MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
June 18, 2019

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order on Tuesday, June 18, 2019 at 6:00 p.m. at the Council Chambers located at 1500 Blowing Rock Road in Boone. Mayor Rennie Brantz presided. Council Members present included Mayor Pro-Tem Loretta Clawson, Lynne Mason, Sam Furgiuele, Connie Ulmer and Marshall Ashcraft. Staff present included Town Manager John Ward, Town Clerk Nicole Harmon, Finance Director Amy Davis, Public Works Director Rick Miller, Deputy Public Works Director Todd Moody, Waste Water Treatment Plant Superintendent Rudy Broschinski, Fire Chief Jimmy Isaacs, Police Chief Dana Crawford, Planning Director Jane Shook and Cultural Resources Director Pilar Fotta. Town Attorney Allison Meade was also present.

ANNOUNCEMENTS

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

TENTATIVE AGENDA ADOPTION

Mr. Furgiuele made a motion to add two items to the end of the Council Matters section of the agenda:

16. Direction to the Town Attorney to prepare a draft ordinance reflecting changes that were discussed at the night's Water Use Committee meeting.
17. Discussion regarding amending of Code of Ethics to clarify the acceptance of gratuities.

Ms. Ulmer seconded the motion.

VOTE: Aye: All
Nay: None

Upon a motion by Ms. Mason, seconded by Mr. Furgiuele, Council voted to approve the agenda as amended.

VOTE: Aye: All
Nay: None

PUBLIC HEARING REGARDING FY 2019/20 PROPOSED BUDGET

Mayor Brantz opened the Public Hearing at 6:23 p.m. Mr. Ward outlined the proposed budget and asked for questions from Council and members of the audience. Mr. Furgiuele and Mayor Brantz asked about health insurance, with Ms. Davis noting that this year, the Town saw its first increase (5%) since 2012. No one from the audience wished to speak regarding the proposed budget.

PUBLIC COMMENT

Lori Whitehead on behalf of the Hospitality House thanked Council for supporting their program.

Tom Trueman on behalf of the Hospitality House thanked Council for their support, and for recognizing the good that the organization did for the community.

Susie Winters of Day Drive in Boone spoke on behalf of High Country Watch in regards to the proposed asphalt plant on Rainbow Trail. Ms. Winters thanked Council for recently passing a resolution against the plant in an effort to protect citizen's health.

Terry Covell of Wake Robin Lane in Boone spoke to Council against the proposed asphalt plant on Rainbow Trail. He stated that the proposed plant would be located in his back yard, and asked Council to step in to try and stop the plant from being constructed.

Bob Herring of Wake Robin Lane in Boone spoke against the proposed asphalt plant. He expressed concern that homeowner's property values would drop, and that the construction of the asphalt plant would ensure stormwater

runoff issues on and around the property. Mr. Herring recommended that the Town attempt to work with the County as to whether the asphalt plant property owner would be interested in a property swap.

Attorney Frank Wilson spoke regarding the issue of amortizing non-conforming properties in residential districts, and expressed concern that a potential amortization ordinance directed at these properties would also affect approximately 100 properties, most of which housed tenants who followed the law and were not viewed as a nuisance. He wondered how properties would be monitored if such an ordinance was passed, and cautioned Council about the potential cost of litigation and loss of tax revenue if the ordinance was approved. Mr. Wilson further expressed that if individuals were required to come forward to prove their innocence to the Town as the proposal outlined, he believed this would be a burden on Town taxpayers.

Rob Holton of Boone spoke against amortizing non-conforming properties in residential districts, and stated that he was confused as to why the R2 zoning district was being considered for inclusion in the ordinance, since previous discussions seemed to focus on R1 neighborhoods. Mr. Holton felt that the Town of Boone had made promises to property owners in terms of "grandfathering" their property, only to pull the rug out from under them with the proposed ordinance. He did not believe the ordinance to be fair to property owners or to tenants, and believed this ordinance would incur great litigation costs and a loss of tax revenue. Mr. Holton felt that the ordinance would affect affordable housing in Boone and would put pressure on single family neighborhoods. He asked Council if they decided to move forward, to consider rezoning as many properties as possible before implementation. Mr. Holton finished by asking Council to take into account the use of styrofoam as packing material in their discussion about possibly banning the use of styrofoam later in the agenda.

Harold Tilley of Boone spoke against the amortizing of non-conforming properties in residential districts and expressed that, contrary to previous discussion, he did not believe an occupancy violation could be viewed from the street. He believed that the problem the proposed ordinance was trying to address arose from occupancy issues, and not from the buildings themselves. Mr. Tilley felt that occupancy violations would continue even with an ordinance, and that challenges would continue. He believed that if buildings were eliminated as a result of this ordinance, that this would result in additional pressure being placed on the Town's single family neighborhoods.

REQUESTED APPEARANCES

JOHN-PAUL PARDY - BOONE GREENWAY SKATEPARK UPDATE

John-Paul Pardy updated Council on the new Boone Greenway Skatepark. He stated that a GoFundMe account had been opened in support of the project, and that they were looking into grants and other funding options. Mr. Pardy hoped that the skatepark would be open in the spring of 2020.

LAURA BOLGER - REQUEST FOR SEWER SERVICE

Ms. Bolger requested that her home be connected to Town sewer since her septic tank was crushed by a delivery truck and was currently leaking. She added that the Health Department could not find a suitable place to install a replacement tank due to the location of creeks on the property. Mr. Furgiuele asked why Ms. Bolger was reluctant to annex her property into the Town limits if the service request was approved. Ms. Bolger answered that money was one reason, and that she was concerned that annexing into the Town would involve increased property taxes. Mr. Furgiuele confirmed her statement, but stated that in exchange for increased taxes, residents also gained benefits in the form of various Town services. Ms. Meade reminded Council that under the current ordinance, Council could not grant the request, and that even if a hardship was identified, the property owner would still have to annex if possible. She suggested that Ms. Bolger inquire of the truck's insurance company to see if they would be able to pay for a replacement system. Ms. Meade felt that the matter of an applicant obtaining one utility without the other should be discussed by Council in the future. Mr. Miller confirmed that this property was not adjacent to the Town's sewer lines, and that if the request was granted that easements would have to be obtained at an extra cost.

