

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
May 19, 2016**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order at 5:30 p.m. Thursday, May 19, 2016, in the Council Chambers located at 1500 Blowing Rock Road. Mayor Rennie Brantz presided. Council members present were Mayor Pro Tem Lynne Mason, Loretta Clawson, Charlotte Mizelle, Jeannine Underdown Collins and Jennifer Teague. Town Attorney Allison Meade was in attendance. Staff present were Town Manager John Ward, Assistant Town Manager Jim Byrne, Town Clerk Christine Pope, Finance Director Amy Davis, Cultural Resources Director Pilar Fotta, Planning Director Bill Bailey, Human Resources Director Peri Moretz, Police Chief Dana Crawford, Public Works Director Rick Miller and Fire Chief Jimmy Isaacs.

ANNOUNCEMENTS

Mayor Brantz called the meeting to order and welcomed all in attendance. Mayor Brantz, along with Public Works Director Rick Miller and Program Coordinator Lane Weiss, recognized the 2016 "Every Drop Counts" poster contest winners:

Every Drop Counts Second Grade Poster Contest
2016 Results

First Place: Andy Eller, Hardin Park School

First place will receive a brand new bicycle and helmet

Second Place: Maggie Holt, Hardin Park School

Second place will receive a brand new art kit complete with easel and various supplies

Third Place: Sophia Kop, Hardin Park School

Third place will receive an outdoor exploration kit

Honorable Mention: Kora Laine Knight, Two Rivers Community School

The Town of Boone Every Drop Counts Water Conservation Program is celebrating Drinking Water Week with our annual Every Drop Counts Second Grade Poster Contest. The second grade students at Hardin Park Elementary and Two Rivers Community School worked diligently on their posters and the winners have been chosen. This year there was a total of **99 posters** and **EVERY class had 100% participation**, each student will be rewarded with a field trip to the Water Treatment Plant as well as a pizza party picnic at the Clawson-Burnley Park. Mayor Brantz noted that anyone wanting to speak during the public comment session would need to sign the public comment sign-up sheet.

Mayor Brantz noted that there will be a budget workshop Tuesday, May 24, 2016, which will include an open comment period at 10 a.m. for anyone who would like to speak regarding the proposed budget.

TENTATIVE AGENDA ADOPTION

ADOPTION OF AGENDA

Town Manager John Ward noted the following updates to the agenda for Council's consideration:

1. Move two requests for water and sewer service to immediately after public comment.
2. Move Request to Send Wellness District Cases to Public Hearing to the Consent Agenda.
3. Addition of Item to Consent Agenda - Approval of Encroachment Agreement - Windstream Communications, Inc.
4. Addition of Item to Consent Agenda - Scheduling of Budget Public Hearing for Thursday, June 16, 2016, during Council's regularly scheduled meeting beginning at 5:30 p.m.
5. Update to Water and Sewer Request for ASU Health Sciences - updated version reflects a decrease in water usage allocation requested from 29,466 to 20,262.

Upon a motion by Council Member Mason, seconded by Council Member Clawson, Council moved to adopt the tentative agenda, as amended.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Mayor Pro Tem
SECONDER:	Loretta Clawson, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

PUBLIC COMMENT

Annette Reeves, of Boone, appeared before Council to express her opposition to the race track. She stated the Unified Development Ordinance needs clarity to identify the uses allowed and those prohibited.

Ben Miller, of Boone, appeared before Council to correct statements that were in the Watauga Democrat article regarding the proposed Rivers Walk development. He stated the article alluded to the fact that Rivers Walk had an agreement with someone across the street for additional parking. He stated he owns the property referred to as Campus West across the street, which is managed by a company for him, and he was not sure there would be any additional spaces available for this project as it is completely full this year and others have priority for lease of these spaces above the project.

COUNCIL MATTERS

REQUEST FOR WATER AND SEWER SERVICE - ELIZABETH CARROLL (QUASI-JUDICIAL)

Before deliberating on the quasi-judicial request, Town Attorney Allison Meade questioned the members of Council on whether or not they had contact with the applicant regarding the request. All Council members stated that they had not had any significant contact with the applicant for the request.

Ms. Meade opened the public hearing at 5:48 p.m. to hear sworn testimony on a request for water and sewer service to property located on/near Maplewood Circle. Ms. Elizabeth Carroll, being duly sworn, stated she is requesting permission to obtain a water and sewer connection to her property due to a failing well. She added that one of her neighbors has recently obtained this permission from the Town who was also on this well, and only one other resident remains on the well. In response to Council Member Mason's question regarding documentation from the health department indicating the well is failing, Ms. Carroll advised that she does not have anything from the health department, but the electricity has gone up 10 times over the past year with fewer people on the well. Ms. Carroll indicated that the cost to have the issue diagnosed would also be very costly. Public Works Director Rick Miller, being duly sworn, stated a previous request from someone else on this well was granted recently as Ms. Carroll indicated, and that the well is not on this property or the property of the previous requester. He added that to the best of his recollection, the issue with the well is mechanical, but was not sure the water had been tested by the health department. Mr. Miller advised that this property is closer to the connection than the previous requester. Council Member Mason wondered if others on the well will want to connect as well. Ms. Carroll indicated she was aware of only one other person utilizing the well at this time. Ms. Meade added that she believed there were a total of four or five property owners using the well to begin with. Mr. Miller advised Council that there are taps available at the bypass, but the owners have the responsibility to connect to it from their properties should they be granted water. Council Member Teague asked for clarification on the legal opinion statement from the Planning Department in the packet of materials. Ms. Meade stated this brings attention to the question of whether or not a property can be annexed as Council typically asks for a promise from the applicant to be willing to annex if granted water. She stated this is something on her list of matters to be addressed, since she believed the property owner's promise to annex is not binding and nothing is done to ensure they annex. With no further testimony, Ms. Meade closed the hearing at 5:53 p.m.

Council Member Mason asked what the provisions were regarding Council's authority to grant an extension. Ms. Meade informed her that they were hardship extensions. Ms. Meade reopened the hearing at 5:54 p.m. to hear additional testimony. Mr. Miller stated the Town is currently not allowed to do extensions, only connections to existing lines, which is what is currently being requested by Ms. Carroll. He added that there are

special circumstances to allow extensions into secondary pressure zones, but for this situation, there has to be an existing line in place for the connection to be allowed. With no further testimony, Ms. Meade closed the hearing at 5:55 p.m.

Upon a motion by Council Member Mason, seconded by Council Member Clawson, Council moved to grant Ms. Carroll's request for water and sewer service to property located on/near Maplewood Circle with a predicted usage of 15 gallons per day, including the condition that the applicant is responsible for the costs incurred and the stipulation that the applicant annex the property, if able.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Mayor Pro Tem
SECONDER:	Loretta Clawson, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

REQUEST FOR WATER AND SEWER SERVICE - ASU COLLEGE OF HEALTH SCIENCES (QUASI-JUDICIAL)

Before deliberating on the quasi-judicial request, Town Attorney Allison Meade questioned the members of Council on whether or not they had contact with the applicant regarding the request. All Council members stated that they had not had any significant contact with the applicant for the request.

Ms. Meade opened the public hearing at 5:56 p.m. to hear sworn testimony on a request for water and sewer service to property located at previously addressed 1179 State Farm Road. Dayton Cole, general counsel for Appalachian State University, being duly sworn, stated he had no objections to the documents submitted with the exception of the page which includes a breakdown of the projected usage. It was noted that this calculation has been revised and the updated information is included in the online meeting packet. Mr. Cole noted that Appalachian State University (ASU) and the Town have an agreement that was executed in 2008 allowing the entities to share their water supplies with one another (copy of agreement permanently on file in Town Hall). In response to a question by Mayor Brantz regarding ASU's water capacity, Mr. Cole advised that their director of facilities indicated they have roughly two million gallons per day capacity with more than one million gallons per day in excess that they can furnish upon request. He added that, to his knowledge, ASU is not supplying water to the town although there are five ASU facilities to which the Town is currently providing water. Ms. Meade wondered if it would be appropriate to create an addendum to the 2008 agreement adding this new facility to the list and get the amount of supply from ASU equal to the amount this facility will withdraw. Council Member Clawson noted she believed this agreement was for emergency purposes. Ms. Meade indicated that was one of the provisions of the agreement, but it also allows both entities to receive water supply from the other upon request in non-emergency situations. Discussion ensued regarding the 2008 agreement and its benefits to both ASU and the Town. Mr. Miller noted that the Town currently has in excess of 180,000 gallons per day remaining for 2016, and 150,000 gallons per day allotted for both 2017 and 2018. Mr. Cole stated their anticipated completion date in which they will need water is summer of 2018. With no further testimony, Ms. Meade closed the hearing at 6:11 p.m.

Upon a motion by Council Member Mason, seconded by Council Member Underdown Collins, Council moved to grant Appalachian State University the request for water and sewer service to property located at previously addressed 1179 State Farm Road with a predicted usage of 20,262 gallons per day to be taken out of the 2016 allotment and to pursue adding this project to the 2008 agreement between the Town and ASU.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Mayor Pro Tem
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CONSENT AGENDA ADOPTION

Council Member Teague asked for clarification regarding the rescheduling of the Rivers Walk public hearing as well as the approval of fee waivers for special event permits. Town Manager John Ward advised that the Rivers Walk public hearing would be heard by both the Planning Commission and Town Council, but would not include new recommendations from the Planning Commission. He added that since he began working for the Town, Council has never denied a request for fee waiver for special event permits, which is why the accompanying budget amendments are now included with the approval of the event in order to save time should Council choose to waive the fee versus submitting the budget amendment separately at their next meeting.

Upon a motion by Council Member Clawson, seconded by Council Member Underdown Collins, Council moved to approve the Consent Agenda.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Loretta Clawson, Council Member
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

TOWN COUNCIL - PUBLIC HEARING - APRIL 4, 2016 5:30 PM

TOWN COUNCIL - SPECIAL MEETING - APR 5, 2016 6:00 PM

TOWN COUNCIL - REGULAR MEETING - APR 21, 2016 5:30 PM

TOWN COUNCIL - PUBLIC HEARING - MAY 2, 2016 5:30 PM

REQUEST TO SEND WELLNESS DISTRICT CASES TO JUNE 6, 2016 PUBLIC HEARING

REQUEST TO RESCHEDULE CASE 20160136 - RIVERS WALK - TO THE JUNE 6, 2016 PUBLIC HEARING

REQUEST TO SEND CASE TO JUNE 6, 2016 SPECIAL PUBLIC HEARING: LANDSCAPE CONTRACTORS TEXT AMENDMENT

APPROVAL OF ENCROACHMENT AGREEMENT WITH RAB PARTNERS, LLC - MARICH LANE

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the 25 day of April, 2016, by and between the TOWN OF BOONE, party of the first part; and RAB Partners, LLC, party of the second part.

W-I-T-N-E-S-S-E-T-H

THAT WHEREAS, the party of the second part desires to encroach on public land designated as (CHOOSE ONE) a public sidewalk/public street/public park/public land (hereinafter referred to as the "public land") located at 141 Marich Lane, Boone, NC with the following: 15" HDPE Stormwater Pipe #103 connecting to structure #102 in Perkinsville Dr (hereinafter referred to as "the encroaching facility"); and

WHEREAS, it is to the material advantage of the party of the second part to effect this encroachment, and the party of the first part, in exercise of authority conferred upon it by statute and ordinance, is willing to permit the encroachment on public land, subject to the conditions of this agreement;

NOW, THEREFORE, IT IS AGREED that the party of the first part hereby grants to the party of the second part the right and privilege to make this encroachment upon the following conditions, to wit:

That the party of the second part complies with all pertinent provisions of the North Carolina State Building Code, the Town of Boone Unified Development Ordinance and the Town of Boone Municipal Code, and such other laws, regulations and ordinances which might apply;

That the said party of the second part binds and obligates itself, its successors and assigns, to install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said public land, nor obstruct nor interfere with the proper maintenance thereof, to reimburse the party of the first part for the costs incurred for any repairs or maintenance to its roadways, sidewalks and other structures resulting from the installation and existence of the encroaching facility of the party of the second part, and if at any time the party of the first part shall require the removal of or changes in the location of the encroaching facility, that the said party of the second part binds itself, its successors or assigns, to promptly remove or alter the said encroaching facility in order to conform to the said requirements of the party of the first part, without any cost to the party of the first part.

