MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
June 15, 2021

CALL TO ORDER

A regular meeting of the Town Council was called to order virtually at 6:04 p.m. Mayor Rennie Brantz presided. Council members present included Mayor Pro-Tem Connie Ulmer, Sam Furgiuele, Dustin Hicks, Nancy LaPlaca and Virginia Roseman. Staff present included Town Manager John Ward, Town Clerk Nicole Harmon, Public Works Director Rick Miller, Finance Director Amy Davis, Police Chief Andy Le Beau, Administrative Support/Communications Officer Laney Pilkington, Deputy Public Works Director Todd Moody, Downtown Boone Development Director Lane Moody, Intern Adam Zebzda, Fire Chief Jimmy Isaacs, Cultural Resources Director Mark Freed, Sustainability and Special Projects Manager George Santucci, Planning Director Jane Shook, and Human Resources Director Dale Presnell. Town Attorney Allison Meade was also in attendance.

ANNOUNCEMENTS

Mr. Ward presented the most recent Covid-19 count for the County.

TENTATIVE AGENDA ADOPTION

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

PUBLIC HEARING - FY 21/22 BUDGET AND FEE SCHEDULE

Mayor Brantz opened the public hearing regarding the FY 21/22 Budget and Fee Schedule at 6:07 p.m.

John Prickett of Boone spoke on behalf of the Sustainability Committee in favor of the proposed budget and the goals and priorities presented therein.

Elizabeth Young of the Hunger and Health Coalition spoke in favor of the proposed budget and thanked the Police Department for their assistance throughout the years.

Josiah Davis of Boone spoke in support of the proposal to fund an additional downtown officer.

Yolanda Adams spoke in support of the proposed budget and in support of the Police Department in general.

Ashley Wurth of the Watauga Law Enforcement Assisted Diversion group spoke in support of the additional officer positions in the proposed budget.

Mollie Furman of the Watauga Law Enforcement Assisted Diversion group spoke in support of the additional officer positions in the proposed budget.

Marissa Cornell of the Watauga County mediation center spoke in support of the budget as presented.

Mr. Ward presented the proposed budget. Mr. Furgiuele asked what the impact on individual property owners would be if taxes were increased from $.41 to the proposed $.44, to which Mr. Ward replied he would report back with an answer on Thursday. Mr. Furgiuele asked whether Outside Agency Funding applicants would be allowed to resubmit their applications since funding would potentially be increased. Mr. Ward anticipated that they would be allowed to do so, or at least supplement their applications with additional requests. Mr. Furgiuele asked whether the additional officer positions could be funded out of the fund balance over the 35% threshold. Mr. Ward replied that he was hesitant to fund things like salary out of the fund balance.

Mayor Brantz closed the public hearing at 6:46 p.m.

PUBLIC HEARING - NON-DISCRIMINATION ORDINANCE

Mayor Brantz opened the public hearing regarding the non-discrimination ordinance and poll at 6:46 p.m.

Todd Chasteen spoke regarding the non-discrimination ordinance and believed that the overwhelming majority of people in the community desired to treat all people with kindness and fairness, but that did not mean everyone

would agree on everything. He referenced issues in countries such as Sweden where ordinances such as the one passed in Boone could be, in his view, improperly used to sue medical providers regarding gender transitions. Mr. Chasteen believed that members of the community could coexist and work together on common ground issues without forcing behavior through government mandates that could hold unforeseen, unintended consequences.

Kathy Parham spoke in support of the ordinance already passed by Council and questioned the validity of the poll results. She noted the suicide rate of the LGBTQ population and urged Council to strengthen the ordinance to provide additional protection.

Todd Carter spoke in support of strengthening the current non-discrimination ordinance. He indicated that his existence was not something to be tolerated and that the way he lived his life was not a choice. Mr. Carter felt that though he was considered a leader in the community in many ways through his role at the Hospitality House, he often felt unwelcome as a white gay man.

Justin Kearley spoke in support of strengthening the non-discrimination ordinance. He stated that he worked at Western Youth Network on the Community Health Team as well as the Center for Rural Health Research at ETSU. Mr. Kearley was concerned that LGBTQ youth were prone to experience serious mental health issues.

Allison Marston of Boone spoke in support of strengthening the non-discrimination ordinance. She believed that though it was unfortunate to have to have policies such as the non-discrimination ordinance, it was necessary. Ms. Marston believed that many of the answers on the poll were questionable and should not weigh heavily on Council's decision to support strengthening the ordinance.