ANNE WARD - RADFORD ASPHALT MATERIALS/RAINBOW TRAIL ASPHALT PLANT

Anne Ward on behalf of High Country Watch asked that Council explore getting involved with the proposed asphalt plant, and noted that there were three options in Town for potential plants. She believed that the Town should speak to the County against the proposed plant, and was concerned that runoff from the plant would contaminate resident's drinking water. Ms. Ward did not believe it was a coincidence that the Town was stripped of its ETJ powers in June 2014 and that Radford applied for the permit a day before the County was soliciting public comment regarding the HILU permitting process. Ms. Ward expressed concern with what she viewed as judicial overreach by the Court of Appeals. Mr. Furgiuele stated that he did not believe the Town had any authority in the matter, since its ETJ powers were removed and the property was no longer in the Town limits. Ms. Meade agreed with Mr. Furgiuele's statement, and noted further that the state law taking away the Town's ETJ powers specifically removed any authority for it to act in the ETJ, and that the Town sued the State in an attempt to keep its EJT powers and lost in the Supreme Court. Ms. Ward asked why the applicant was not grandfathered into Town limits since they were grandfathered under the old HILU permitting system. Ms. Meade responded that state law gave permit applicants the choice to choose regulations in place at the time an application was filed or as subsequently modified. Mr. Furgiuele stated that there were examples all over Town of applicants submitting applications right before an ordinance change in order to avoid new regulations. Ms. Meade felt that the only option the Town and County had was to attempt to purchase the land or condemn it for park and recreational use. Mr. Furgiuele believed that the Town would have to have permission of the County commissioners to condemn the property, and Ms. Meade agreed. Ms. Ward asked Council to suggest this idea to the County, with Mr. Furgiuele responding that while he was not opposed to making such a suggestion, he believed the County to be uninterested in the Town Council's viewpoint since the County Commissioners had refused to even meet with the Town concerning the distribution of sales tax revenues and other issues.

MIKE TREW - BOONE CLIMBERS COALITION

Mike Trew of the Boone Climber's Coalition presented Council with draft signage for boulders located off of the Greenway Trail. Mr. Trew announced that climbing anchors had been installed and the Climber's Club had been out to test them. Ms. Meade stated that she wanted to review the sign, in that there was very specific language that should be included on the sign in order to protect the Town in the event of an accident. She was also concerned about the use of the Town logo, and noted that she believed she should have been consulted before climbing on the boulders began. Mr. Trew stated that the boulders had been climbed on for twenty years, and that he could try to stop them until the sign was installed, but that he could not guarantee people would listen. Mr. Furgiuele suggested that the signs give credit to the Climber's Coalition for their work on the boulders and anchors. It was the consensus of Council to direct the Town Attorney to review the language of the sign and regarding the use of the Town logo. Mr. Trew announced that the group would like to reroute the trail to the boulders and wanted to add an informational kiosk in the area in the future.

RESULT:	**CONSENSUS**

CONSENT AGENDA ADOPTION

Mr. Furgiuele stated that there was a property owner last year who was upset over the closure of Depot Street for an event and asked whether this concern was addressed when planning the proposed Jimmy Smith Fun Run this year. Ms. Fotta stated that there had been discussion about the complaint and that the DBDA had the event listed on their schedule in an attempt to get the word out to merchants about the closure and to provide information about detours. Upon a motion by Mayor Pro-Tem Clawson which was seconded by Ms. Ulmer, Council voted to approve the following items on the Consent Agenda:

1. Request for Approval of Jimmy Smith Park .333k Fun Run and Street Party
2. Consideration of Approval of Boone BOO! Ordinance

AN ORDINANCE DECLARING A ROAD CLOSURE FOR AN ANNUAL CELEBRATION

WHEREAS, The Boone Town Council acknowledges a long tradition of providing an annual Fall Celebration for its citizens which is open to everyone and is provided as a benefit to the community; and

WHEREAS, the Boone Town Council acknowledges that its citizens realize a financial benefit from holding annual events; and

WHEREAS, the Boone Town Council wishes to ensure the health and safety of all participants and spectators; and

WHEREAS, the Boone Town Council acknowledges that the annual downtown Boone Boo! celebration requires approximately thirty (30) minutes to install signage, and traffic control, and also requires approximately thirty (30) minutes for removing signs, traffic control, and litter;

NOW THEREFORE BE IT ORDAINED by the Town of Boone pursuant to the authority granted by G.S. 20-169 that they do hereby declare a temporary road closure during the day(s) and times set forth below on the following described portion of a State Highway System route:

Date(s):	**Wednesday, October 30, 2019**
Times:	**4:15 p.m. – 6:30 p.m.**
Route Description:	**King Street (U.S. Route 421) between Hardin Street and Poplar Grove Connector, and SR 1102 (Water St./North Water St.)**

This ordinance to become effective when signs are erected giving notice of the limits and times of the parade, and implementation of adequate traffic control to guide through vehicles around the parade route.

Adopted this _____day of _____, 2019

_____
The Honorable Rennie Brantz, Mayor

Attest:

_____, Town Clerk

VOTE: Aye: All
Nay: None

COUNCIL MATTERS

INVITATION OF GROCERY STORE REPRESENTATIVES TO SOLICIT IDEAS ON REDUCING THE USE OF PLASTIC BAGS

Roger Walters, co-manager at the Boone Wal-Mart and Josh Morefield, fresh market manager stated that the Wal-Mart company had many policies geared toward sustainability, and announced that the Boone store had just started a program to help promote the use of recyclable bags. Mr. Walters noted that management had initiated a competition among staff to push the use of recyclable bags, and believed that the program had generated an increased use of recyclable bags. He felt that the biggest hindrance in people using recyclable shopping bags was that they often forgot them at home or in their vehicle. Mr. Morefield stated that regular plastic bags were expensive, with the Boone store spending approximately $7,000 on bags in the past year. Mr.