That the party of the second part agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and/or other warning devices, as necessary or as requested by the party of the first part's Director of Public Works or his designee, for the protection of the public and in the case of encroachment into a street right of way, in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and amendments or supplements thereto. Information as to the above rules and regulations may be obtained from the party of the first part.

That to the extent permitted by law, the party of the second part shall be responsible for all liability associated with the encroaching facility. In furtherance of such responsibility, the party of the second part agrees to indemnify and hold harmless the party of the first part from and against any claim by any third party based upon any action or omission occurring during construction or maintenance of the encroaching facility, as well as from and against any and all claims, demands, suits, causes of action, or other assertion of responsibility, however denominated, for personal injury, damage to property, losses and expenses, including court costs and attorney's fees, arising out of or in any way related to the encroachment or encroaching facility;

That where pertinent and requested by the party of the first part, the party of the second part agrees to name the party of the first part as an additional insured on its and/or its contractor's general liability insurance policies applicable to the encroachment or encroaching facility.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such encroaching facility as the party of the first part carries out its construction and maintenance operations, and the party of the second part expressly waives all claims of liability or responsibility against the party of the first part for any damage that may be caused to the encroaching facility as the result of the Town carrying out any construction and maintenance operations. The party of the second part acknowledges that with regard to canopies, awnings, signs and similar encroachments, even where same fully comply with the Town of Boone Unified Development Ordinance, when placed less than ten feet above the surface of a public sidewalk, such obstructions are at great risk of damage by the equipment of the party of the first part during snow removal and general sidewalk construction and maintenance, and the party of the second part understands that by placing the encroaching facility less than ten feet above the surface of a public sidewalk, the party of the second part is knowingly and intentionally assuming that heightened risk of damage.

That the party of the second part agrees to be bound by such other and additional conditions as the Town Council may impose in connection with the encroaching facility.

The party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; silting or pollution to the rivers,

streams, lakes, reservoirs, other water impoundments; ground surfaces or other property; or pollution of the air. The party of the second part shall comply with all applicable rules and regulations of the North Carolina Sedimentation Control Commission, the Town of Boone Unified Development Ordinance and all other applicable laws and regulations relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover, the party of the second part agrees to remove and replace the sod or otherwise re-establish the grass cover to meet the satisfaction of the party of the first part. The party of the second part shall comply with all pertinent ordinances, rules, regulations and laws, and failure to do so shall be a basis for revocation of this encroachment agreement by the party of the first part.

That the party of the second part agrees to assume the actual cost of any inspection of the work considered to be necessary by the party of the first part.

That the party of the second part agrees to have available at the encroaching site, at all times during construction, a copy of this agreement showing evidence of approval by the party of the first part. The party of the first part reserves the right to stop all work unless evidence of approval can be shown.

Provided the work referred to in this agreement is being performed on a completed public street open to traffic, the party of the second part agrees to give written notice of when work will begin to the party of the first part.

That in the case of noncompliance with the terms of this agreement by the party of the second part, the party of the first part reserves the right to stop all work until the encroaching facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

That it is agreed by both parties that this agreement shall become void if actual construction of the work contemplated herein is not begun and completed within ____ year(s) from the date of this agreement unless written waiver is secured by the party of the second part from the party of the first part.

The party of the first part expressly reserves the unrestricted right to require the party of the second part to change the location of the encroaching facility described herein at no expense to the party of the first part.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed as of the day and year first above written.

TOWN OF BOONE

By: _____
Mayor

ATTEST:

Town Clerk

By: _____
President/Member-Manager/Owner

Printed Name: Party of the Second Part

ATTEST:

Secretary/Witness

APPROVAL OF ENCROACHMENT AGREEMENT - APPALACHIAN THEATRE OF THE HIGH COUNTRY

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the ____ day of ____, 20__, by and between the TOWN OF BOONE, party of the first part; and APPALACHIAN THEATRE OF THE HIGH COUNTRY, LLC, party of the second part.

W-I-T-N-E-S-S-E-T-H

THAT WHEREAS, the party of the second part desires to encroach on public land designated as (CHOOSE ONE) a public sidewalk/public street/public park/public land (hereinafter referred to as the "public land") located at: 559 WEST KING STREET with the following: STOREFRONT CLADDING SYSTEM & THEATRE MARQUEE (hereinafter referred to as "the encroaching facility", see attached site plan for details); and

WHEREAS, it is to the material advantage of the party of the second part to effect this encroachment, and the party of the first part, in the exercise of authority conferred upon it by statute and ordinance, is willing to permit the encroachment on public land, subject to the conditions of this agreement;

NOW, THEREFORE, IT IS AGREED that the party of the first part hereby grants to the party of the second part the right and privilege to make this encroachment upon the following conditions, to wit:

That the party of the second part complies with all pertinent provisions of the North Carolina State Building Code, the Town of Boone Unified Development Ordinance and the Town of Boone Municipal Code, and such other laws, regulations and ordinances which might apply;

That the said party of the second part binds and obligates itself, its successors and assigns, to install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said public land, nor obstruct nor interfere with the proper maintenance thereof, to reimburse the party of the first part for the costs incurred for any repairs or maintenance to its roadways, sidewalks and other structures resulting from the installation and existence of the encroaching facility of the party of the second part, and if at any time the party of the first part shall require the removal of or changes in the location of the encroaching facility, that the said party of the second part binds itself, its successors or assigns, to promptly remove or alter the said encroaching facility in order to conform to the said requirements of the party of the first part, without any cost to the party of the first part.

That the party of the second part agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and/or other warning devices, as necessary or as requested by the party of the first part's Director of Public Works or his designee, for the protection of the public and in the case of encroachment into a street right of way, in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and amendments or supplements thereto. Information as to the above rules and regulations may be obtained from the party of the first part.

That to the extent permitted by law, the party of the second part shall be responsible for all liability associated with the encroaching facility. In furtherance of such responsibility, the party of the second part agrees to indemnify and hold harmless the party of the first part from and against any claim by any third party based upon any action or omission occurring during construction or maintenance of the encroaching facility, as well as from and against any and all claims, demands, suits, causes of action, or other assertion of responsibility, however denominated, for personal injury, damage to property, losses and expenses, including court costs and attorney's fees, arising out of or in any way related to the encroachment or encroaching facility;

That where pertinent and requested by the party of the first part, the party of the second part agrees to name the party of the first part as an additional insured on its and/or its contractor's general liability insurance policies applicable to the encroachment or encroaching facility.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such encroaching facility as the party of the first part carries out its construction and maintenance operations, and the party of the second part expressly waives all claims of liability or responsibility against the party of the first part for any damage that may be caused to the encroaching facility as the result of the Town carrying out any construction and maintenance operations. The party of the second part acknowledges that with regard to canopies, awnings, signs and similar encroachments, even where same fully comply with the Town of Boone Unified Development Ordinance, when placed less than ten feet above the surface of a public sidewalk, such obstructions are at great risk of damage by the equipment of the party of the first part during snow removal and general sidewalk construction and maintenance, and the party of the second part understands that by placing the encroaching facility less than ten feet above the surface of a public sidewalk, the party of the second part is knowingly and intentionally assuming that heightened risk of damage.

That the party of the second part agrees to be bound by such other and additional conditions as the Town Council may impose in connection with the encroaching facility.

The party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; silting or pollution to the rivers, streams, lakes, reservoirs, other water impoundments; ground surfaces or other property; or pollution of the air. The party of the second part shall comply with all applicable rules and regulations of the North Carolina Sedimentation Control Commission, the Town of Boone Unified Development Ordinance and all other applicable laws and regulations relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover, the party of the second part agrees to remove and replace the sod or otherwise re-establish the grass cover to meet the satisfaction of the party of the first part. The party of the second part shall comply with all pertinent ordinances, rules, regulations and laws, and failure to do so shall be a basis for revocation of this encroachment agreement by the party of the first part.

That the party of the second part agrees to assume the actual cost of any inspection of the work considered to be necessary by the party of the first part.

That the party of the second part agrees to have available at the encroaching site, at all times during construction, a copy of this agreement showing evidence of approval by the party of the first part. The party of the first part reserves the right to stop all work unless evidence of approval can be shown.

Provided the work referred to in this agreement is being performed on a completed public street open to traffic, the party of the second part agrees to give written notice of when work will begin to the party of the first part.

That in the case of noncompliance with the terms of this agreement by the party of the second part, the party of the first part reserves the right to stop all work until the encroaching facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

That it is agreed by both parties that this agreement shall become void if actual construction of the work contemplated herein is not begun and completed within 1 year(s) from the date of this agreement unless written waiver is secured by the party of the second part from the party of the first part.

The party of the first part expressly reserves the unrestricted right to require the party of the second part to change the location of the encroaching facility described herein at no expense to the party of the first part.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed as of the day and year first above written.

TOWN OF BOONE

By: _____
Mayor

ATTEST:

Town Clerk

By: _____
President/Member-Manager/Owner

Printed Name: Party of the Second Part

ATTEST:

Secretary/Witness

**APPROVAL OF CONTRACT RENEWAL WITH DOWNTOWN BOONE
DEVELOPMENT ASSOCIATION FOR FY 2016/17**

**AGREEMENT BETWEEN TOWN OF BOONE
AND THE DOWNTOWN BOONE DEVELOPMENT ASSOCIATION, INC.**

THIS AGREEMENT ("Agreement") is entered into this 19th day of May, 2016, by and between the TOWN OF BOONE, a North Carolina municipality (hereafter referred to as "the Town") and the DOWNTOWN BOONE DEVELOPMENT ASSOCIATION, INC., a North Carolina non-profit membership corporation (hereafter referred to as "the DBDA"), collectively referred to as "the Parties."

W I T N E S S E T H:

THAT, WHEREAS, the Town is a municipal corporation organized pursuant to the laws of the State of North Carolina and located in Watauga County, North Carolina; and,

WHEREAS, the Town has established a Municipal Service District pursuant to N.C. Gen. Stat. § 160A-535, et seq., (hereafter "the MSD") from which it collects a Municipal Service District tax the authorized purposes of which are identified under State law; and,

WHEREAS, the Town is a participant in the North Carolina Main Street Program administered by the North Carolina Department of Commerce (hereafter, "the Main Street Program"); and,

WHEREAS, the DBDA is a North Carolina Non-Profit Corporation, duly organized pursuant to the laws of the State of North Carolina and authorized by law to enter into Agreements for the purposes for which it was created, including the promotion, encouragement, and assistance in the revitalization and economic health and stability of the Town's Municipal Service District (the "MSD"); and,

WHEREAS, the parties wish to confirm their Agreement concerning the expenditure of MSD funds, governance of the DBDA, and required and permitted activities of the DBDA in writing.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration passing from each party to the other, the receipt of which is hereby respectively acknowledged by each of the parties hereto, the parties agree and contract as follows:

1. **Term:** The term of this Agreement shall be one year, commencing on July 1, 2016, and ending June 30, 2017. No continuation or renewal of the Agreement shall be inferred following its expiration, nor shall any further commitment by either party exist without specific action by each of the parties to authorize, create and adopt a new contract, except as to those duties created by this Agreement.
2. **Consideration:** In consideration of the DBDA's performance of the duties and responsibilities set out herein, the Town will make available for expenditure with the advice and direction of DBDA the 2016-2017 MSD tax revenues, as those revenues become available (hereafter, "MSD funds"). Each party recognizes and confirms that all MSD funds are derived from MSD taxes and are subject to all relevant restrictions for MSD tax funds set out in the North Carolina General Statutes. Should the Agreement be terminated or end before all funds have been paid, the Town shall reimburse the DBDA or pay from MSD funds for any outstanding expenses committed by the DBDA pursuant to this Agreement.
3. **Governance:** Beginning with the 2011 annual meeting of the membership of the DBDA, one-half of the members of the Board of Directors shall be elected by the membership of the DBDA, and one-half of the members shall be appointed by the Boone Town Council. Service of the new board shall begin at the first meeting of the directors following the annual meeting of the members. Should the Town Council also appoint one or more of its members as liaison to the DBDA, the DBDA board of directors shall include them in their meetings and deliberations, but they shall be considered as *ex officio*, non-voting members of the Board.
4. **Administration:** The parties acknowledge that the executive director of the DBDA is a Town employee, subject to the Town's Personnel Policy and working under the supervision of the Town Manager or his designee.
5. **Appropriate Uses of MSD Funds:** DBDA shall propose the expenditure of MSD funds solely for purposes authorized by this Agreement, but the DBDA may expend or direct the expenditure of funds from other sources for other purposes so long as: (1) they are accounted for using methods with satisfactorily assure their proper use; (2) no MSD funds are committed, either directly or indirectly, to support any activities which are not appropriate for the use of MSD funds; and, (3) such other funds are expended in accordance with pertinent law and the DBDA's own by-laws. MSD funds will not be authorized for sign or façade grants until a policy is developed and recommended by the DBDA, and adopted by the Town Council, which ensures comprehensive notice of the availability of such grants and which contains criteria for determining which proposed façade or sign improvements or replacements benefit the MSD as a whole and not simply the individual property owner or business.
6. **Recommendations by DBDA to Town Council:** The DBDA will make recommendations to the Town Council for its consideration, to ensure that:
 - A. To the extent feasible and taking into consideration the limits of the DBDA's ability to know all changes which take place within the MSD, the DBDA's Web site is updated at least quarterly and MSD directory signage is updated at least annually.
 - B. Regular office hours for public and membership access to the DBDA director or his or her designee are maintained in accordance with the hours reflected on the DBDA Web site, subject to the review and approval of the Town Manager (who must oversee the hours of employees and Town's compliance with wage and hour laws, etc.).

- C. MSD funds are used to benefit only the MSD area, are used to benefit the entire range of stakeholder categories (i.e. service providers and other non-retail establishments) and all MSD locations (e.g. less-traveled streets and outer boundary edges), and prohibiting the use of MSD funds, in whole or in part, to promote businesses or activities outside the MSD.
- D. At least 30% of MSD funds are utilized for tangible improvements to the MSD, such as streetscape improvements.
- E. Remaining MSD funds are utilized, if desirable, to create, coordinate, and administer District revitalization projects which provide for services or functions, such as additional garbage pick-up, which are in addition to or to a greater extent than those provided or maintained by the Town for the entire town; to support any duly-adopted plan by the Town aimed at improving the MSD, which is specifically authorized herein; or, for such other activities which benefit the MSD, work toward its revitalization or preservation, or otherwise enhance the MSD area and help the businesses of the MSD thrive.

Such recommendations shall address activities such as:

- 1. Promotional and development activities, such as sponsoring festivals and markets in the MSD, promoting business investment in the MSD, helping to coordinate public and private actions in the MSD, and developing and issuing publications on the MSD designed to improve the economic well-being of the MSD.
- 2. Administrative of any MSD revitalization project specifically requested by the Town.
- 3. Creation, maintenance and administration of a clearinghouse for information concerning the availability of properties within the MSD for purchase or rent, by creating, maintaining and administering a repository of such information to which MSD property owners may contribute, as they may wish, and which shall be in a format which will make it broadly available to the public and to people potentially interested in investment in the MSD.
- 4. In participation in activities, and the maintenance and submission of all information requested or required by or of the Town, or by the North Carolina Department of Commerce in order for the Town to continue to participate in good standing in the North Carolina Main Street Program and for the Town to derive all available benefits from its continued participated in the Main Street program.

7. **Commitments by DBDA:** The DBDA agrees that:

- A. Should the DBDA hire employees with non-MSD funds, it will maintain and provide to the Town Manager a comprehensive personnel policy which addresses and ensure the proper performance by non-Town staff for expenditure of funds, and which includes procedures for the supervision of staff and the discipline of staff, with personnel actions up to and including dismissal authorized.
- B. No later than 30 days after its receipt, or Sept. 30, 2016, whichever is earlier, it will provide the Town Manager and Town Council a full copy of any audit which it obtains, and that should it obtain an audit, it shall be prepared by an independent auditing firm having no conflicts of interest and selected by the DBDA board of directors after a general solicitation to appropriate accounting firms in the region, including an Audited Income Statement with detailed expense

categories, not just one generic “downtown redevelopment” expense item. The audit must disclose itemized expenditures by funding source.

- C. At least five days before each meeting of the DBDA board of directors, it will post on its Web site and provide notice, in accordance with its duly adopted by-laws, of the meeting to its membership, Board members, Town Council members and Town Manager, along with an agenda and a copy of the draft minutes from the previous meeting.
 - D. It will provide the Town Manager with a copy of the organization’s Form 990 promptly after it is prepared.
 - E. It will maintain a written policy which requires that a fund accounting system is created and maintained which ensure that any non-MSD funds are used only in accordance with State law and this contract, to the extent applicable.
 - F. It will maintain written policies ensuring that non-MSD funds are properly used in accordance with its own by-laws and in accordance with applicable law.
 - G. It will report to the Town Council the duly adopted, collective views of its full membership and its Board of Directors as to those actions and policies which the Town may consider within the District to improve the District’s economic well-being.
8. **Activities to Serve Entire Municipal Service District without Charge:** The activities of the DBDA and the expenditure of MSD funds shall be undertaken in such manner, insofar as possible, as to provide benefits to and throughout the entire District.
9. **Compliance with Laws:** The DBDA shall comply with all pertinent federal, State, county and Town laws, regulations and ordinances, including but not limited to all North Carolina and federal laws relating to the operation of non-profit membership corporations, those laws which govern the conduct of the annual meetings of its membership and the selection of its directors and officers. In addition, and not by way of exclusion, in any and all its actions and activities, the DBDA shall comply with and hereby certifies its compliance with the Americans with Disabilities Act, as amended, and Title VII of the Civil Rights Act of 1964, as amended, and should it hire employees of its own, the Fair Labor Standards Act, as amended, the Occupational and Health Safety Act, as amended, the North Carolina Employment Security Act, as amended, and the North Carolina Worker’s Compensation Act, as amended, to the extent each such law applies to the DBDA or any of its activities.
10. **Compliance with its By-Laws and Organizational Reporting to the Town:** The DBDA will operate and act in accordance with its duly adopted by-laws, including but not limited to the provisions which govern the conduct of the annual meetings of its membership, the notice and quorum requirements for meetings of its board of directors, the selection of its directors and officers, and its prohibition against legislative advocacy. The DBDA shall seasonably provide the Town with its current by-laws and a roster of its current board of directors and officers, including their names, addresses, terms and class of membership, and it shall seasonably notify and provide a copy to the Town of any changes in its by-laws or in its board of directors or officers. The DBDA shall invite and include in its membership all property owners in the MSD and it shall provide a mechanism or opportunity for all businesses and residents within the MSD to be represented in the DBDA or have their voices heard as policies are formulated and recommended. Should the DBDA’s corporate status be revoked by the North Carolina Secretary of State, or should the DBDA’s non-profit status be revoked by the United States Internal Revenue Service or otherwise, the DBDA shall immediately notify the Town, and this Agreement shall immediately terminate and it shall have no claim to the commitment of any remaining MSD funds.

- 11. Reporting on its Activities:** At least quarterly during the term of the Agreement, and at such additional times as may be requested by the Town, the DBDA shall report to the Town Council on its activities. Said report shall include at a minimum descriptions of activities of the DBDA which have been undertaken since the prior report and those activities which are planned for the future.
- 12. Financial Responsibilities:** The DBDA shall develop and recommend to the Town Council a proposed budget for the expenditure of MSD funds. Such proposed budget shall include an amount sufficient to pay, at a minimum, one-half of the salary and fringe benefits of the executive director of the DBDA. It shall present the proposed budget to the Town Council for its consideration by a date designated by the Town Manager, which gives the Town Finance Director an adequate opportunity to review and evaluate the proposal, and the Town Council an adequate opportunity to review the recommendation and propose such changes as it may determine are desirable. Should the Town Council be unwilling to accept the proposal of the DBDA in any material way, an effort shall be undertaken for the parties to discuss their differences before a final budget is approved by the Town. In addition to provided the annual audit, as required by Paragraph 7(B), the DBDA shall maintain its financial accounts for non-MSD funds, and shall operate in accordance with generally accepted accounting principles. Financial information shall be maintained and provided, if requested, in a form acceptable to the Town and shall include, among other things, a detailed accounting for all funds from all non-MSD sources received or collected by the DBDA during the reporting period. In addition, the DBDA shall provide such records, verification of the expenditure of the funds, and other such information as requested by the Town. Should the DBDA at any time be advised by a funding, taxing or other governmental entity, or by its accountants, or any misappropriation of funds from any source or of any malfeasance or misfeasance, it shall immediately report such advice to the Town. Should the DBDA itself discover or determine any wrongdoing, misappropriation, malfeasance or misfeasance, it shall immediately report such matter to the Town. The DBDA will notify the Town in writing within five days if any member of its staff is charged with or convicted of any crime involving malfeasance or misfeasance, or dishonesty in the use or handling of any DBDA funds, whatever the source, or if the DBDA itself is accused or any wrongdoing. Should the DBDA become aware of or suspicious of any embezzlement, malfeasance or misfeasance by an employee, agent, officer, director or other person connected with DBDA, of any of the DBDA's funds, whether from this grant or elsewhere, whatever the source, it hereby commits that it will promptly report to and notify the appropriate law enforcement agency of such act, omission or suspicion.
- 13. Maintenance of Records:** All records of the DBDA shall be available for inspection by the Town Manager or the Town Manager's designee. The DBDA agrees that records of its past use of MSD funds and of all disbursements of any funds will be maintained by it for a period of no less than seven years, and upon request such books and records will be made available to the Town or its representative for inspection. The DBDA shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement, and the accounting methods shall be satisfactory to the Town. Upon request, the DBDA will turn over all financial records governing the use of MSD funds to the Town for storage and eventual destruction.
- 14. Indemnity:** The DBDA shall indemnify and reimburse the Town for any misuse by it of funds which results in the assertion of liability against the Town. The DBDA hereby releases, acquits and forever discharges the Town, its agents, officers and employees, from any claims, demands, costs, lost or services, expenses, compensation, liabilities and obligations, suits at law or equity, including claims or suits for contribution and/or indemnity of whatever nature and all consequential damages resulting from or on account of its use of non-MSD funds, and it hereby agrees to indemnify and defend the Town from any claims brought as a result of its use or misuse of said funds.
- 15. Insurance:** The DBDA confirms that it maintains sufficient liability insurance coverage to satisfactorily compensate any person for injury to a person or property caused by the operation of DBDA's programs and/or services paid in whole or part with non-MSD funds. The DBDA agrees that should the Town determine, in its sole discretion, that the DBDA does not maintain adequate liability insurance to

satisfactorily protect itself and its participants, it will promptly increase its coverage to a level determined necessary by the Town.