Gillian (no last name given) of Boone spoke in support of strengthening the non-discrimination ordinance. She expressed that she felt privileged to have been raised here, but as a gay woman, did not want to be scared, threatened or intimidated. Gillian felt that LGBTQ people had the right to live safely in Boone and to be protected by community members and Town Council members.

Elizabeth Young spoke in support of strengthening the non-discrimination ordinance.

Mayor Brantz closed the public hearing at 7:09 p.m.

REQUESTED APPEARANCES

NICK KATERS - APPALACHAIN STATE UNIVERSITY

Nick Katers of Appalachian State University appeared before Council to explain the need for the installation of a deadend "dip" pole on a "teardrop" location near the Convocation Center in its attempt to move toward renewable energy. He indicated that the University was in the process of completing a title search to determine whether ASU was the owner of the property on which the teardrop pole was located. Mr. Furgiuele asked how many lines the poles would hold. Mr. Katers responded that the poles would hold four lines which would go from the overhead transmission pole to the underground and then proceed to the substation. In response to Mr. Furgiuele, Mr. Katers indicated that the poles would be pre-rusted to look similar to a tree to be more aesthetically pleasing. He added that he would consult with an arborist at the University to find other screening methods as well. Mr. Furgiuele indicated his support and added that he believed the teardrop belonged to the Town instead of the University. He said he hoped that the University would do all it could to hide the pole to the extent possible with natural landscaping, and made a motion to authorize the Town Manager to sign an agreement with ASU, but that if the Town Manager had any doubts about the terms, that the agreement would be brought back to Council. Mayor Pro-Tem Ulmer seconded the motion, which passed unanimously.

ADOPTION OF ITEMS ON CONSENT AGENDA

Upon a motion by Ms. Roseman, seconded by Mr. Furgiuele, Council voted unanimously to approve the following items on the consent agenda:

1. Resolution of Appreciation - R. Crepeau
2. Annual Agreement – DBDA

RESOLUTION OF VOLUNTEER APPRECIATION AND RECOGNITION

WHEREAS, Dr. Richard Crepeau has served this community well in numerous capacities during his time volunteering on the Town of Boone's Board of Adjustment; and,

WHEREAS, Dr. Crepeau's service to the Town of Boone shows exemplary dedication to the best interest and betterment of the community; and,

WHEREAS, through the performance of his duties and responsibilities as a member of the Board of Adjustment, he has made excellent and constructive contributions to our Town; and,

WHEREAS, he has earned the admiration and high regard of those with whom he has come into contact and the affection of his fellow public servants.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Boone, North Carolina does hereby express our sincere appreciation and thanks, as well as that of our citizens, to Dr. Richard Crepeau with sincere best wishes for continued success and many happy years ahead.

Adopted by unanimous vote of the Town Council on the 15th day of June, 2021.

_____
Mayor Rennie Brantz

ATTEST:

_____
Town Clerk Nicole Harmon

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

THIS AGREEMENT ("Agreement") is entered into this 30th day of June, 2021, 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, whereas, the Town provides services, facilities, functions, and promotional and developmental activities in the MSD with its own forces pursuant to N.C. Gen. Stat. § 160A-536(d); 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 to promote, encourage, and assist in the revitalization and economic health and stability of the Town's Municipal Service District (the "MSD");

WHEREAS, the Town provides assistance to the DBDA with its own forces, and seeks the guidance of the DBDA with respect to the expenditure of funds derived from the MSD tax (hereinafter "MSD funds"); and

WHEREAS, the Town and the DBDA wish to reduce to writing their understanding and agreement as to the governance of the DBDA, its activities relating to the MSD, and related matters;

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, 2021, and ending June 30, 2022.

2. **Governance:** Consistent with its Bylaws, one-half of the members of the Board of Directors of the DBDA 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.

3. **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.

4. **Expenditure of non-MSD Funds:** The DBDA may expend its own (non-MSD) funds so long as such expenditures are accounted for using methods that satisfactorily assure their proper use and are made in accordance with pertinent law and the DBDA's own by-laws.

5. **Recommendations by DBDA to Town Council as to Expenditure of MSD Funds:** The DBDA will make recommendations to the Town Council as to expenditure of MSD funds, 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 and 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).