Furgiuele asked whether Wal-Mart had considered adding a surcharge for the use of non-reuseable bags of a cent or two per bag to encourage customers to buy and use reusable bags. Ms. Mason suggested that the store offer a discount if shoppers used their own bags. Mr. Walters was in favor of these concepts, but stated that they could not be implemented at a local level without direction from the corporate level. He added that the store could send the idea to the sustainability team at corporate, with Mr. Ward offering to provide a letter of support from Boone Town Council. Ms. Meade suggested adding signage in the parking lot to remind patrons to bring in their reusable bags, with Mr. Walters agreeing to send that idea to corporate as well. When asked what else the Town could do to support increased sustainability efforts from Wal-Mart, Mr. Walters indicated that it would take additional time for staff to think of additional ideas. Mr. Morefield noted that Wal-Mart did currently participate in some sustainable practices, with the Boone store sending out 294 bales of recyclable materials containing 1,000 pounds each to a private recycling company. He added that the Boone store did all plastic and cardboard baling themselves, and that they sent off approximately 30-40 bales a week and have done so for the past 10-12 years. Mr. Morefield stated that the company was adding electric charging stations and solar fields in some store parking areas, and felt that Wal-Mart was aggressive in terms of pursuing renewable energy. Ms. Mason reminded Council of the High Country Grown initiative that offered certificates of recognition in exchange for the use of locally-produced products, and wondered if the Town could initiate a similar program to award businesses for their sustainable efforts. Mayor Pro-Tem Clawson and Mr. Furgiuele agreed with this idea. Mr. Walters noted that Boone Wal-Mart staff would soon be wearing new vests that were made from recycled water bottles. Mr. Furgiuele asked the gentlemen if this agenda item was placed on the September agenda, they would come back to Council and share their ideas. Mr. Walters and Mr. Morefield agreed to do so. Mr. Furgiuele then made a motion, which was seconded by Mayor Pro-Tem Clawson, to authorize staff to send a letter thanking the Boone Wal-Mart's staff for appearing at the meeting, and asking them to communicate with corporate about financial incentives for the use of recyclable bags. Ms. Mason suggested that a special meeting could also be held for managers in a more laid-back setting. Mr. Ward was in favor of this idea, but was unsure of the availability of store managers.

VOTE: Aye: All
Nay: None

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

UPDATE FROM MEETINGS WITH DANIEL BOONE NATIVE GARDENS BOARD OF DIRECTORS

Mr. Furgiuele asked whether the board of directors was in compliance with the current agreement. Ms. Fotta indicated that since the current representative lived in Greensboro and was unable to attend, that she would be making their annual presentation for them this year. She stated that she had put the board members into contact with Blue Ridge Women in Agriculture to see how they might partner together, and that all recent contact with the board had been positive. Ms. Fotta stated that the North Carolina Garden Club had restrictions on how the board could recruit members and how much funding they were allocated. Mayor Brantz asked what would happen if the lease was broken, with Mr. Furgiuele expressing that he did not believe the board to be in compliance with the agreement currently. Ms. Fotta indicated that she had informed the board of its duty to provide annual updates, which they agreed to do, and that the North Carolina Garden Club did not have any inclination to give up on the lease. Ms. Fotta noted that she had suggested that members work on increased programming, and expressed concern that the gardens did not have a local phone number. She added that she was hesitant to use a Town of Boone phone number, since the gardens were not a Town obligation. In response to a question by Mayor Brantz, Ms. Fotta indicated that the Town supplemented activities at the gardens and funded water and power, as well as landscaping at the gardens. Ms. Fotta also felt that the lack of parking until after 1 p.m. on Saturdays was a significant deterrent for events to be held there.

Mayor Brantz declared a break at 8:27 p.m. Council reconvened at 8:37 p.m.

APPROVAL OF FY 2019/20 OUTSIDE AGENCY ALLOCATIONS

Upon a motion by Ms. Mason, which was seconded by Mayor Pro-Tem Clawson, Council voted to approve the FY2019/20 outside agency allocations as presented.

Agency	Amount Requested	Amount Recommended	Comments
Blue Ridge Women in Agriculture	$20,000	$17,000	Members felt that the organization should be funded on a pro-rata basis compared to last year's allocations and that the organization provided a needed service to Town residents.
Community Care Clinic	$25,000	$21,000	Members felt that the organization should be funded on a pro-rata basis compared to last year's allocations and believed that the organization provided a necessary service to a vulnerable population in Town.
The Children's Playhouse	$5,000	$4,000	Members felt that the organization should be funded on a pro-rata basis compared to last year's allocations. They were pleased with the services the organization provided to the community's young population.

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The Children's Playhouse	$5,000	$4,000	Members felt that the organization should be funded on a pro-rata basis compared to last year's allocations. They were pleased with the services the organization provided to the community's young population.

TOTAL	**$171,000**	**$115,000**	

CONSIDERATION OF ADOPTION OF TOWN OF BOONE FY 2019/2020 FEE SCHEDULE

Upon a motion by Mr. Furgiuele, seconded by Mayor Pro-Tem Clawson, Council voted to approve the FY 2019/20 fee schedule as presented. Mr. Ward noted that staff planned to move forward with unpaid fee collection. Mr. Ashcraft asked whether the Town offered businesses the same free waste pick-up as was offered to residents, and felt that this would be a small area that the Town could work with businesses to support clean-up efforts. He also asked whether there was any follow-up on the water rate study from last year, specifically on the waste water treatment side. Mr. Ward answered that these changes would be brought back to Council next year. Ms. Mason asked that Council remain mindful that if something in the fee schedule proved to not work as intended, that the schedule be revisited.

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

CONSIDERATION OF BUDGET AMENDMENTS

After brief discussion, Mr. Ashcraft made a motion to approve the budget amendments as presented. Ms. Mason seconded the motion.

