
11. Upon termination for whatever reason, Client will pay Artisan for all costs incurred and fees earned by Artisan, its vendors and subcontractors to the date of termination, as well as such additional fees and costs as are subsequently incurred at Client's direction. Client will not be responsible to pay cancellation charges of vendors and subcontractors; demobilization costs; or anticipatory or unearned profits, unabsorbed overhead, opportunity costs,

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- or other consequential damages.
12. Termination under this section shall not waive any right or claim to damages which Client may have with respect to work performed by Artisan, and Client may withhold any payment due to Artisan for the purpose of setoff until such time as Client can determine the exact amount of damages due Client because of the breach and/or pursue any cause of action which it may have by law or under this Agreement on account of such work.
 13. Laws of the State of North Carolina shall control any proceedings arising in the transaction described herein.
 14. Client and Artisan agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by a mutually agreed certified NC Superior Court Mediator. The mediation shall be conducted on a confidential basis and shall be completed within 90 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to another dispute resolution method of their choice (binding or non-binding), or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.
 15. THE EXCLUSIVE VENUE FOR LITIGATION OF ANY DISPUTE SHALL BE THE STATE AND FEDERAL COURTS HAVING JURISDICTION IN WATAUGA COUNTY, NORTH CAROLINA. EACH PARTY HEREBY CONSENTS TO THE JURISDICTION OF SAID COURTS, WAIVES ANY OBJECTION TO THE JURISDICTION AND VENUE OF SAID COURTS, AND AGREES THAT ANY DISPUTE MUST BE BROUGHT EXCLUSIVELY IN SAID COURTS.
 16. Artisan shall provide a certificate of insurance coverage of no less than the following requirements. The Town of Boone must be listed as additionally insured on said policies.
 - i. Commercial general liability: \$1,000,000 per occurrence, \$2,000,000 aggregate;
 - ii. Automobile Liability: \$1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. Coverage for Hired and Non-Owned Auto Liability may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy.
 - iii. Worker's Compensation & Employers Liability: Worker's compensation insurance in accordance with North Carolina General Statute Chapter 97 and employer's liability of no less than \$500,000 each accident.
 - iv. Excess/umbrella - \$2,000,000 per occurrence, \$2,000,000 aggregate
 17. Artisan's liability to Client for damages will, in aggregate, not exceed the Artisan's liability insurance coverages. This limitation of liability will apply whether Artisan's liability to Client arises under breach of contract or warranty; tort, including negligence; strict liability; or statutory liability, and shall include Artisan's directors, officers, employees and subcontractors.
 18. Both Client and Artisan hereby waive any right to pursue claims for consequential damages against one another, including any claims for lost profits.

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19. Artisan agrees to indemnify and hold harmless Client, and Client's officers, officials, agents, contractors, and employees from any losses, damages, and judgments (including reasonable Artisans' and attorneys' fees, court costs, and other expenses incurred in defense of the claim or action) arising from any third-party claim or action, provided that any such losses, damages, or judgment is attributable to (a) Artisan's failure to perform its obligations under this Agreement; (b) bodily injury, sickness, disease, or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent, reckless or intentional act(s) or omission(s) of Artisan or Artisan's officers, directors, members, partners, agents, employees, or subcontractors; (c) any claim that the Artisan or an employee, agent or subcontractor of the Artisan is an employee of Client, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like; (d) Artisan's violation of any law (including, without limitation, immigration laws); or (e) the violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to Artisan's services or any products or deliverables provided by Artisan to Client pursuant to this Agreement.
20. Each party's obligations and liabilities, including but not limited to, its indemnification obligations, and its rights and remedies with respect thereto, shall survive completion or termination of this Agreement.
21. This Agreement shall be binding upon and inure to the benefit of the parties and their assigns and successors in interest.
22. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Client and Artisan, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Artisan and not for the benefit of any other party. Neither Client nor Artisan shall assign, sublet, or transfer any rights under or interests in this Agreement without the written consent of the other which may or may not be granted in that party's sole discretion. However, nothing contained herein shall prevent or restrict Artisan from employing independent subcontractors as Artisan may deem appropriate to assist in the performance of services hereunder, subject to the prior notification and approval of Client, which approval shall not be unreasonably withheld.
23. This Agreement supersedes all prior agreements of the parties and shall not be amended except by written agreement signed by each party.
24. This Agreement (and any amendments or modifications thereof) may be executed in several counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument. Facsimile and/or electronic copies of the executed counterparts shall have the same legal effect as the originals.

Acceptance

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If this proposal meets with your approval, please sign and return to our office. When accepted, this proposal will serve as a mutual commitment between Artisan and the Client for the above outlined services and fees. Work will be scheduled upon receipt of signed agreement.

By signing below, you are accepting the terms and condition listed above.

Artisan Concrete Services, Inc., dba Artisan Skateparks

Date: 5.3.2021

BY: 
Andy Duck, President
Artisan Skateparks

Town of Boone

Date: _____

By: _____
Authorized Representative
Town of Boone

CLIENT SOURCEWELL MEMBER #

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AWARD OF BID FOR HAULING AND PLACEMENT OF ASPHALT

Mr. Miller requested Council award the bid for hauling and placement of asphalt on Town streets for FY 21/22. Mr. Furgiuele asked whether Mr. Miller was satisfied with Tri-County Paving's past work, which Mr. Miller confirmed that he was.

Upon a motion by Mr. Furgiuele, seconded by Mayor Pro-Tem Ulmer, Council voted unanimously to approve the award of bid for hauling and placement of asphalt as presented in the amount of \$21.50 per ton.

APPROVAL OF BUDGET AMENDMENT - PUBLIC WORKS

Upon a motion by Mr. Furgiuele, seconded by Ms. Roseman, Council voted unanimously to approve the following budget amendment:

Street/Sidewalk Construction (\$60,000) Fee-in-Lieu of Sidewalk Improvements

CLOSED SESSION

Upon a motion by Mayor Pro-Tem Ulmer, seconded by Mr. Hicks, Council voted unanimously to enter into closed session at 8:42 p.m. pursuant to:

1. N.C. Gen. Stat. 143-31.11 (2)(1), to approve and seal closed session minutes from Council's prior closed session(s).
2. N.C. Gen. Stat. § 143-318.11 (a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and obtain legal advice, consider and/or give instructions to the attorney concerning one or more potential legal claims or other legal matters.
3. N.C. Gen. Stat. § 143-318.11 (a)(5), to establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (I) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease (PIN 2911-50-4269-000 and 2911-50-2341-000).
4. N.C. Gen. Stat. § 143-318.11 (a)(6), To consider the qualifications, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge or grievance by or against an individual public officer or employee.

Upon a motion by Ms. LaPlaca, seconded by Ms. Roseman, Council voted unanimously to exit closed session at 9:38 p.m.

ADJOURNMENT

Upon a motion by Mr. Furgiuele, seconded by Ms. LaPlaca, Council voted unanimously to adjourn the meeting at 9:30 p.m.

Nicole Harmon, Town Clerk

Rennie Brantz, Mayor