   D. At least 30% of MSD funds are utilized for tangible improvements to the MSD, such as streetscape improvements.

   E. 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.

F. Remaining MSD funds may be 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.

The DBDA's 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. Administration 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. Coordinating and participating in activities, and maintaining and providing 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.

6. **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 ensures appropriate controls for expenditure of funds and procedures for the supervision and discipline of staff, with personnel actions up to and including dismissal authorized.

B. No later than 10 days after its receipt, provide the Town Manager and Town Council a full copy of any audit which it obtains. Should the DBDA 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, the DBDA 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. The DBDA will provide the Town Manager with a copy of the organization's Form 990 promptly after it is prepared.

E. The DBDA will maintain a written policy requiring that a fund accounting system is created and maintained that ensures that any non-MSD funds are used only in accordance with State law and this contract, to the extent applicable.

F. The DBDA 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. The DBDA 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.

7. **Activities to Serve Entire Municipal Service District:** All activities of the DBDA shall be undertaken in such manner, insofar as possible, as to provide benefits to and throughout the entire District.

8. **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.

9. **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 the Town Council may in its discretion declare this Agreement immediately terminated.

10. **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.

11. **Financial Responsibilities:** The DBDA shall develop and recommend to the Town Council a proposed budget for the expenditure of MSD funds. The proposed budget shall include an amount sufficient to pay, at a minimum, one-half of the salary and fringe benefits of the Town employee who serves as executive director of the DBDA. The proposed budget shall be presented to the Town Council for its consideration by a date designated by the Town Manager, which date 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.

The DBDA shall maintain its financial accounts for non-MSD funds and 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, of 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 of 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.

12. **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.

13. **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 of 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.

14. **Insurance:** The DBDA shall maintain 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 pursuant to this paragraph, the DBDA will promptly increase its coverage to the level determined necessary by the Town.

15. **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.

16. **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.

17. **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.

18. **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.

19. **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.

20. **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.

21. **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.

22. **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.

23. **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.

24. **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.

25. **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.

26. **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.

27. **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

8

Downtown Boone Development Association, Inc., by

_____
President

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

9

COUNCIL MATTERS

CONSIDERATION OF A&R MOUNTAIN PROPERTIES LLC VOLUNARY ANNEXATION PETITION (243/245 BAMBOO RD)

Upon a motion by Mr. Furgiuele, seconded by Mayor Pro-Tem Ulmer, Council voted unanimously to approve the Resolution Directing the Clerk to Certify the Sufficiency of the Petition, and the Resolution Fixing the Date for Public Hearing as August 17, 2021 at 6:00 p.m. with notice being provided to residents within a 300 foot radius of the property to be annexed, and that an R3 zoning analysis be prepared of the property.

****

RESOLUTION DIRECTING THE CLERK TO INVESTIGATE
A PETITION RECEIVED UNDER G.S. 160A-31
(A&R Mountain Properties)

WHEREAS, a petition requesting annexation of an area described in said petition was received on April 1, 2021 by the Town Council; and

WHEREAS, G.S. 160A-31 provides that the sufficiency of the petition shall be investigated by the Town Clerk before further annexation proceedings may take place; and

WHERAS, the Town Council of the Town of Boone deems it advisable to proceed in response to this request for annexation;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Boone that:

The Town Clerk is hereby directed to investigate the sufficiency of the above-described petition and to certify as soon as possible to the Town Council the result of her investigation.

ATTEST: Mayor

Clerk

****

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION
OF ANNEXATION PURSUANT TO G.S. 160A-31
(A&R Mountain Properties LLC)

WHEREAS, a petition requesting annexation of the area described herein has been received; and
WHEREAS, the Town Council has by resolution directed the Town Clerk to investigate the sufficiency of the petition; and
WHEREAS, certification by the Town Clerk as to the sufficiency of the petition has been made;
NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Boone, North Carolina that:

Section 1. A public hearing on the question of annexation of the area described herein will be held at Council Chambers at 6:00 p.m. on August 17, 2021.