1. Public Utilities (Admin salaries - $1,812)
2. Public Utilities (Admin salaries - $906)
3. Police Department (Maintenance vehicles - $4,047)
4. Fire Department (M&R Vehicles - $2,767)
5. Cultural Resources (Special event projects - $2,046)
6. Cultural Resources (Daniel Boone Park - $2,000)
7. Police Department (Capital outlay - Automobiles - $33,209)
8. Group medical insurance claims (precautionary to cover potential end of year claims - $370,000)
9. Water/sewer capital reserve (System development fees - $276,400)

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

ADOPTION OF PROPOSED FY 2019/20 BUDGET

Upon a motion by Mayor Pro-Tem Clawson, seconded by Mr. Furgiuele, Council voted to approve the FY 2019/20 budget as presented. When asked by Mr. Ward if they felt the budget process was appropriate, Ms. Mason and Mr. Ashcraft expressed frustration with important priorities going unfunded. Ms. Ulmer believed that Council was making progress and was doing a good job. Mayor Pro-Tem Clawson complimented the Town Manager with balancing the budget without requiring a tax increase, which she felt was important particularly as the County was raising taxes.

ORDINANCE #

TOWN OF BOONE, NORTH CAROLINA
2019-2020 BUDGET ORDINANCE

BE IT ORDAINED by the Town Council of the Town of Boone, North Carolina that:

SECTION 1: It is established that the following revenues will be available in each fund listed for the operation of the Town of Boone government and its activities for the fiscal year beginning July 1, 2019 and ending June 30, 2020.

GENERAL FUND		
CURRENT YEAR TAXES	$	5,782,321
PRIOR YEAR TAXES	$	45,000
TAX PENALTIES & INTEREST	$	16,000
NCVTS TAXES	$	230,000
TAX REFUNDS	$	(100)
GROSS RECEIPTS TAX	$	46,500
PRIOR YEAR TAX REFUNDS	$	(200)
MUNICIPAL VEHICLE TAX	$	120,000
LOCAL SALES TAX 1%	$	1,386,665
LOCAL SALES TAX 1/2% (40)	$	603,320
LOCAL SALES TAX 1/2% (42)	$	683,795
LOCAL SALES TAX 1/4% (44)	$	22
LOCAL SALES TAX 1/4% (14) MEDICAID HOLD HARMLESS	$	507,025
SOLID WASTE DISPOSAL TAX	$	13,500
BUSINESS LICENSE	$	1,000
ROOM OCCUPANCY TAX	$	400,000
ROOM OCCUPANCY TAX - ADMIN	$	40,000
LOCAL VIDEO PROGRAMMING REVENUE	$	155,050
UTILITIES FRANCHISE TAX	$	1,016,810
TELECOMMUNICATIONS SALES TAX	$	175,000
BEER & WINE TAX	$	85,000
ABC REVENUES	$	500,000
ABC BOARD - LAW ENFORCEMENT	$	30,000
STATE FUNDS - POWELL BILL	$	449,266
PYMT IN LIEU OF TAXES - APPALACHIAN STUDENT HOUSING	$	129,220
BUILDING & SIGN PERMIT FEES	$	245,000
COURT COSTS, FEES & CHARGES	$	500
PARKING VIOLATION PENALTIES	$	230,000
PENALTIES - PLANNING & INSPECTIONS	$	7,500
POLICE FEES	$	16,000
SCHOOL RESOURCE OFFICER	$	72,598
FIRE PROTECTION CHARGES - ASU	$	201,361
FIRE DEPARTMENT - MISC. FEES/PERMITS	$	85,000
RECYCLING REVENUE	$	500
INTEREST EARNED ON INVESTMENTS	$	200,000

INTEREST EARNED ON POWELL BILL	$	1,000
LIBRARY LOT PARKING	$	7,650
TRACY CIRCLE PARKING	$	9,000
HORN IN THE WEST PARKING	$	75,000
JONES HOUSE PARKING	$	6,050
QUEEN STREET PARKING	$	55,500
BOOT FEES	$	2,000
PARKING METERS	$	585,000
FEMA - SAFR GRANT	$	-
SALE OF SURPLUS PROPERTY	$	80,000
SALE OF SURPLUS PROPERTY - POWELL BILL	$	2,500
CONTRIBUTIONS/DONATIONS	$	35,000
CONTRIBUTIONS/DONATIONS - CULTURAL RESOURCES	$	2,000
RENTAL INCOME	$	85,000
RENTAL INCOME - JONES HOUSE	$	750
LICENSE FEES	$	10,000
CULTURAL RESOURCES REVENUE	$	45,000
MISCELLANEOUS REVENUE	$	218,806
LOAN PROCEEDS	$	633,050
TRANSFER FROM E-911	$	21,305
TRANSFER FROM SIDEWALK CAPITAL RESERVE FUND	$	15,000
TRANSFER FROM SEPARATION ALLOWANCE TRUST	$	86,231
TRANSFER FROM WATER & SEWER FUND	$	201,967
TRANSFER FROM MUNICIPAL SERVICE DISTRICT	$	41,000
TRANSFER FROM TOB RURAL FIRE TAX	$	698,082
APPROPIRATED FUND BALANCE	$	680,904
TOTAL GENERAL FUND REVENUE	**$**	**17,071,448**
EMERGENCY TELEPHONE SYSTEM		
E-911 SERVICE CHARGE	$	144,348
E-911 SERVICE CHARGE REALLOCATION REQUEST	$	118,322
APPROPRIATED FUND BALANCE	$	-
TOTAL EMERGENCY TELEPHONE SYSTEM REVENUE	**$**	**262,670**
NARCOTICS ENFORCEMENT		
APPROPRIATED FUND BALANCE	$	32,600
TOTAL NARCOTICS ENFORCEMENT	**$**	**32,600**
WATER & SEWER FUND		
CIVIL PENALTIES	$	10,000
INTEREST EARNED ON INVESTMENTS	$	15,000
WATER SALES	$	3,479,150
SEWER CHARGES	$	3,671,062
WATER - LABOR & MATERIAL CHARGES	$	45,000