16. **Lobbying:** The DBDA will use no funds for purposes of local, state, or legislative advocacy or lobbying, or to attempt to influence the legislative process at the local, state or federal level. Likewise, no funds will be used to carry on any religious or political activities, or to attempt to influence the outcome of any public election.
17. **Default:** If the DBDA defaults in the performance of any of its duties under this Agreement, all of which are deemed material, the Town may terminate the Agreement after affording the DBDA prior notice and a reasonable opportunity to cure its default. On the date specified in any such notice of default for the DBDA to cure its default, should the default not be cured, this Agreement shall terminate. In the event of repeated violation of this Agreement, the Town may elect to terminate the Agreement without any further chance to cure the violation. Should this Agreement be terminated prior to the full expenditure of MSD funds for the fiscal year, the DBDA shall have no claim to the commitment of remaining funds.
18. **Modification of Agreement, Merger:** This Agreement contains all of the terms and conditions agreed upon by the Town and the DBDA. All discussions between them have been merged into this Agreement, and there are no oral terms or conditions agreed upon by the parties hereto which are not contained in this written Agreement. There shall be no modification of this Agreement unless the modification is in writing and signed by both parties.
19. **Waiver:** The Town's failure to strictly enforce any of its rights under this Agreement shall not constitute a waiver of such rights, and the parties agree that this provision may itself not be waived by the conduct of the parties, but only by a written instrument executed by each.
20. **Relationship of Parties:** Each party shall be considered an independent contractor in relation to the other, and neither shall be construed to be an agent or representative of the other party except as agreed upon by both parties and approved by the Boone Town Council. Therefore, neither party shall have any liability to a third party for the acts or omissions of the other party. In addition, neither party nor any of its employees, agents, or contractors shall be deemed to be employees or agents of the other party. Neither party nor any of that party's employees, agents or contractors shall be entitled to compensation for services, worker's compensation or employee benefits from the other party by virtue of this Agreement or actions taken in furtherance of the Agreement.
21. **Assignments:** The DBDA shall not assign any of its duties under this Agreement or its right to compensation from the Town to any other person or entity without the written consent of the Town, but the Town shall have no responsibility, express or implied, to approve any proposed assignment.
22. **Force Majeure:** In the event that either party shall be interrupted or delayed in completing performance of its obligations hereunder by an act of God or any other occurrence which is wholly beyond the control of the parties hereto, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.
23. **Partial Invalidity:** If any term, covenant, condition or provision of this Agreement shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law. Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

- 24. Headings and Construction of Agreement:** The headings used in this Agreement have been prepared for the convenience of reference only and shall not control, affect the meaning, or be taken as an interpretation or any provisions of this Agreement. This Agreement has been prepared on the basis of mutual understanding of the parties and shall not be construed against either party by reason of such party being the drafter hereof.
- 25. Entirety of Agreement:** This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and Agreements between the parties with respect to said matter. Each party to this Agreement acknowledges that no representations, inducements, promises, or Agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, and that no other Agreement, statement, or promise not contained in this Agreement shall be valid or binding.
- 26. Governing Law and Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, and venue of any dispute between the parties shall be in Watauga County, North Carolina.
- 27. Execution:** Each party represents and warrants to the other that all necessary authorizations and approvals required for execution and performance of this Agreement have been given and obtained, and that the undersigned individual is duly authorized to execute this Agreement and bind the party for which it signs.
- 28. Notices:** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, to the following addresses:

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

If to the DBDA, to: President
The Downtown Boone Development Association, Inc.
P.O. Box 362 DTS
Boone, NC 28607

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

Town of Boone, by

Rennie Brantz, Mayor

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

Downtown Boone Development Association, Inc., by

President

Attest: _____ (Seal)
Secretary, Downtown Boone Development Association, Inc.

**APPROVAL OF NEW MARKET WATER STORAGE TANK WORK BID AWARD -
GLOVERS WELDING AND BRUSHY MOUNTAIN BUILDERS**

APPROVAL OF BUDGET AMENDMENT - SPECIAL PROJECTS/EVENTS

Description:	Account Number:	To:	From:
Cultural Resources – Special Projects/Events	010-418-000-549121	\$7,530	
Cultural Resources Revenue – Fees	010-000-000-484111		(\$7,530)

APPROVAL OF BUDGET AMENDMENT - INSURANCE REIMBURSEMENTS

Description:	Account Number:	To:	From:
Maintenance – Vehicles	010-500-300-525301	\$1,092	
Miscellaneous Revenue	010-000-000-489900		(\$1,092)

REQUEST FOR APPROVAL OF SPECIAL EVENT PERMIT FOR THE HIGH COUNTRY HALF MARATHON AND ACCOMPANYING BUDGET AMENDMENT

Description:	Account Number:	To:	From:
Overtime – Police Department	010-500-300-501201	\$750	
Overtime – Street Department	010-600-401-501201	\$750	
Appropriated Fund Balance – General Fund	010-000-000-499900		(\$1,500)

REQUEST FOR APPROVAL OF SPECIAL EVENT PERMIT FOR THE 2016 BOONE CYCLO.VIA FESTIVAL AND ACCOMPANYING BUDGET AMENDMENT

Description:	Account Number:	To:	From:
Overtime – Police Department	010-500-300-501201	\$750	
Overtime – Street Department	010-600-401-501201	\$750	
Appropriated Fund Balance – General Fund	010-000-000-499900		(\$1,500)

APPROVAL OF ENCROACHMENT AGREEMENT - WINDSTREAM COMMUNICATIONS, INC.

STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the __ day of __, 20__, by and between the TOWN OF BOONE, party of the first part; and WINDSTREAM KDL, LLC, party of the second part.

W-I-T-N-E-S-S-E-T-H

THAT WHEREAS, the party of the second part desires to encroach on public land designated as public street(s) (hereinafter referred to as the "public land") by installing aerial fiber optic cable on existing utility poles owned by New River Light and Power ("NRLP") as follows: at a point beginning at the AT&T Central Office located at 179 East King Street, with aerial fiber optic cable connected to pole number NRLP45-4 (02P) and crossing East King Street and attaching to pole number NRLP45-4 on the north side of Oak Street; from there moving in a westerly direction on Oak Street attaching to NRLP poles through pole number NRLP45-5(16P); from that point, moving south attaching to poles beginning with pole number NRLP40-4(21P) on Blowing Rock Road (US 321), and continuing to NRLP50-3 (26P); from that point, crossing Blowing Rock Road, and entering into the Standard Apartment complex (hereinafter referred to as "the encroaching facility"); and

WHEREAS, it is to the material advantage of the party of the second part to effect this encroachment, and the party of the first part, in the exercise of authority conferred upon it by statute and ordinance, is willing to permit the encroachment on public land, subject to the conditions of this agreement;

NOW, THEREFORE, IT IS AGREED that the party of the first part hereby grants to the party of the second part the right and privilege to make this encroachment upon the following conditions, to wit:

That the party of the second part complies with all pertinent provisions of the North Carolina State Building Code, the Town of Boone Unified Development Ordinance and the Town of Boone Municipal Code, and such other laws, regulations and ordinances which might apply;

That the said party of the second part binds and obligates itself, its successors and assigns, to install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said public land, nor obstruct nor interfere with the proper maintenance thereof, to reimburse the party of the first part for the costs incurred for any repairs or maintenance to its roadways, sidewalks and other structures resulting from the installation and existence of the encroaching facility of the party of the second part, and if at any time the party of the first part shall require the removal of or changes in the location of the encroaching facility, that the said party of the second part binds itself, its successors or assigns, to promptly remove or alter the said encroaching facility in order to conform to the said requirements of the party of the first part, without any cost to the party of the first part.

That the party of the second part agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and/or other warning devices, as necessary or as requested by the party of the first part's Director of Public Works or his designee, for the protection of the public and in the case of encroachment into a street right of way, in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and amendments or supplements thereto. Information as to the above rules and regulations may be obtained from the party of the first part.

That to the extent permitted by law, the party of the second part shall be responsible for all liability associated with the encroaching facility. In furtherance of such responsibility, the party of the second part

agrees to indemnify and hold harmless the party of the first part from and against any claim by any third party based upon any action or omission occurring during construction or maintenance of the encroaching facility, as well as from and against any and all claims, demands, suits, causes of action, or other assertion of responsibility, however denominated, for personal injury, damage to property, losses and expenses, including court costs and attorney's fees, arising out of or in any way related to the encroachment or encroaching facility;

That where pertinent and requested by the party of the first part, the party of the second part agrees to name the party of the first part as an additional insured on its and/or its contractor's general liability insurance policies applicable to the encroachment or encroaching facility.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such encroaching facility as the party of the first part carries out its construction and maintenance operations, and the party of the second part expressly waives all claims of liability or responsibility against the party of the first part for any damage that may be caused to the encroaching facility as the result of the Town carrying out any construction and maintenance operations. The party of the second part acknowledges that with regard to canopies, awnings, signs and similar encroachments, even where same fully comply with the Town of Boone Unified Development Ordinance, when placed less than ten feet above the surface of a public sidewalk, such obstructions are at great risk of damage by the equipment of the party of the first part during snow removal and general sidewalk construction and maintenance, and the party of the second part understands that by placing the encroaching facility less than ten feet above the surface of a public sidewalk, the party of the second part is knowingly and intentionally assuming that heightened risk of damage.

That the party of the second part agrees to be bound by such other and additional conditions as the Town Council may impose in connection with the encroaching facility.

The party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; silting or pollution to the rivers, streams, lakes, reservoirs, other water impoundments; ground surfaces or other property; or pollution of the air. The party of the second part shall comply with all applicable rules and regulations of the North Carolina Sedimentation Control Commission, the Town of Boone Unified Development Ordinance and all other applicable laws and regulations relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover, the party of the second part agrees to remove and replace the sod or otherwise re-establish the grass cover to meet the satisfaction of the party of the first part. The party of the second part shall comply with all pertinent ordinances, rules, regulations and laws, and failure to do so shall be a basis for revocation of this encroachment agreement by the party of the first part.

That the party of the second part agrees to assume the actual cost of any inspection of the work considered to be necessary by the party of the first part.

That the party of the second part agrees to have available at the encroaching site, at all times during construction, a copy of this agreement showing evidence of approval by the party of the first part. The party of the first part reserves the right to stop all work unless evidence of approval can be shown.

Provided the work referred to in this agreement is being performed on a completed public street open to traffic, the party of the second part agrees to give written notice of when work will begin to the party of the first part.

That in the case of noncompliance with the terms of this agreement by the party of the second part, the party of the first part reserves the right to stop all work until the encroaching facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

That it is agreed by both parties that this agreement shall become void is actual construction of the work contemplated herein is not begun and completed within **one (1)** year(s) from the date of this agreement unless written waiver is secured by the party of the second part from the party of the first part.

The party of the first part expressly reserves the unrestricted right to require the party of the second part to change the location of the encroaching facility described herein at no expense to the party of the first part.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed as of the day and year first above written.

[signatures follow]

TOWN OF BOONE

WINDSTREAM KDL, LLC

By: _____
Rennie Brantz, Mayor

By: _____
Stacy M. Light
Manager – OSP Engineering

ATTEST:

Town Clerk

ATTEST:

Witness
Autry Meeker
Sr. Analyst – OSP Engineering

SCHEDULING OF PUBLIC HEARING - FY 2016/17 BUDGET

Scheduled for Thursday, June 16, 2016, during Council's regular meeting beginning at 5:30 p.m. in the Council Chambers located at 1500 Blowing Rock Road.

COUNCIL MATTERS

REQUEST FOR DIRECTION REGARDING NCDOT SAFE ROUTES TO SCHOOL SIDEWALK PROJECT

Town Manager John Ward advised Council that when Council first authorized funding for the NCDOT Safe Routes to School Sidewalk Project, no estimates had been received for the final installation costs, and it was assumed that any new installations would be, for the most part, completed within NCDOT right-of-way and that the Town's costs would be covered but not to exceed the \$500,000 granted from the Federal Highway Administration/NCDOT Bike/Ped Division for construction. Since that time, staff has been advised by NCDOT that they are unable to certify the rights-of-way along the western side of NC Highway 194, but are willing to accept an area of right-of-way along the eastern side of Hwy. 194 if the property owners and our attorney do not dispute the surveys. Mr. Ward presented to Council five options for consideration on how to proceed with this project. He noted that no monies have been budgeted for these services within the existing or proposed budgets and all costs to date have been absorbed within the current budget. Mayor Brantz noted that the Rural Transportation Advisory Committee met and the Hwy. 194 widening project was identified as a priority for 2025, therefore any sidewalks put in could potentially be removed later. Mr. Ward recommended Council move forward with Option 5 which would connect the school to the existing sidewalks at New Market Boulevard and safeguard the remaining money for sidewalks throughout the rest of town.