Section 2. The area proposed for annexation is described as follows:

A 0.988 acre parcel lying and being in the Blue Ridge Township on the east side of the Bamboo Road, NCSR 1524; bounded on the north by Regina Hampton (Plat Book 22 at Page 231), on the east by Sherrill Hampton (Book of Records 73 at Page 843), on the south by Deerfield Ridge, LLC (Book of Records 762 at Page 410), on the west by the Bamboo Road; north being relative to and being all the lands as described in Book of Records 1733 at Page 204 and more fully described as follows:

BEGINNING on a Mag Nail on the east side of the Bamboo Road in the Deerfield Ridge LLC line, this nail located N20-37-59E 332.63' from Runway PK No. 1 monument found (N899939.47 sft E1222369.85 sft), from from the BEGINNING and with the Deerfield Ridge LLC line N73-09-20W 9.12' to a point in the Bamboo Road, thence with said road N00-42-59W 152.98' to a 5/8" rebar found buried on the east side of the Bamboo Road and in the center of Hampton Trailer Ct, thence out and with the Hampton Trailer Ct, a private road S73-06-18E 349.95' to a spike found buried in the center of road just west of a stream running under said road, thence leaving said road and with Sherrill Hampton line S40-10-51W 158.51' to 1.5" pipe found on the west side of stream, thence with the Deerfield Ridge LLC line N73-09-20W 231.88' to the point and place of **beginning ..... containing** 0.988 acres by coordinate geometry as surveyed November 21, 2019 and shown on plat no 19036-1 by Hencle J. Matheson, PLS L-2561.

Section 3. Notice of the public hearing shall be published in the Watauga Democrat, a newspaper having general circulation in the Town of Boone, at least ten (10) days prior to the date of the public hearing.

_____
Mayor

ATTEST:

_____
Town Clerk

CONSIDERATION OF AGREEMENT WITH REPUBLIC SERVICES FOR SOLID WASTE AND RECYCLING COLLECTION

Mr. Miller presented a request to consider an agreement with Republic Services for solid waste and recycling collections for the Town of Boone. Mr. Miller explained that as of July 1, 2021, all municipal waste hauled to the County's transfer station before traveling to Tennessee would be billed directly to Republic Services which would result in revisions to the current agreement with Republic which was scheduled to expire on June 30, 2021 with an option to extend for an additional three years. Mr. Miller indicated that two options were available, Option A would continue utilizing the Watauga County Transfer Station for disposal at a total annual cost of $252,937.64, and Option B would entail hauling Town of Boone waste directly to Foothills Landfill in Caldwell County at an annual cost of $240,654.28. Mr. Furgiuele asked Mr. Miller to confirm that the actual travel distance to the Caldwell County site would be less and thus result in a reduction of greenhouse gases, and Mr. Miller confirmed that the site was significantly closer to Boone. Ms. LaPlaca thanked Mr. Miller and staff for their work on the matter, but indicated that she could not support the contract with Republic due in part to their monetary contributions to the Republican Party and her belief that much of the recycled material sent to them ended up in the ocean. After brief discussion, Mr. Phelps with Republic Services responded that none of their recyclable materials were going into oceans or landfills, though there were other companies that did this. Tracy Nestor with Republic Services added that the Town had supported this contract for almost 35 years, and noted that Republic employed 30 people in the community and paid almost $30,000 in property taxes. She invited members to tour their recycling center to see the new sustainability efforts being made by the company. Mr. Furgiuele asked Mr. Ward if there were alternative companies at this time, and he confirmed that he knew

of none and when the contract was last put out to bid, Republic was the only bidder. Mr. Furgiuele made a motion, seconded by Ms. Roseman, to renew the agreement with Republic Services for 3 years and to adopt option B as presented.

VOTE:	Aye:	Furgiuele, Roseman, Ulmer, Hicks
	Nay:	LaPlaca

Mayor Brantz declared a break at 8:40 p.m. Council reconvened at 8:56 p.m.

In response to a comment made during break by Mr. Phelps, Ms. LaPlaca stated that she did not have a problem with him, and recognized that the Town needed the service. She noted that she had a problem with the giant corporation creating a staggering amount of waste in the landfills.