SEWER - LABOR & MATERIAL CHARGES	$	20,000
CONNECTION/RECONNECTION/DISCONNECTION FEES	$	20,000
SEPTIC TANK DISCHARGE FEE	$	110,000
SYSTEM DEVELOPMENT FEES - WATER	$	75,000
SYSTEM DEVELOPMENT FEES - SEWER	$	75,000
NSF/RETURNED CHECK CHARGES	$	1,000
METER CHECK/RE-READS	$	25,000
LATE PAYMENT PENALTIES	$	70,000
SALE OF SURPLUS PROPERTY	$	5,000
MISCELLANEOUS REVENUES	$	45,514
LOAN PROCEEDS	$	87,334
TRANSFER FROM WATER CAPITAL RESERVE	$	180,000
TRANSFER FROM SEWER CAPITAL RESERVE	$	50,000
APPROPRIATED FUND BALANCE	$	11,570
TOTAL WATER & SEWER FUND REVENUE	**$**	**7,995,630**
HEALTH INSURANCE FUND		
INSURANCE REVENUE - COBRA	$	12,000
INSURANCE REVENUE - RETIREE %	$	60,000
INSURANCE REVENUE - GENERAL FUND TRANS	$	1,395,280
INSURANCE REVENUE - WATER/SEWER FUND TRANS	$	488,035
INTEREST EARNED ON INVESTMENTS	$	1,000
MISCELLANEOUS REVENUE	$	1,500
TOTAL HEALTH INSURANCE FUND REVENUE	**$**	**1,957,815**
MUNICIPAL SERVICE DISTRICT		
CURRENT YEAR TAXES	$	122,460
PRIOR YEAR TAXES	$	1,000
TAX PENALTIES & INTEREST	$	400
NCVTS TAXES	$	1,400
LOCAL SALES TAX	$	63,995
INTEREST EARNED ON INVESTMENTS	$	100
TOTAL MUNICIPAL SERVICE DISTRICT REVENUE	**$**	**189,355**
RURAL FIRE SERVICE DISTRICT		
CURRENT YEAR TAXES	$	930,105
PRIOR YEAR TAXES	$	8,977
TAX PENALTIES & INTEREST	$	1,000
NCVTS TAXES	$	50,000
LOCAL SALES TAX	$	250,000
TOTAL RURAL FIRE SERVICE DISTRICT	**$**	**1,240,082**
GRAND TOTAL - ALL REVENUE	**$**	**28,749,600**

SECTION 2: The following amounts are hereby appropriated in each fund listed for the operation of the Town of Boone government and its activities for the fiscal year beginning July 1, 2018 and ending June 30, 2019.

GENERAL FUND		
GOVERNING BODY	$	116,452
ADMINISTRATION	$	910,602
FINANCE	$	487,709
TAX COLLECTIONS	$	116,950
LEGAL	$	112,700
ELECTIONS	$	31,000
FIRE STATION # 1	$	44,500
BLOWING ROCK ROAD BUILDING	$	36,450
BROWN BUILDING	$	85,200
JONES HOUSE	$	36,500
TOWN HALL BUILDING	$	59,600
SPECIAL PROGRAMS & PROJECTS	$	876,010
SUBSIDIES & ALLOCATIONS	$	115,000
PROFESSIONAL MEMBERSHIPS	$	23,700
GIS	$	186,817
FIRE STATION #2	$	21,750
DOWNTOWN POST OFFICE BUILDING	$	24,200
CULTURAL RESOURCES	$	328,076
FIRE STATION #3	$	10,000
NON-DEPARTMENTAL/DEBT SERVICE	$	332,305
POLICE DEPARTMENT	$	3,456,046
COMMUNICATIONS	$	771,803
FIRE DEPARTMENT	$	2,829,938
PLANNING & INSPECTIONS	$	812,215
PUBLIC SERVICES & ENGINEERING	$	365,101
STREET DEPARTMENT	$	2,021,655
PARKING SERVICES	$	314,399
POWELL BILL	$	449,226
FLEET MAINTENANCE	$	360,099
FACILITIES MAINTENANCE	$	1,240,178
SANITATION	$	237,771
RECYCLING	$	257,496
TOTAL GENERAL FUND APPROPRIATIONS	**$**	**17,071,448**
EMERGENCY TELEPHONE SYSTEM		
E-911	$	262,670
TOTAL EMERGENCY TELEPHONE SYSTEM APPROPRIATIONS	**$**	**262,670**

NARCOTICS ENFORCEMENT DIVISION		
ENFORCEMENT	$	32,600
TOTAL NARCOTICS ENFORCEMENT APPROPRIATIONS	**$**	**32,600**
WATER & SEWER FUND		
PUBLIC UTILITIES (ADMIN)	$	762,736
WATER OPERATIONS	$	1,259,710
SEWER OPERATIONS	$	925,413
WATER TREATMENT PLANT	$	988,346
WASTE WATER TREATMENT PLANT	$	1,704,387
UTILITY BILLING & COLLECTIONS	$	357,575
NON-DEPARTMENTAL/DEBT SERVICE	$	1,997,463
TOTAL WATER & SEWER FUND APPROPRIATIONS	**$**	**7,995,630**
HEALTH INSURANCE FUND		
HEALTH INSURANCE	$	1,957,815
TOTAL HEALTH INSURANCE FUND APPROPRIATIONS	**$**	**1,957,815**
MUNICIPAL SERVICE DISTRICT		
MUNICIPAL SERVICE DISTRICT	$	189,355
TOTAL MUNICIPAL SERVICE DISTRICT APPROPRIATIONS	**$**	**189,355**
RURAL FIRE SERVICE DISTRICT		
RURAL FIRE SERVICE DISTRICT	$	1,240,082
TOTAL RURAL FIRE SERVICE DISTRICT APPROPRIATIONS	**$**	**1,240,082**
GRAND TOTAL - ALL APPROPRIATIONS	**$**	**28,749,600**

SECTION 3: There is hereby levied a tax rate of forty one cents ($0.41) per one hundred dollars ($100.00) valuation of property as listed for taxes as of January 1, 2019 for the purpose of raising the revenues listed "Current Year Taxes" in the General Fund in Section 1 of this Ordinance. This rate is based on an estimated total valuation of property for the purpose of taxation of $1,419,692,193 assessment ratio of 100% of the appraised value. The collection rate of 99.34% is reflected in the budget. The FY 2019-2020 operating budget follows the general reappraisal of real property for the Town of Boone. The Municipal Vehicle tax is levied at $30.00 per registered vehicle.