Discussion ensued regarding the various options presented and if NCDOT would work with the town when the expansion to Hwy. 194 was done to ensure bike lanes and sidewalks similar to the Hwy. 421 expansion completed. Upon a motion by Council Member Mizelle, seconded by Council Member Underdown Collins, Council moved to accept Option 5 (Termination of contract and abandonment of project, but complete a sidewalk connection with New Market Boulevard in front of the school on our own. Requires easement from Watauga County Schools plus an encroachment agreement with NCDOT, but the only other associated costs would be for the construction of the sidewalk. Staff estimated \$25,000 to complete this with Town personnel) and to send this decision to the Alternate Transportation Subcommittee for additional advice on how to facilitate a safe crossing to Hardin Park School.

After some confusion, it was clarified that the area which would have a sidewalk constructed under Option 5 only included from New Market Boulevard to the entrance of Hardin Park School. Mr. Ward advised Council that the other options presented would require the grant of \$500,000, all sidewalk fund money budgeted plus some additional money from the fund balance in order to complete those sidewalk project versions. With no further discussion, Mayor Brantz called for a vote.

RESULT:	APPROVED [3 TO 2]
MOVER:	Charlotte Mizelle, Council Member
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Clawson, Mizelle, Collins
NAYS:	Mason, Teague

REQUEST FOR DIRECTION REGARDING AMENDMENTS TO HARDSHIP POLICY

Town Manager John Ward presented a draft hardship policy for Council to consider and provide feedback (Copy of draft policy in May 2016 meeting packet). He noted they are approaching a total of \$70,000 waived in water and sewer fees this year. Mr. Ward stated that the proposed revisions to the policy allow for shared responsibility, only allowing waivers for concealed leaks. He stated this a two-part process with the first part being reducing the amount of waivers given and the second part to include a potential meter replacement program in the future to reduce the unaccounted for water. Mr. Ward noted some of the major changes to the policy proposed, including who holds the responsibility of waiving fees--public works director handles requests under \$3,000 and town manager for anything exceeding that amount-- and no adjustments unless leak exceeds 10,000 gallons. Discussion ensued regarding a possible payment plan option, some waiver requests still coming to Council, whether income levels should play a role and the percentage of fees to be waived in these circumstances. There was a general consensus by Council that they would like to address a payment plan option, receive an update in the quarterly financial report as to how much has been waived, include notice in water bill invoices regarding the upcoming process changes, and to increase the amount waived to 75% until the upgrade to the metering system is completed in order to notify people of leaks sooner.

RESULT:	CONSENSUS
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CONSIDERATION OF CASES HEARD AT THE MAY QUARTERLY PUBLIC HEARING

Mayor Brantz declared a break at 7:22 p.m. Council reconvened at 7:31 p.m.

CASE 20160058 MODERN AUTOMOTIVE - GENERAL USE ZONING MAP AMENDMENT - VOTE #1

Mr. Jerry Hollifield with Modern Automotive Network has filed a General Use Zoning Map Amend Petition to rezone the R3 Multi-Family Residential portion of 185 and 225 Modern Drive to B3 General Business.

Upon a motion by Council Member Mizelle, seconded by Council Member Underdown Collins, Council moved that the proposed amendment to the Town's zoning map is consistent with the Town's Comprehensive Plan and

other applicable adopted plans of the Town which relate to this application because currently the combined parcel is split-zoned and staff recommends to unify general use zoning on existing split-zoned parcels where appropriate. On the parcel associated with this large project, B-3 uses are much more compatible with the existing use than those associated with the R-3 zone. The Corridor District reaches almost to the back of the area proposed for B-3 zoning.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Charlotte Mizelle, Council Member
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CASE 20160058 MODERN AUTOMOTIVE GENERAL USE ZONING MAP AMENDMENT - VOTE #2

Upon a motion by Council Member Mizelle, seconded by Council Member Underdown Collins, Council moved to approve the proposed amendment to the Town's zoning map and believe approval is reasonable and in the public interest because the parcel is located in the Primary Growth Area as mentioned in the Comprehensive Plan 1.2. The town shall encourage a public serve and regulatory environment conducive to business recruitment and expansion as mentioned in the Comprehensive Plan 2.1.1 (E). The commercial uses may be encouraged to develop by consolidation and expansion of existing commercially zoned property as mentioned in the Comprehensive Plan 2.1.1 (F), only when such consolidation and expansion does not encroach upon a viable residential area.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Charlotte Mizelle, Council Member
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CASE 20160027 PROTEST PETITION REMOVAL - TEXT AMENDMENT - VOTE #1

Amend UDO Articles 1 and 9 to remove reference to "Protest Petitions."

Upon a motion by Council Member Underdown Collins, seconded by Council Member Mason, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to this application importantly because as of Aug. 1, 2015, the North Carolina General Assembly eliminated a municipality's ability to allow protest petitions in zoning ordinance amendments. Therefore, the UDO must be in compliance with the modified North Carolina General Statutes.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jeannine Underdown Collins, Council Member
SECONDER:	Lynne Mason, Mayor Pro Tem
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CASE 20160027 PROTEST PETITION REMOVAL - TEXT AMENDMENT - VOTE #2

Upon a motion by Council Member Underdown Collins, seconded by Council Member Mason, Council moved to approve the proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because the Unified Development Ordinance must comply with North Carolina General Statutes:

Article 1 General Provisions

...

- 1.14.03** Except for appeals to the Board of Adjustment ~~or protest petitions~~, any materials received after 3:00 p.m. will be considered to have been received the next business day.

Article 9 Amendments

...

9.04 ~~Protest Petition~~ Citizen Comment

- 9.04.01** If any resident or property owner in the Town submits a written statement regarding a proposed amendment, modification, or repeal to a zoning ordinance to the clerk to the board at least two (2) business days prior to the proposed vote on such change, the clerk to the board shall deliver such written statement to the Town Council.

- ~~9.04.01~~ If a protest petition opposing a general or conditional district map amendment is filed in accordance with the provisions of this Section, then the proposed amendment may be adopted only by a favorable vote of three fourths of the Council.

- ~~A.~~ For the purposes of this Section, vacant positions on the Council and members who are excused from voting shall not be considered for calculation of the requisite supermajority.

- ~~9.04.02~~ To trigger the three fourths vote requirement, the petition must meet all of the following:

- ~~A.~~ Be signed by the owners of either:

1. Twenty percent (20%) or more of the area included in the proposed change, or
2. Five percent (5%) of a 100-foot wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned.

- ~~B.~~ **Computation of Protest Petition Area:**

1. A street right of way shall not be considered in computing the 100-foot buffer area as long as that street right of way is 100 feet wide or less.
2. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel.
3. In the absence of evidence to the contrary the Town may rely on the county tax listing to determine the 'owners' of potentially qualifying areas.

- ~~C.~~ **Property Owner Signature Required:** When there are multiple owners of a single parcel, all owners must sign the protest petition for the parcel to be included in the calculation of the amount of property represented by the protest petition.

- ~~D.~~ Be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment.

- ~~E.~~ Be received by the Town Clerk in sufficient time to allow the Town at least two (2) normal working days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed amendment to determine the sufficiency and accuracy of the petition.

- ~~F.~~ Be on a form provided by the Town Clerk and contain all the information requested on this form.

- ~~9.04.03~~ A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment.

- ~~9.04.04~~ Only those protest petitions that meet the qualifying standards set forth at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement.

- ~~9.04.05~~ A protest petition shall not be applicable to the following:

- ~~A.~~ Any amendment which initially zones property added to the Town's jurisdiction as a result of annexation or otherwise, or

- ~~B.~~ Amendments to adopted conditional districts when the amendment does not:

1. Change the types of uses that are permitted within the district or
2. Increase the approved density for residential development, or
3. Increase the total approved size of nonresidential development, or

~~4. Reduce the size of any buffers or screening.~~

~~9.04.06 — If a petition opposing a change in the zoning classification of any property is filed in accordance with the provisions of this Section, the Administrator shall announce to the Commission and Council receipt of such petition prior to accepting public comment at the public hearing.~~

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jeannine Underdown Collins, Council Member
SECONDER:	Lynne Mason, Mayor Pro Tem
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CASE 20160028 FIRE CODE COORDINATION - TEXT AMENDMENT - VOTE #1

Amend UDO Article 23 to bring street and driveway standards into compliance with the NC Fire Code.

Upon a motion by Council Member Underdown Collins, seconded by Council Member Mason, Council moved that the proposed amendment to the zoning ordinance is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to this application because it aligns the Unified Development Ordinance with the North Carolina Fire Code and eliminate confusion of the different standards for applicants. It aligns the Unified Development Ordinance with other elements of North Carolina state law, and the proposed amendment has been approved by the Fire Marshal. It is also supported by Comprehensive Plan 2.1.1 E 1, and will continue to assist in aspects to make development regulations and permit procedures more predictable and timely.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jeannine Underdown Collins, Council Member
SECONDER:	Lynne Mason, Mayor Pro Tem
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CASE 20160028 FIRE CODE COORDINATION - TEXT AMENDMENT - VOTE #2

Upon a motion by Council Member Underdown Collins, seconded by Council Member Mason, Council moved to approve the proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because the existing language in the Unified Development Ordinance Subsections 23.03 and 23.04 are in conflict with the requirements of the North Carolina Fire Code regarding maximum grade for driveways and streets:

Article 23 Driveways, Streets, and Sidewalks

...

23.03 Driveways

...

23.03.04 The maximum grade at any one point on a driveway used for a fire access roadway shall not exceed ~~fifteen percent (15%)~~ **ten percent (10%) at any one point on the driveway** unless ~~no other practicable alternative is available and has been approved by the Boone Fire Marshal~~ **Chief of the Boone Fire Department.**

23.04 Relationship of Streets to Topography

...

23.04.02 The maximum grade ~~at any one point on a~~ **of any** street used for a fire access roadway shall not exceed ~~fifteen percent (15%)~~ **ten percent (10%) at any one point** unless ~~no other practicable alternative is available and has been approved by the Boone Fire Marshal~~ **Chief of the Boone Fire Department.**

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jeannine Underdown Collins, Council Member
SECONDER:	Lynne Mason, Mayor Pro Tem
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CASE 20160178 PLANNED DEVELOPMENT MODIFICATION - TEXT AMENDMENT

Amend UDO Article 9 to modify who the applicant must invite to the neighborhood meeting and the place of the meeting.

Planning Director Bill Bailey clarified each of the four amendments recommended by the Planning Commission pertaining to neighborhood meetings under the Planned Development process. Discussion ensued regarding the process for making additional revisions to proposed text amendments following Council direction at their public hearings. Town Attorney Allison Meade noted that she would prefer if, in the future, any consensus of the Council's direction for revisions be put into the text and presented to Council in that form for consideration in addition to the Planning Commission recommendations. Council was in consensus they would like the neighborhood meeting notices to be sent out to property owners located within 300 feet of the proposed development property, would like to give the option of the Watauga County Administration Building or the Town Council Chambers both as primary location options for the neighborhood meeting, and would like the changes previously discussed incorporated into the proposed text for review at the next meeting for consideration.

Upon a motion by Council Member Underdown Collins, seconded by Council Member Clawson, Council moved to continue Case 20160178 Planned Development Modification - UDO Text Amendment until the Thursday, June 16, 2016, regular Town Council meeting with the revisions previously discussed.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jeannine Underdown Collins, Council Member
SECONDER:	Loretta Clawson, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CASE 20160222 UNLISTED USES - TEXT AMENDMENT

Town Manager John Ward noted this item would be delayed for consideration until after closed session.

CASE 20160224 TREE BOARD REMOVAL - TEXT AMENDMENT - VOTE #1

Amend UDO Article 2 to remove the "Tree Board" from the UDO and modify the powers and duties of the "Community Appearance Commission."