NON-DISCRIMINATION ORDINANCE DISCUSSION

Mr. Ward presented the results of the Community Diversity, Equity and Inclusion Survey. Council member Hicks was concerned that many of the responses reflected a discrimination problem in Boone, and that something needed to be done at a state and federal level, though they had failed. Mr. Furgiuele thought that the narrative responses offered more insight thatn the ratings data and that he believed that many of the respondents misunderstood the polling questions and the extent of municipal power, noting responses suggesting that the Town could curtail free speech. He indicated that he was shocked at some of the responses regarding people of Islamic faith or Middle Eastern origin, reporting that they had been subjected to discrimination in Boone, and because of the many concerns which were expressed regarding housing discrimination, he suggested that Ms. Meade prepare an analysis as to the protections in terms of the federal and state Fair Housing Acts and whether or not there was room for strengthening protections at a local level in terms of housing. He also suggested that the analysis include information regarding the Equal Employment Opportunity Commission and protections involving employment at the local level. Mr. Ward expressed concern regarding the enforcement of a more powerful ordinance. Ms. Meade indicated that she could come back with alternative language possibilities and analyses on the topics brought up by Mr. Furgiuele. She believed that this was more of a policy issue at this level, and agreed that enforcement was a major concern, as were potential lawsuits against the Town. Mr. Ward agreed that the Town should get its own house in order and make sure its staff was educated about different types of issues before dictating how others were supposed to run their businesses. He also asked that Council identify funds for legal fees if they decided to move forward with additional protections. Mr. Furgiuele proposed creating a human relations committee within the Town for discussion and recommendations regarding policy. Ms. Roseman suggested amending the Town's nuisance policy to include violations against the non-discrimination ordinance. Mr. Hicks made a motion to direct Ms. Meade to come back in July with an ordinance which prohibited discrimination against LGBTQ+ individuals in all public accommodations in Town, along with thorough explanations of a Human Rights Committee, and civil penalties, as well as Town procedures as they relate to non-discrimination, and increasing the diversity of cultural events so that Council could move forward with scheduling another public hearing. Mr. Ward asked that members consider how the committee staffing would be paid for and which department would be responsible for the committee. Mayor Pro-Tem Ulmer felt that members were rushing into things, while Mr. Hicks believed that members were not willing to do enough to address discrimination in Boone. Ms. LaPlaca stated that she understood Mr. Hicks' frustrations because she felt members were not willing to do enough to address clean energy, and added that she did not want to put staff in a position where they were trying to enforce a rule that was impossible to enforce. This motion died due to the lack of a second. Mr. Furgiuele made a substitute motion to authorize Ms. Meade to investigate this issue further and report back at the July meeting concerning the feasibility of an ordinance which would give the Town authority to take action against public discrimination and those who systematically violated the rights of people or the classes that had been identified in the previously adopted non-discrimination ordinance; Mr. Ward should come back in July with a proposal for a committee that would be designed to interact with offenders in the community and would be charged with making recommendations to the Town, including ways that the Town as an institution could address some of the things that were identified by people in their responses, such as the perception that the town was not a welcoming place, etc. Mayor Pro-Tem Ulmer seconded the motion. Mr. Hicks felt that this action was not enough, and felt that members were not doing the job they were elected to do. He also suggested a friendly amendment to include expansions to the cultural

events. Mr. Furgiuele and Mayor Pro-Tem Ulmer accepted this amendment, and asked that Mr. Freed report back to Council with recommendations on the matter. The motion passed unanimously.

UPDATE TO TOWN ORDINANCE 96.002 OBSTRUCTIONS PROHIBITED

Mr. Ward presented proposed changes to Town Code Chapter 96.002 which would prohibit obstructions to memorials and public art, expressing concern about the commercial activities taking place around public art and the Veteran's Memorial. Mr. Furgiuele was concerned that the drafted prohibition interfered with ingress and egress around public art displays. Mr. Ward noted that he was more concerned about the protection of the Veteran's Memorial than other art displays. Mr. Furgiuele suggested that the word "art" be stricken from the proposed language to preserve the main intent of the revisions. Ms. Meade noted that since the memorial was located on Town property, obstructions could be regulated more freely with signage. Mr. Furgiuele then made a motion to amend the ordinance to prohibit obstructions to memorials, to allow the Town Manager to designate areas where commercial activities can and cannot take place and to install signage around the memorial prohibiting commercial activity. Ms. Roseman seconded the motion which passed unanimously.

****

§ 96.002 OBSTRUCTIONS PROHIBITED.

(A) Except as otherwise authorized by statute, ordinance (including this chapter), and/or in writing by the Town Council, or as required by the performance of some function authorized or mandated by a statute or ordinance, no person(s) may congregate, stand, sit or lie on a public way in a manner that would intentionally obstruct or cause to be obstructed pedestrian traffic or prevent the free ingress and egress by members of the public to and from private or public buildings, *memorials*, parks or parking lots adjacent to or accessed by public way within the town. Also, no person may intentionally obstruct a public way within the town by placing or leaving any object(s) within the traveled portion of the public way, except as authorized by this chapter. A situation maintained in violation of this section is hereby declared to be a public nuisance and is subject to the provisions of § 96.010 herein

(B) Exceptions.