SECTION 3 (a): There is hereby levied a tax rate of twenty one cents ($0.21) per one hundred dollars ($100.00) valuation of property as listed for taxes as of January 1, 2019 for the purpose of raising the revenues listed "Current Year Taxes" in the Downtown Municipal Service District in Section 1 of this Ordinance. This rate is based on an established taxation of $63,195,917 assessment ratio of 100% of the appraised value.

The collection rate of 94.82% is reflected in the budget. The FY 2019-2020 operating budget follows the general reappraisal of real property for the Downtown Municipal Service District.

SECTION 4: The Budget Officer is hereby authorized to transfer appropriations within a Fund as contained herein under the following conditions:

A. He may transfer amounts between objects of expenditure within a Department to a maximum of the budgeted amount per Department. Transfers shall be filed with the Finance Department for public and Town Council inspection. Town Council shall approve transfers in excess of the limitation.

B. He may transfer available funds between departments of the same fund with an official report of such transfer on file with the Finance Department for inspection by the general public and the Town Council.

C. He may not transfer any amounts between Funds.

D. Town Council shall establish, by governing body procedure, the purchasing mechanism for large capital items (e.g. vehicle purchases). Such procedures shall not be in conflict with NCGS 143-129.

SECTION 5: The rates for water and sewer shall be established as set forth in Exhibit A, which is an attachment to this Ordinance. These rates will remain in effect until subsequently repealed or modified by the Town Council.

SECTION 6: Copies of this Budget Ordinance shall be furnished to the Finance Director and to the Budget Officer of the Town of Boone to be kept on file by them for their direction in the disbursement of funds.

ADOPTED this the 20th day of June, 2019 by the Town Council of the Town of Boone, North Carolina.

_____

Mayor

ATTEST:

_____

Town Clerk

TOWN OF BOONE
WATER AND SEWER ORDINANCE
EFFECTIVE 07/01/2019

Late Penalty Charge: $10.00	
Meter Re-read Charge: $10.00	
Meter Connect/Disconnect/Reconnect (Each): $20.00	
Returned Check Charge: $25.00	
Septic Disposal Fees (Per 100 Gallons): $7.00 Residential; $10.00 Commercial	
System Development Fees (Per Gallon): $7.89 Water / $7.99 Sewer	

Deposits (Outside City Limits Deposits are Double Rates Listed Below):		
Residential	$	150.00
Commercial	$	500.00
Construction (Temporary):		
3/4"	$	200.00
2" or 3"	$	1,600.00

Minimum Fees Each - Water & Sewer:		
(Outside City Limits Minimums are Double Rates Listed Below)		
Minimum Residential 3/4" Includes 0 - 1,000 Gallons **or**	$	15.75
Minimum Residential 3/4" Includes 1,001 - 2,000 Gallons	$	17.25
Minimum Commercial 3/4" Includes First 2,000 Gallons	$	23.00
Minimum Commercial 1" Includes First 2,000 Gallons	$	28.00
Minimum Commercial 1 1/2" Includes First 2,000 Gallons	$	33.00
Minimum Commercial 2" Includes First 2,000 Gallons	$	33.00
Minimum Commercial 3" Includes First 2,000 Gallons	$	43.00
Minimum Commercial 4" Includes First 2,000 Gallons	$	53.00
Minimum Commercial 6" Includes First 2,000 Gallons	$	73.00
Minimum Commercial 8" Includes First 2,000 Gallons	$	93.00

Consumption - Water:		
(Outside City Limits Consumption is Double Rates Listed Below)		
2,001 to 4,999 Gallons	$	6.90
5,000 to 9,999 Gallons	$	7.15
10,000 to 14,999 Gallons	$	7.40
15,000 to 19,999 Gallons	$	7.65
Over 20,000 Gallons	$	7.90
Consumption - Sewer:		
(Outside City Limits Consumption is Double Rates Listed Below)		
Over 2,000 per 1,000 Gallons - Residential	$	6.25
Over 2,000 per 1,000 Gallons - Commercial	$	6.50

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

REQUEST FOR DIRECTION REGARDING REQUEST FOR QUALIFICATIONS FOR LICENSED COMMERCIAL REAL ESTATE AGENT

Mr. Ward asked Council for their direction regarding the recently published Request for Qualifications for a licensed commercial real estate agent to market the Police Department and Public Works buildings. Mr. Ashcraft asked whether the submissions included in the meeting packet were the complete submissions from both applicants, to which Mr. Ward confirmed that they were. Mr. Furgiuele expressed surprise that only two realtors had responded to the invitation and Mr. Ward detailed his efforts to reach out broadly to real estate professionals. Mr. Furgiuele asked whether Mr. Ward had a recommendation for Council as to which firm he believed should be selected, and Mr. Ward said that he thought the presentations spoke for themselves. Ms. Meade suggested that staff should discuss commissions with both parties before deciding on an applicant. Mr. Furgiuele asked whether an applicant must be chosen before negotiations, then if the requirements were not what Council was looking for, they could move to a different applicant. Ms. Meade stated that there were restrictions such as this for certain professionals, but did not believe they would apply in this context. Mr. Ward stated that he could bring commission information back to Council at a later date, but reminded them that this would further delay marketing the properties. Mr. Furgiuele stated that he was struck at the difference in the applicants' responses, but suggested that the proposals did not necessarily reflect the ultimate quality of one's performance. Ms. Meade reminded Council of their previous work with Hodges Real Estate on the purchase of the Bolick property, and felt that their lack of information submitted may have been due to assumptions that the Town was familiar with their work. Mr. Furgiuele felt that Council should do all they could to keep costs to the Town down, and stated that he did not mind the Town having conversations regarding commissions with both parties before the selection was made. Mr. Ward noted that both parties were aware the submissions would be on the meeting agenda, and that only one of the applicants had chosen to attend. He added that he was moving forward on this RFQ as he had been directed to in the past on other RFQs. Mr. Furgiuele felt that this was a big commitment for the Town and stated that he would like to hear verbal or written marketing plans from each applicant, and noted that he would prefer verbal. Ms. Ulmer agreed. Mr. Ward asked whether Council wanted to direct that the same instruction apply to engineers who respond to RFQs in the future. Mr. Furgiuele felt that the difference in the two situations was that Council was usually given recommendations by staff for engineers. Mr. Ward responded that his recommendation would be based on the applications submitted and the level of effort put in to each one, as well as recent sales levels. Mr. Furgiuele believed that if it was legally permissible, that Council should follow Ms. Meade's recommendation and hear from both applicants to find out what their marketing strategies would be and what commissions they would be willing to accept. Mr. Ashcraft believed that this should be addressed at a staff level and suggested that Council authorize the Town Manager to enter into negotiations and bring back additional materials regarding commissions, as well as a recommendation for how to proceed. Mr. Ashcraft made a motion to authorize the Town Manager to enter into negotiations with both applicants regarding commissions and to bring those results back to Council along with the applicants' marketing plans. Ms. Mason seconded the motion.