Upon a motion by Council Member Mason, seconded by Council Member Clawson, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to this application because it will continue to conserve existing trees and plant new trees, and continues the Town's commitment to maintaining urban forest and tree preservation and consolidates the responsibilities of two boards into one, allowing for greater efficiency.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Mayor Pro Tem
SECONDER:	Loretta Clawson, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CASE 20160224 TREE BOARD REMOVAL - TEXT AMENDMENT - VOTE #2

Upon a motion by Council Member Mason, seconded by Council Member Underdown Collins, Council moved to approve the proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because the previous duties of the Tree Board are now part of the Community Appearance Commission duties:

Article 2 Administrative Mechanisms

....

2.03.06 Powers and Duties of the Community Appearance Commission

A. The Community Appearance Commission may:

1. Make studies and recommend to the Council plans, goals, and objectives relating to the visual appearance, community beautification, landscape development, urban forest protection and redevelopment of the Town's planning area; and
2. Develop and recommend to the Council policies, Ordinances, administrative procedures, and other means for carrying out plans for community beautification in a coordinated and efficient manner. The Community Appearance Commission shall not, however, have the power to "initiate" changes to this Ordinance, as the term "initiate" is used in Section 9.02; and
3. Develop educational programs and materials which inform the public on matters concerning community beautification and urban forest protection and other subjects as detailed in Section 2.03.06(A)(1); and
4. Respond to requests made by the Administrator for recommendations concerning the suitability of site landscaping for proposed special use permits; and
5. Upon request of the Administrator, review and approve or reject requests for approval of alternative means to address the Community Appearance Standards of Article 25, as well as when such approval is a condition adopted by the Board in connection with the issuance of a special use permit or one adopted by the Council in a conditional zoning determination; and
6. Coordinate and/or conduct special studies related to assigned responsibilities; and
7. Perform any other duty assigned by the Council which is authorized pursuant to N.C. Gen. Stat. § 160A-452.
(20160224-05192016)

...

2.05 ~~Tree Board Reserved (20160224-05192016)~~

2.05.01 ~~The Tree Board is an advisory board which makes recommendations, studies and educational programs relating to the urban forest within the Town's jurisdiction pursuant to Subsection 2.05.05.~~

2.05.02 ~~Appointment and Terms of Tree Board Members~~

- ~~**A. Number of Members:** There shall be a Tree Board consisting of five members. All members shall reside within the planning jurisdiction of the Town.~~
- ~~**1.** To the extent qualified persons can be found, the members shall have special training or experience in arboriculture, horticulture, architecture, or landscape design.~~
- ~~**2.** If during a protracted period of time during for which a position is advertised no qualified person applies, then any interested person may be appointed.~~
- ~~**a.** Ninety (90) days shall be considered a "protracted period of time" for purposes of this Section.~~
- ~~**B. Terms:** Tree Board members shall be appointed for two [2] year staggered terms, but members may continue to serve until their successors have been appointed.~~
- ~~**1.** Vacancies which occur for reasons other than the expiration of term shall be filled as they occur for the unexpired remainder of the term.~~

- ~~2. Members may be appointed to no more than three successive terms. A former member may be reappointed following a one year period of non-membership.~~

~~C. Absences:~~

- ~~1. Absences due to sickness, death or other emergencies of like nature shall be recognized as excused absences and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Commission.~~
- ~~a. For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings.~~
- ~~b. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by the Council, the member shall be replaced.~~
- ~~c. Council may take specific action to excuse the absences and reappoint a member after being informed by the Administrator of the member's removal.~~
- ~~2. Tree Board members shall be automatically removed for failure to attend three (3) consecutive meetings or for failure to attend fifty percent (50%) of the regular meetings in any twelve month period.~~
- ~~3. The Administrator shall notify in writing any member for whom one more absence will trigger removal.~~
- ~~4. The Administrator shall notify the member and Town Council when a member has exceeded the allowable number of unexcused absences.~~

- ~~D. Resignation: A member of the Tree Board may resign by notifying the Mayor, Town Manager, or Administrator. A resignation shall be effective at the time a replacement member has been appointed unless the member declares a date certain in the resignation.~~

2.05.03 Meetings of the Tree Board

- ~~A. Schedule: The Tree Board shall conduct a meeting no less than quarterly (in order to meet the requirements of Tree City USA), or more often as it shall determine or require, to be held so long as there are items for its consideration, and it may schedule additional meetings ("continuation meetings" and "special meetings"), as necessary, so long as all notice requirements are met. Continuation meetings may be scheduled without additional advertising if the date, time, and location of the meeting is adopted and announced by the Tree Board at a duly advertised meeting.~~
- ~~B. Rules and Procedure: Since the Board has only advisory authority, it need not conduct its meetings strictly in accordance with the quasi-judicial procedures set forth in Article 6. However, it shall conduct its meetings so as to obtain necessary information and to promote the free and full exchange of ideas.~~
- ~~C. Open Meetings: The Tree Board shall operate in compliance with the North Carolina Open Meetings law, codified as N.C. Gen. Stat. §§ 143-318.9 et seq. (hereafter, "the law"). At a minimum, all meetings of the Tree Board or any subcommittee, advisory group, or working group, by whatever name or designation (hereafter referred to as a "subcommittee") shall require all of the following:~~
- ~~1. Notice of all official meetings, other than an emergency meeting, by posting of the date and time of the meeting at least 48 hours in advance on the bulletin Board for that purpose in Town Hall. If an agenda has been distributed to members of the Tree Board or subcommittee, it shall also be posted.~~

- ~~a.~~ An “official meeting” occurs whenever a regularly scheduled meeting of the Tree Board or subcommittee occurs, whether or not a quorum is present, or when a majority of the Tree Board meets, whether in person or by electronic means such as conference call or e-mail, to conduct a hearing, deliberate, take action, or otherwise transact public business.
- ~~b.~~ “Deliberate” includes examining, weighing or reflecting upon the reasons for or against a possible decision and also includes the collective acquisition and exchange of facts preliminary to a decision.
- ~~c.~~ An “emergency meeting” is one that concerns generally unexpected circumstances which require the immediate consideration of the Tree Board or subcommittee. In the event of an emergency meeting, a local news medium must be notified prior to the meeting of the date, time and subject matter of the meeting.
- ~~2.~~ A meeting which is open to the public, except as to a closed session conducted in accordance with the law for a reason authorized by the law.
- ~~3.~~ Full and accurate minutes of the meeting, a copy of which shall be provided to the Town Clerk, once they are approved by the Tree Board or subcommittee.
- ~~a.~~ Minutes of the Tree Board or subcommittee shall be subject to revision and adoption by the group as a whole.
- ~~D.~~ In the absence of the Chair, the Vice Chair shall conduct any meeting of the Tree Board, and in the absence of both officers, the Mayor may designate a person to act as Chair for the meeting in question or if no one is designated the Board can elect a presiding officer by majority vote.
- ~~E.~~ The agenda shall include only those matters within the responsibilities and powers of the Tree Board, as provided herein.
- ~~F.~~ The business of the Tree Board or subcommittee shall be conducted in such manner as to afford all members an opportunity to speak. However, no member shall generally address the body until first recognized by the Chair, and members of the Tree Board or subcommittee shall be respectful to each other and shall avoid interrupting each other.
- ~~G.~~ Meetings of the Tree Board or subcommittee shall proceed in the following order: adoption of an agenda, approval of the minutes, unfinished business, new business, informal discussion, and public comment, when public comment is to be accepted. By majority vote of the members in attendance, the order of business may be altered.
- ~~H.~~ At any meeting of the Tree Board or subcommittee, if the meeting is opened for public comment, any person wishing to address the body or subcommittee shall state his or her name and whether or not he or she is a resident of the Town or ETJ.
 - ~~1.~~ If there is a signup sheet provided, speakers shall be recognized in the order in which they have signed up.
 - ~~2.~~ Unless a different time limit is adopted by the Tree Board or subcommittee, no member of the public shall be allowed to speak for more than five minutes.
 - ~~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 such persons designate a spokesperson for their group to address the Tree Board or subcommittee, and the presiding officer may allot a larger amount of time for the presentation of the group position by the spokesperson.
 - ~~4.~~ All persons addressing the Tree Board or subcommittee 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 such person(s) and, except in a situation where there is a risk of harm to any person present, providing such person(s) the opportunity to alter the behavior to bring it into conformity with norms of accepted decorum, the presiding officer may direct that such person(s) be removed from the meeting.~~

2.05.04 — Quorum and Voting

~~A.~~ A quorum shall consist of a simple majority of the appointed members.

~~B.~~ All actions or recommendations of the Tree Board or subcommittee shall require the presence of a quorum and are only effective or adopted upon majority vote of the members present, following a motion and second. In the case of a divided vote on any question on which the Tree Board is required to act, the record shall include the vote of each member. When such action is to be reported to the Council, Community Appearance Commission or Planning Commission, the Tree Board shall not only report the action or recommendation adopted, but the vote by which it was adopted. Proxy voting is not allowed, but a member who cannot be physically present may participate in the meeting by electronic or telephonic means so long as the member can hear all deliberations and proceedings of the Board, and the members of the Board can hear the member.

~~C.~~ A roll call vote shall be taken upon the request of any member.

2.05.05 — Tree Board Officers

~~A.~~ Unless the Town Council designates the Chair and Vice Chair of the Tree Board, it shall retain the power to choose its own Chair and Vice Chair. The Tree Board shall designate the Chair and Vice Chair of any subcommittees. The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for re appointment. Vacancies in these offices shall be filled for the unexpired terms only. The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for re appointment. Vacancies in these offices may be filled for the unexpired terms by the Council.

~~B.~~ The Chair and Vice Chair may take part in all deliberations and vote on all issues.

2.05.06 — Powers and Duties of the Tree Board

~~A.~~ The Tree Board may:

- ~~1.~~ Make studies and recommend to the Council plans, goals, and objectives relating to the urban forest of the Town.
- ~~2.~~ Develop and recommend to the Council policies, Ordinances, administrative procedures, plans and other means for maintaining the Town's urban forest program. The Tree Board, shall not, however, have the power to "initiate" changes to this Ordinance, as the term "initiate" is used in Section 9.02.
- ~~3.~~ Develop public education programs which inform the public on matters concerning the betterment of trees and related resources.
- ~~4.~~ Coordinate and/or conduct special projects for the betterment of the urban forest.

~~B.~~ Limitations on Powers of the Tree Board

- ~~1.~~ No individual member of the Board shall purport to speak or act on behalf of the Board without action by the Board explicitly authorizing the member to speak or act on its behalf.
- ~~2.~~ No individual member of the Board, or the Board itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the Board to speak or act on its behalf.

- ~~3. Without an express grant of authority or explicit authorization by the Council, no individual member of the Board, or the Board itself, shall direct Staff to take action requiring the expenditure of Town funds.~~
- ~~4. The Tree Board shall not create any group external to its membership without the explicit approval and or appointment of the Town Council. When deemed appropriate the Town Council will appoint a group(s) to advise the Tree Board on tasks assigned by the Town Council or its designee.~~
- ~~5. The Tree Board may create subcommittees or working groups within its membership without explicit approval of the Town Council providing that these groups do not require ongoing resources. Where ongoing resources are requested the assignment of these resources shall be approved by the Town Manager or his or her designee.~~

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Mayor Pro Tem
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CASE 20150149 PUBLIC HEARING PROCESS CHANGE - TEXT AMENDMENT - VOTE #1

Modify UDO Article 9 with respect to the hearing, review and approval process for UDO text amendments and Zoning Map amendments (including PD and CD applications).

Brief discussion ensued regarding whether there should be language addressing the meeting to be tentatively scheduled for the fourth Monday of each month to hear cases. Planning Director Bill Bailey stated a calendar of these dates would be published, but it is not required by statute to include this as part of the text. Town Attorney Allison Meade stated that while she thought there would be text specifying this schedule, there is something to be said by keeping it flexible in the language in case it needs to be changed. Mr. Bailey reviewed the proposed schedule with Council.