(1) Construction. The foregoing prohibitions shall not apply to temporary obstructions caused by persons engaged in construction work on abutting property when proper warning devices are maintained in accordance with § 96.005.

(2) Limited exception for temporary sidewalk sales. Partial obstruction of a public sidewalk for a sidewalk sale is permissible only under the following conditions:

(a) The obstruction takes place only during daylight hours.

(b) The sidewalk is only partially obstructed in a manner that does not seriously inconvenience the public or threaten the public safety; in any event, a minimum four-foot width of sidewalk must be left clear and unimpeded for pedestrians. For purposes of this subsection, an obstruction shall be understood to include any employee(s) who occupy the sidewalk in connection with the sale.

(c) The person or entity conducting the sidewalk sale is authorized to do so by the fee owner(s) of the property on which the sale is being held.

(3) Temporary sidewalk sales may be prohibited on specific days by proclamation issued by the Mayor according to law or by resolution adopted by the Town Council.

(Ord. passed 9-17-2019)

AUTHORIZE AMENDMENT TO TOWN CODE REGARDING DEDICATION OF STREETS

Mr. Furgiuele read the following request:

"At the May 2021 town council meeting I questioned the naming of a street dedicated by Appalachian Regional Healthcare. I supported acceptance of the dedication, but wanted to revisit the name proposed by ARHS, which was generic. After subsequent conversations with John Ward and a representative from the hospital, I have agreed to withdraw my objection. Despite that I am asking the council to authorize the town attorney to prepare an amendment to the town code making clear that when a street is dedicated to the town, the town council

reserves the right to name the street as it sees fit, and further requiring, before a name is associated with a dedicated street, that the town manager confer with the town council and obtain authorization for a particular name, after the town council itself confers with the Historic Preservation Commission (HPC). There are few opportunities to name town-controlled structures, land or features after people who have been important to the history of Boone or who have made exemplary contributions to the town. Street naming is one of the few ways to do so, and when a new street is dedicated, the issues which arise with changing the name of an existing street are less likely to occur. The HPC, in particular, has alerted the Council of the past neglect by the town to honor African Americans who have made important historical or current contributions to the town. In the future I would like to see the dedication of streets as one of the opportunities to honor such former and current citizens."

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

FATS, OILS AND GREASE PREVENTION PROGRAM FEE WAIVER REQUEST

Upon a motion by Mr. Furgiuele, seconded by Mayor Pro-Tem Ulmer, Council voted unanimously to approve the request as submitted.

REQUEST FOR DETAILED REPORT OF THE STATUS OF THE "POLICE COMMITTEE"

Upon a motion by Mr. Furgiuele, seconded by Ms. Roseman, Council voted unanimously to invite Rev. Hunt to give a detailed report to Council in July regarding the status of the Police Committee.

RESCHEDULE POLICE 2021 POLICE FORUM

Upon a motion by Mr. Furgiuele, seconded by Ms. Roseman, Council voted unanimously to table this matter until Thursday night's meeting to allow staff time to consider additional dates for the 2021 Police Forum.

REQUEST TO SCHEDULE SPECIAL CALLED MEETING

Upon a motion by Mr. Furgiuele, seconded by Ms. Roseman, Council voted unanimously to schedule a special meeting beginning at 6:00 p.m. on August 3, 2021 in Council Chambers (at half capacity) for the purpose of appointing a new Council member to replace outgoing member Dustin Hicks.

CLOSED SESSION

Upon a motion by Mayor Pro-Tem Ulmer, seconded by Mr. Furgiuele, Council voted unanimously to enter into closed session at 10:54 p.m. pursuant to:

1. N.C. Gen. Stat. §143-318.11 (a)(6), To consider the qualifications, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge or grievance by or against an individual public officer or employee.

Upon a motion by Ms. LaPlaca, seconded by Ms. Roseman, Council voted unanimously to exit closed session at 11:16 p.m.

ADJOURNMENT

Upon a motion by Ms. LaPlaca, seconded by Ms. Roseman, Council voted unanimously to adjourn the meeting at 11:17 p.m.

Nicole Harmon, Town Clerk

Rennie Brantz, Mayor