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

SELECTION OF A NEW ROADWAY AND NEW PEDESTRIAN PROJECT FOR CONSIDERATION IN THE STIP

Mr. Ward asked Council for their direction in selecting a new roadway and a new pedestrian project for consideration in the State Transportation Improvement Program. Mr. Miller suggested that Council not select a

project that the County had already picked, and Mr. Ward noted that the Grove Street path had already been approved. Mr. Ward stated that staff recommended the Council focus on submitting Highway 194 since it was a safe project in terms of not being removed from the list, and would add needed sidewalks to the Hardin Park school area. Mr. Furgiuele and Ms. Mason agreed with this suggestion. Mr. Ward stated that staff's suggestion on the pedestrian project was to focus on the New River Hills path in order to further connect the existing Greenway. While Mr. Furgiuele did not disagree with this suggestion, he believed Council should consider a multimodal path across Poplar Grove Road from the Highway 105 intersection in order to allow for better access to ASU. Mr. Ward was in agreement, but believed that Council should focus on connecting the current Greenway. Mr. Miller offered clarification that the Town would be responsible for paying 20% of the cost of the approved projects, and noted that there would be significant costs at New River Hills due to land acquisition. Ms. Mason made a motion to move forward with the recommendation of NC Highway 194 from US 421 to Howard's Creek Road (with the concept of three lanes and a center turn lane, with bicycle and pedestrian accommodations to the Town limits), and the recommendation of a multi-use path along New River Hills from Casey Lane to US Highway 421 at Brookshire Road that would complete a multimodal path form the Town limits to East Boone. Mr. Ashcraft seconded the motion. Brief discussion took place regarding the previously proposed Daniel Boone Parkway, with Mr. Ward indicating that he hoped to one day bridge the river at the Bolick property and to intertwine the bottom area with trails. Mr. Furgiuele stated that next year, Council should give thought to ASU access from Highway 105. Mr. Ward suggested that the Town talk with ASU about this idea, due to the amount of property they owned in the area.

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

AWARD OF BID FOR HAULING AND PLACEMENT OF ASPHALT

Upon a motion by Mayor Pro-Tem Clawson, seconded by Ms. Mason, Council approved the award of bid for the hauling and placement of asphalt to Moretz Paving.

AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT

THIS AGREEMENT is by and between Town of Boone ("Owner") and Moretz Paving Inc. ("Contractor").

Effective Date of Agreement: _____

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Furnishing all labor and necessary equipment for resurfacing selected town streets on a per-ton basis (including all hauling, placing, leveling, compacting, etc.) according to Town of Boone and NCDOT specifications. The contract price does not include the cost of asphalt itself, which shall be purchased by the Town or purchased by Contractor and reimbursed by the Town at cost.

ARTICLE 2 – OWNER

2.01 The Projects have been designed/determined by the Town of Boone Public Works Department, Street Department. The Director of Public Works or his designee, the Street Superintendent, will be the Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 3 – CONTRACT PRICE

3.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents for all Unit Price Work or amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item. The unit price for each item is as supplied in the Bid for the project.

ARTICLE 4 – PAYMENT PROCEDURES

4.01 Submittal and Processing of Payments

Contractor shall submit Applications for Payment upon completion of hauling and placing asphalt for agreed upon street or streets.

ARTICLE 5 – CONTRACTOR'S REPRESENTATIONS

5.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. Contractor has visited the street or streets and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. The Contract Documents are sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 6 – CONTRACTOR'S CERTIFICATIONS

6.01 Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 6.01:

A. "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;

B. "Fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

C. "Collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

D. "Coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ARTICLE 7 – TERMINATION OF WORK

7.01 Owner May Terminate for Cause

A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's material failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers;

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's repeated disregard of the authority of the Town of Boone; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

7.02 Owner May Terminate For Convenience

A. Owner may, at any time, terminate the contract in whole or in part for Owner's convenience and without cause. Termination by Owner under this Paragraph 7.02 shall be by a notice of termination prepared by the Owner and delivered to Contractor indicating intent to terminate for convenience and the effective date thereof.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

C. Upon receipt of a notice of termination for convenience, Contractor shall immediately, in accordance with instruction from Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Paragraph 7.02.B:

1. Cease operations as specified in the notice;

2. Place no further order and enter into no further subcontracts for materials, labor, services, or facilities except as necessary to complete continued portions of the Contract;

3. Terminate all subcontracts and orders to the extent they relate to the Work terminated;

4. Proceed to complete the performance of Work not terminated; and

5. Take actions that may be necessary, or that Owner may direct, for the protection and preservation of the Work.

D. Upon such termination, Contractor shall recover as its sole remedy payment for Work performed satisfactorily and not previously paid for as determined by the Owner. Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

ARTICLE 8 – DISPUTE RESOLUTION

8.01 Non-binding Mediation

A. In the event of a dispute of any nature between the Contractor and Owner arising from or relating to the performance of this Contract ("Dispute") that is not resolved by the Engineer or otherwise to their mutual satisfaction, the parties shall submit the Dispute to non-binding mediation.

B. The parties must agree upon a mediator. In the event the parties cannot agree on a mediator, they shall petition the Resident Superior Court Judge of Watauga County to appoint a mediator, who shall be a Certified North Carolina Superior Court Mediator.

C. The mediation will be conducted in accordance with the "Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions," originally adopted October 2, 1991, as amended., and the procedures and rules adopted by the Superior Court of the Twenty-fourth Judicial District in implementation thereof.