Upon a motion by Council Member Mason, seconded by Council Member Underdown Collins, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to this application because it is another way to make development regulations and permit procedures more predictable and timely.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Mayor Pro Tem
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CASE 20150149 PUBLIC HEARING PROCESS CHANGE - TEXT AMENDMENT - VOTE #2

Upon a motion by Council Member Mason, seconded by Council Member Clawson, Council moved to approve the proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because the proposed changes streamline the amendment process by providing for a monthly public hearing schedule rather than quarterly, allowing development proposals and text amendments to be heard, discussed and decided in a timely manner:

Article 9 Amendments

9.01 Amendments in General

9.01.01 Amendments to the text of this Ordinance (hereafter, “the UDO”) or to the Town’s officially adopted zoning map shall be made in accordance with the provisions of this Article.

9.02 Initiation of Amendments**9.02.01 Text and Map Amendments**

~~Only Council may initiate an amendment to this Ordinance. Staff and other Town entities (boards, commissions, advisory bodies, and other such entities), when they are charged or empowered with making recommendations to the Council regarding the text of the UDO, may make recommendations regarding potential desired changes to the UDO to the Council, but the preparation of the text of a proposed draft amendment shall only proceed after the Council has endorsed the policy objectives sought to be achieved with the recommendation and has acted to authorize preparation of a draft text amendment.~~

~~Whenever a request to amend the text of this Ordinance is initiated or authorized by the Council, the Town Attorney in consultation with the Administrator shall determine whether the proposed amendment represents substantive planning policy or procedural matters, such as enforcement procedures, amendment procedures and appeal procedures.~~

- ~~1. If the Town Attorney determines the proposed amendment represents a substantive planning policy, the Administrator shall draft the text of the proposed amendment in consultation with the Town Attorney. Before an amendment drafted by the Administrator is presented to the Council for consideration, the Town Attorney shall endorse and date the draft amendment with the following statement: Approved as to Form this ___ day of ___, 20___, _____ Town Attorney.~~
- ~~2. If the Town Attorney determines the proposed amendment represents a procedural matter, the Town Attorney shall draft the text of the proposed amendment in consultation with the Administrator. Before an amendment drafted by the Town Attorney is presented to the Council for consideration, the Administrator shall endorse and date the draft amendment with the following statement: Approved as to Planning Policy this ___ day of ___, 20___, _____, Administrator.~~
- A. Any other person may petition request the Council to amend the text of this Ordinance set a public hearing to consider a text amendment or a general map amendment, Conditional District map amendment or Planned Development map amendment (the later three being collectively referred to as “map amendments” or “rezonings”).
 1. Such petition shall be heard by Council at the next available regularly-scheduled Council meeting.
- B. The petition shall be filed with the Administrator and shall include at a minimum:
 1. The name, address, and phone number of the applicant, and
 2. A In the case of a proposed text amendment, a summary of the specific objective of any proposed change in the text of this Ordinance.
 3. In the case of a proposed general map amendment,
 - a. A description of the land affected by the proposed amendment, and
 - b. A description of the proposed map change.
 4. In the case of Conditional District or Planned Development map amendments, those items described at Subsection 9.02.02 below.
- C. The drafting of proposed text amendments and general map amendments and consideration of any such amendment at a public hearing may proceed only upon direction given by Council to Staff:
 1. Upon Council’s own initiative, or
 2. Upon recommendation made by Staff, the Town Attorney, or any Town board, commission, or other entity, or
 - a. Every text amendment proposed by a department, board, or officer of the Town shall be drafted by the Administrator or the Town Attorney, in consultation with each other.

3. Upon consideration by Council of a petition made by the owner of any legal or equitable interest in land located within the Town or its extraterritorial jurisdiction;
4. Provided, however, that amendments considered by the Administrator or the Town Attorney to be necessary or advisable in light of state law may be prepared without prior direction by Council.
- D. The Administrator may in his or her discretion, prepare a written analysis of the proposed amendment to assist Council in consideration of whether to forward the amendment for public hearing. Any such analysis by the Administrator shall address the conformity of the proposed amendment with the Comprehensive Plan and other officially adopted plans of the town, as well as such other matters as the Administrator deems relevant.
~~Upon receipt of a petition the Administrator shall forward the petition to Council with or without written comment for a determination of whether a draft amendment should be prepared in accordance with Subsection 9.02.01(B).~~
~~Upon receipt of a draft amendment, should the Council act to proceed with its consideration, it shall establish a date for a public hearing.~~
 1. ~~The public hearing may be scheduled at a pre arranged date, time and location, such as at a "quarterly public hearing," or at such other date, time and location authorized by the Council which will allow proper notice to issue in advance of the hearing.~~~~No later than seven (7) days prior to the date set for the public hearing, the Administrator shall prepare an analysis of the proposed petition to assist the Planning Commission and Council in determining the conformity of the draft amendment with the Comprehensive Plan and any other officially adopted plan of the Town which relate to the proposed amendment.~~

9.02.02 General Map Amendments

- A. ~~Any person may petition the Council to amend the Zoning Map. The petition shall be filed with the Administrator and shall include at a minimum:~~
 1. ~~The name, address, and phone number of the applicant,~~
 2. ~~A description of the land affected by the proposed amendment, and~~
 3. ~~A description of the proposed map change.~~
- B. ~~Upon receipt of a petition, the Administrator shall forward the petition to Council to establish a date for a public hearing.~~
 1. ~~The public hearing may be scheduled at a pre arranged date, time and location, such as at a "quarterly public hearing," or at such other date, time and location authorized by the Council which will allow proper notice to issue in advance of the hearing.~~
- C. ~~No later than seven (7) days prior to the date set for the public hearing, the Administrator shall prepare an analysis of the proposed petition to assist the Planning Commission and Council in determining the conformity of the draft amendment with the Comprehensive Plan and any other officially adopted plan of the Town which relate to the proposed amendment.~~

9.02.0302 Conditional District (CD) and Planned Development (PD) Map Amendments

- A. A property may be placed in a CD or in a PD only in response to a petition by the owners of all property to be included.
 1. No State owned property may be placed in a CD or in a PD without prior approval by the Council of State.
- B. The petition shall be filed with the Administrator and shall include at a minimum:
 1. The name, address, and phone number of the applicant,
 2. A description of the land affected by the proposed amendment, and
 3. A description of the proposed map change, and
 4. A site specific development plan and supporting documentation that specifies the actual use or uses intended for the property and any rules, regulations and conditions that, in addition to all predetermined Ordinance requirements, will govern the development and use of the property.

~~Upon receipt of a petition, the Administrator shall forward the petition to Council to establish a date for a public hearing.~~

- ~~1. The public hearing may be scheduled at a pre-arranged date, time and location, such as at a "quarterly public hearing," or at such other date, time and location authorized by the Council which will allow proper notice to issue in advance of the hearing.~~

~~No later than seven (7) days prior to the date set for the public hearing, the Administrator shall prepare an analysis of the proposed petition to assist the Planning Commission and Council in determining the conformity of the draft amendment with this Ordinance, the Comprehensive Plan and any other officially adopted plan of the Town that relates to the proposed amendment. In the case of a proposed PD district, the Administrator shall specifically advise and comment as to whether the proposed district is in keeping with the purpose and intent of the Council for creating such PD districts, as set forth at Section 14.05.01 herein.~~

(20150028-11192015)

9.02.03 Council Consideration of Proposed Amendments

- A.** Upon consideration of a proposal to amend the UDO text or zoning map, Council may take any one or more of the following actions:
 1. Direct further consideration and/or development of the amendment by Staff and/or the Planning Commission.
 2. Authorize drafting of a proposed amendment if such has not already been drafted.
 3. Set the proposed amendment for public hearing and consideration by the Planning Commission, and/or
 4. Decline to authorize further consideration of the proposed amendment.
- B.** In the event Council directs a proposed amendment to be considered at a public hearing, such hearing may be scheduled at any such date, time and location as will allow proper notice to issue in advance of the hearing.
- C.** No later than seven (7) days prior to the date set for the public hearing, the Administrator shall prepare an analysis of the proposed amendment to assist the Planning Commission and Council in determining the conformity of the draft amendment with this Ordinance, the Comprehensive Plan and any other officially adopted plan of the Town that relates to the proposed amendment. In the case of a proposed PD district, the Administrator shall specifically advise and comment as to whether the proposed district is in keeping with the purpose and intent of the Council for creating such PD districts, as set forth at Section 14.05.01 herein.

9.02.04 Modification of Applications After Distribution of Agenda Packet

- A. Modification of Petition Between Distribution of the Agenda Packet and the Public Hearing:**
 - 1. Modification in Response to Administrator's Recommendation or Request:** An applicant may not significantly modify an application between the distribution of the Agenda Packet containing the Staff Report of the case and the public hearing unless the proposed modification is in direct response to a specific request or recommendation by the Administrator.
 - a. A proposed modification, even in response to the Administrator's recommendation or request, shall be submitted to the Administrator prior to the hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification.
 - b. If the Administrator determines that the applicant did not submit the proposed modification prior to the public hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification, the applicant will be given the choice between the public hearing being rescheduled until the next regularly scheduled public hearing or withdrawal of the proposed modification.

2. **Insignificant or Minor Modifications in a Petition:** An applicant may make a non-substantial modification to an application between the distribution of the Agenda Packet containing the Staff Report and the scheduled public hearing.
 - a. A proposed non-substantial modification shall be submitted to the Administrator prior to the public hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification. However, if an applicant proposes an insignificant modification to a petition during the scheduled hearing, and the Administrator indicates that adequate time exists to fully evaluate the impacts of the modification with or without a recess by the Council, the modified application may be acted upon by the Council.
 - b. If the Administrator determines that the petitioner did not submit the proposed modification prior to the public hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification, the applicant will be given the choice between the hearing being rescheduled until the next regularly scheduled public hearing or withdrawal of the proposed modification.
3. **Major Modification of an Application:** A petitioner seeking to significantly modify an application between the distribution of the Agenda Packet containing the Staff Report of the case and the public hearing, whether in response to Staff recommendations or self-initiated, must file a new application.
4. **Determination as to whether a Proposed Modification is Insignificant, Minor or Major:** The Planning Director shall make the determination as to whether a modification is “insignificant”, “minor” or “major” in accordance with Section 4.16. The determination of the Planning Director shall constitute the final decision of the Town and is not appealable.

B. Modification of Petition In Response to Concerns & Issues Raised at the Hearing

1. In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Board an applicant may agree to modify an application, including the plans and specifications submitted.
2. Unless such modification is so substantial or extensive that the Council cannot reasonably be expected to perceive the nature and impact of the proposed change without revised plans before it, the Council may approve the petition with the condition that the permit will not be issued until plans reflecting the agreed upon changes are submitted and approved by the Administrator.

9.03 Hearing Required: Conduct of Hearing; Notice of Hearing
9.03.01 Hearing Required

- A.** Text, General, Conditional District and Planned Development Map Amendments are legislative processes subject to judicial review.
- B.** No action that amends or repeals any of the provisions of this Ordinance may be adopted until a public hearing has been held on such.
(20150028-11192015)

9.03.02 Conduct of Hearing

- A.** The Council and Planning Commission shall meet in joint session to hold the public hearing, and a quorum of each body must be present.
- B.** Public hearings on proposed Ordinance amendments will be scheduled no less frequently than on a quarterly basis in February, May, August and November.
- C.** A record of the public hearing will be prepared by Staff and minutes of the hearing submitted to the Planning Commission and Council as soon as practical following the public hearing.
- D.** Public hearings shall be conducted in accordance with rules for the hearing adopted by the Council.
- E.** The Mayor or other presiding officer may, at a minimum:
 1. Limit the length of time for each speaker, and

2. Require the designation of a spokesperson for groups of persons supporting or opposing the proposed amendment for the same reasons, and
3. Provide for the maintenance of order and order the removal from the hearing room of any person attempting to disrupt the hearing or to intimidate or belittle other speakers, and
4. Limit the number of persons in the hearing room at any one time, insofar as the number of persons wishing to attend the hearing exceeds the safe capacity of the hearing room.

9.03.03 Hearing Notice

- A. Legal Ad:** For all amendments, the Administrator shall publish a notice of the public hearing no less than once a week for two (2) successive weeks in a newspaper having general circulation in the area.
1. The notice shall be published for the first time not less than ten (10) days nor more than twenty five (25) days before the date fixed for the hearing.
 2. In computing this period, the date of publication shall not be counted but the date of the hearing shall be.
- B. Adjacent Property Owner Notification:** With respect to General, Conditional District and Planned Development map amendments, the Administrator shall mail written notice of the public hearing by first class mail to the owners, as shown on the listings of the Watauga County Tax Administration, of all properties whose zoning classification will be changed by the proposed amendment and owners of properties for which any portion is within 150 feet of the subject property.
1. Each notice shall be deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing.
 2. The person mailing such notices shall certify to the Council that fact, and such certificate shall be deemed conclusive in the absence of fraud. The certificate of mailing shall be included in the Administrator's analysis of the proposed petition to the Council and Commission.
 - a. However, if the proposed zoning map amendment directly affects more than fifty (50) properties owned by a total of at least fifty (50) different property owners, the Council may direct notification, instead of by the aforesaid individually mailed notices, by publication of the notice described above, supra, alone, but the notice must be not less than one-half a newspaper page in size and must be supplemented by individual notices by first class mail to property owners who reside outside the newspaper circulation area, according to the addressees listed on the most recent property tax listing for each affected property.
- C. Posting:** With respect to General, Conditional District and Planned Development Map Amendments, the Administrator shall also post notices of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right of way within at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing.
1. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the Administrator shall post sufficient notices to provide reasonable notice to interested persons.
 2. In addition, the Administrator shall take any other action deemed by the Council or Administrator to be useful or appropriate or desirable to give notice of the public hearing.
- D. Every notice required by this Section shall:**
1. State the date, time, and place of the public hearing, and
 2. Summarize the nature and character of the proposed change, and
 3. Reasonably identify the property whose zoning classification would be affected by the amendment if the proposed amendment involves a change in zoning district classification, and

4. State that the full text of the proposed amendment can be obtained from the Town Clerk, and
5. State that substantial and insubstantial changes in the proposed amendment may be made following the public hearing.

(20150028-11192015)

9.04 Reserved (20160027-05192016)

9.05 Planning Commission Consideration of Proposed Amendments

9.05.01 ~~At its next meeting following the public hearing, scheduled in accordance with Section 9.03, supra, the Commission shall review the proposed amendment and shall submit a written recommendation to the Council.~~

Following the public hearing, the Planning Commission, may proceed to consider the proposed amendment:

- A.** In that same meeting,
- B.** At its next regularly-scheduled meeting and/or
- C.** At a subsequent special meeting, so long as proper notice is given thereof.

9.05.02 The Commission shall endeavor to provide a written report and written recommendation to the Council within 30 days of the public hearing. However, the Commission may apply to Council for an extension of time to submit its recommendations.

- A.** The Commission shall specifically advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan, the Boone 2030 Land Use Plan and other officially adopted plans that are applicable and whether the Commission recommends adoption of the proposed amendment.
- B.** In its report to the Council, the Commission may comment, as it deems appropriate, on any other matter related to the proposed amendment.

9.05.03 Additional testimony not presented at the public hearing may be considered by the Commission upon favorable vote of the majority of its members present.

9.05.04 No member of the Commission shall participate in the discussion or vote on any recommendations regarding any amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

9.06 Council Action on Amendments

9.06.01 Council Action After Referral to the Commission:

- A.** At any meeting following the receipt of ~~the~~ a written report and recommendation from the Commission or after thirty (30) days following referral of ~~the~~ a proposed amendment to the Commission if the Commission fails to ~~make a~~ submit a written recommendation, the Council may proceed with its consideration of the proposed amendment. Council may:
 1. Adopt the proposed amendment; or
 2. Adopt the proposed amendment with modifications; or
 3. Reject the proposed amendment; or
 4. Continue its consideration of the amendment to a later meeting date; or
 5. Refer the proposed amendment back to Staff and/or the Planning Commission for such further consideration as Council may direct.
- B.** The Council ~~must should~~ endeavor to take action, ~~however,~~ no later than sixty (60) days after the Commission ~~adopts a~~ submits its written recommendation.
- C.** A comment by the Commission that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Council, ~~and~~ .
- D.** The Council is not bound by any other recommendation of the Planning Commission, including a recommendation that the proposed amendment be rejected.

- E.** In the event Council fails to act on a proposed amendment within ninety (90) days of submission of the Commission's recommendation, such action shall be deemed a denial of the proposed amendment.
- 9.06.02** Additional testimony not presented at the public hearing may be considered by the Council upon favorable vote of the majority of its members present.
- 9.06.03** When adopting or rejecting any ~~zoning~~ UDO text or map amendment, the Council shall adopt a statement describing whether its action is consistent with the Comprehensive Plan, the Boone 2030 Land Use Plan and other officially adopted plan that is applicable and explaining why the Council considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.
- 9.06.04** A proposed amendment submitted by an applicant may be withdrawn by the applicant at any time prior to final Town Council action on the application.
- A.** If an applicant fails to pursue the application for a period of six (6) months thereafter, the application shall be deemed to have expired.
- 9.07** **Ultimate Issue Before Council on Amendments**
- 9.07.01** In deciding whether to adopt a proposed amendment to this Ordinance, the central issue before the Council is whether the proposed amendment advances the public health, safety, or welfare. All other issues are irrelevant, and all information related to other issues at the public hearing may be declared irrelevant by the Mayor and be excluded. In particular, when considering proposed general use map amendments:
- A.** The Council shall not consider any representations made by the petitioner that if the change is granted the rezoned property will be used for only one of the possible range of uses permitted in the requested classification. Rather, the Council shall consider whether the entire range of permitted uses in the requested classification is more appropriate than the range of uses in the existing classification.
- B.** The Council shall only consider the impact of the proposed change on the public at large.
- 9.08** **Action Subsequent to Council Decision**
- 9.08.01** The Administrator shall notify the petitioner of the disposition of the amendment petition and file a copy of the decision in the office of the Planning and Inspections Department.
- 9.08.02** Any amendments pertaining to watershed protection must be filed with the North Carolina Division of Water Quality, North Carolina Division of Environmental Health, and the North Carolina Division of Community Assistance.
- 9.08.03** In the case of approval of an amendment, all necessary changes to the Ordinance or zoning map shall be entered within fifteen (15) working days of the effective date of the amendment. The Administrator shall authenticate the entry of each amendment and shall maintain a record of the nature and date of the amendment.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Mayor Pro Tem
SECONDER:	Loretta Clawson, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

TOWN MANAGER UPDATE

Town Manager John Ward provided the following updates:

- Announcement of the Jones House Concerts on the Lawn
- The Public Works Department will begin construction the West King Street sidewalk enhancement project beginning after the July 4th weekend, which will consist of replacement of 400 feet of sidewalk along the north side of W. King Street from Linney Street to 766 W. King Street and will include concrete sidewalk with a border of brick pavers, street and sidewalk lights, and bulb outs at Linney Street. The design is the same as last summer's Jones House/Grand Boulevard project, and construction is expected to last through August.

- Announcement of Foggy Pine Books opening at 444 W. King Street
- Success of new What's Up in Boone podcast
- Town was awarded the Bicycle Friendly Community Designation at the bronze level
- Announced release of FY 2016/17 proposed budget
- Daniel Duckworth received NC Narcotics Officer of the Year Award by NC Narcotics Association
- Town offices to be closed Monday, May 30 for Memorial Day
- Announcement of Emergency Fest for Saturday, June 4
- Construction of façade for Appalachian Theatre will begin next week

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Rennie Brantz announced the board positions set to expire July 31, 2016:

Downtown Boone Development Association - Eric Plaag and Tucker Deal (both eligible to reapply).
Outside Agency Funding Review Committee - Denise Levy (not eligible to reapply).

Mayor Brantz also announced the list of existing vacancies on various boards.

APPOINTMENT TO ABC BOARD

Council Member Clawson nominated Arthur Kohles to serve on this board. With no further nominations, Mayor Brantz called for a vote.

Mr. Kohles' term will expire May 19, 2019.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Loretta Clawson, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

APPOINTMENT TO BOARD OF ADJUSTMENT

Council Member Mason nominated David Welsh for reappointment in a resident position on this board. With no further nominations, Mayor Brantz called for a vote.

Mr. Welsh's term will expire June 30, 2019.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Mayor Pro Tem
AYES:	Mason, Clawson, Mizelle, Teague, Collins

APPOINTMENT TO CULTURAL RESOURCES ADVISORY BOARD

Council Member Mason nominated Frank Mohler for reappointment, Council Member Clawson nominated Trent Margrif for reappointment and Council Member Underdown Collins nominated Kim Wangler for reappointment on this board. With no further nominations, Mayor Brantz called for a vote.

Mr. Mohler's term, Mr. Margrif's term and Ms. Wangler's term will all expire June 30, 2019.

CLOSED SESSION

ENTERING CLOSED SESSION

Upon a motion by Council Member Teague, seconded by Council Member Underdown Collins, Council moved to enter closed session at 8:32 p.m. in order to hear the following items:

1. Pursuant to N.C.G.S. 143-318.11(a)(3), to consult with the Town Attorney concerning the proposed Unlisted Uses - UDO Text Amendment.
2. Pursuant to N.C.G.S. 143-318.11(a)(3), to consult with the Town Attorney in order to consider and give instructions to the attorney concerning the claim involving the Town of Boone and Mike Budka, et al.
3. Pursuant to N.C.G.S. 143-318.11(a)(3), to consult with the Town Attorney in order to consider and give instructions to the attorney concerning the claim involving the Town of Boone and Gary Ray, et al.
4. Pursuant to N.C.G.S. 143-318.11(a)(3), to consult with the Town Attorney in order to consider and give instructions to the attorney concerning the claims involving the Town of Boone and Ronald Cooper et al.
5. Pursuant to N.C.G.S. 143-318.11(a)(3) and (6), to consult with the Town Attorney with respect to legal matters and to consider the qualifications, competence, performance, character, fitness, or conditions of appointment of an individual public employee.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jennifer Teague, Council Member
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

EXITING CLOSED SESSION

Upon a motion by Council Member Clawson, seconded by Council Member Underdown Collins, Council moved to exit closed session.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Loretta Clawson, Council Member
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

POSSIBLE ACTION FOLLOWING CLOSED SESSION

CASE 20160222 UNLISTED USES - TEXT AMENDMENT - VOTE #1

Amend UDO Articles 2 and 15 to add catch-all for uses not listed in the Table of Uses and provide for evaluation of unlisted uses; modify "Recreation" table title and add 12.13 Motor Vehicle Racing/Speedway to Table of Principal Uses as a prohibited use.

Upon a motion by Council Member Mason, seconded by Council Member Mizelle, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to this application because the proposed amendment establishes a much-needed process through which proposed unlisted uses can be evaluated objectively, consistently, and through a clearly defined manner articulated in the Unified Development Ordinance, with one modification to strike Section 15.02.01.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Mayor Pro Tem
SECONDER:	Charlotte Mizelle, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CASE 20160222 UNLISTED USES - TEXT AMENDMENT - VOTE #2

Upon a motion by Council Member Mason, seconded by Council Member Mizelle, Council moved to approve the proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because it is supported by the Comprehensive Plan 2.1.1 (E), the Town shall encourage a public service and regulatory environment conducive to business recruitment and expansion, while at the same time enhancing the area's physical and human resources; and as mentioned in the Comprehensive Plan 2.1.1 (E1), it will continue to look for ways to make development regulations and permit procedures more predictable and timely.

(This zoning text amendment can be found in the Zoning Text Amendment Book #1)

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Mayor Pro Tem
SECONDER:	Charlotte Mizelle, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

ADJOURNMENT

MOTION TO ADJOURN

Upon a motion by Council Member Clawson, seconded by Council Member Teague, Council moved to adjourn the meeting at 10:05 p.m.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Loretta Clawson, Council Member
SECONDER:	Jennifer Teague, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

Christine Pope, Town Clerk

Rennie Brantz, Mayor