D. Each party to the mediation shall pay its pro-rata share of the mediator's fee immediately at the conclusion of the mediation, whether or not the mediation is successful, but in no case in which the Town of Boone is a participant will the Town pay less than one-third of the cost. Each party to mediation must bear its own legal costs, if any.

8.02 Litigation

A. No party may initiate litigation concerning a Dispute until the parties have engaged in mediation per section 8.01.

B. Any lawsuit brought with respect to any Dispute must be brought in the Watauga County, North Carolina Superior Court, and jurisdiction with respect to any such lawsuit shall lie exclusively in that court. Each party waives to the fullest extent permitted by law an objection to the personal jurisdiction of said court, and agrees that it shall be the exclusive jurisdiction and court to resolve any Dispute between them.

ARTICLE 9 – INSURANCE

9.01 Certificates of Insurance

A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Contract Documents, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain. The Owner shall be solely responsible for determining the adequacy and sufficiency of the insurance requested under the Contract Documents and any certificates of insurance which are furnished hereunder.

B. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a

deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

C. Neither Owner nor Contractor represents that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.

D. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the cap contract documents, including under the indemnities granted in the Contract Documents.

9.02 Contractor's Insurance

A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. Claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. Claims for damages insured by reasonably available personal injury liability coverage which are sustained:

   a. By any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

   b. By any other person for any other reason;

5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting there from; and

6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The limits of liability for the insurance required by Paragraph 9.02 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Workers' Compensation, and related coverage under Paragraphs 9.02.A.1 and A.2 of the General Conditions:

   a. Each Accident $1,000,000

   b. Disease – Each Employee $1,000,000

   c. Disease – Policy Limit $1,000,000

2. Contractor's General Liability under Paragraphs 9.02.A.3 through A.6 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:

   a. General Aggregate $2,000,000

   b. Products – Completed Operations Aggregate $2,000,000

   c. Personal and Advertising Injury $1,000,000

   d. Each Occurrence (Bodily Injury and Property Damage) $1,000,000

   e. Property Damage liability insurance will provide Explosion, Collapse, and Under-ground coverage where applicable.

   f. Excess or Umbrella Liability

      - General Aggregate $4,000,000
      - Each Occurrence $4,000,000

3. Automobile Liability under Paragraph 5.04.A.6 of the General Conditions:

   a. Combined Single Limit $1,000,000

C. Contractor covenants and agrees that the insurance coverage and limits required by the Contract Documents shall in no way be considered or used in any manner as a limit or cap of any kind on any liability or obligation that Contractor may otherwise have, including, without limitation, liability under the indemnification provisions contained herein.

1. By requiring such insurance and insurance limits, neither Owner nor Contractor represents that such coverage and limits will necessarily be adequate to protect Contractor.

2. Contractor shall be responsible for any deductible or self-insured retention.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

OWNER: Town of Boone

By: John Ward III

Title: Manager

Attest: _____

Title: _____

Address for giving notices:
321 East King Street
Boone, North Carolina 28607

Pre-Audit Statement: This instrument has been preaudited in the manner required by the Local Budget and Fiscal Control Act as amended.

By: _____

Title: _____

Date: _____

Approved as to Form:

By: _____

Title: _____

Date: _____

CONTRACTOR

Moretz Paving Inc

By: Rebecca O'Keefe

Title: President

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: Stephen M Isaacs

Title: Office Manager

Address for giving notices:
PO Box 270
Zionville NC 28698

Agent for service of process:
James B Moretz Jr.

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

CONSIDERATION OF STORMWATER EASEMENT - 1277 HWY 421 (BOJANGLES)

After it was noted that this easement was being granted to by Bojangles at no cost to the Town, Mr. Furgiuele made a motion to approve the easement as presented. Mr. Ashcraft seconded the motion.

DEED OF EASEMENT

Prepared by: *Allison M. Meade, Meade Law PLLC, PO Box 292,* Boone, NC 28607

STATE OF NORTH CAROLINA **COUNTY OF WATAUGA**

THIS DEED OF EASEMENT, made this the _____ day of _____, 2019, by and between K-5 Associates, LLC, hereinafter referred to as "Grantor," and the Town of Boone, hereinafter referred to as "Grantee," collectively referred to as the "Parties." The designation Grantor and Grantee, as used herein, shall include said Parties, their heirs, successors and assigns, and shall include singular, plural, masculine or feminine, as required by context.

WITNESSETH:

Grant of Permanent Utility Easement. Grantor, for and in consideration of the sum of Ten Dollars ($10.00), and other good and valuable consideration paid by the Grantee, the receipt and adequacy of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee, a permanent, non-exclusive utility easement (referred to hereafter in this Agreement as the "Easement"), within an area containing 2,741 square feet, more or less, as more particularly described on the attached Exhibit A and shown on the map attached as Exhibit B (the "Easement Area"), both Exhibits A and B being incorporated herein by reference. The Easement shall extend, over, within, and across the Easement Area and be used by Grantee solely for the purposes of excavating, installing, inspecting, operating, maintaining, repairing, backfilling, and reconstructing underground storm water facilities, including but not limited to pipes, drainage ditching, and such fittings, fixtures and other accessories as from time to time may be required, together with the full right of access to and egress from the Easement Area.

Servient Property Identified. The property of the Grantor that is subject to this Easement is described in the deed to Grantor recorded in Book of Records 1838, Page 252, Tract One, as well as Plat Book 19, Page 319, Tract Two, Watauga County Registry.

IN CONSIDERATION OF THIS GRANT OF EASEMENT, THE GRANTOR AND THE GRANTEE AGREE TO THE FOLLOWING TERMS:

A. Uses of Easement Area by Grantor. Grantor shall at all times, other than while the utility lines are under actual construction or repair, have the right to use the Easement Area, provided such use shall in no manner interfere with or be inconsistent with the use thereof by Grantee as provided herein. Prohibited uses of the Easement Area by the Grantor include, but are not limited to, the following: the erection of a shed, building, structure or other permanent obstruction within the permanent utility easement; the planting of trees within the permanent utility easement; the placing of additional fill within the permanent utility easement except after prior written consent from Grantee; and the construction of utility lines owned or maintained by entities other than Grantee, including but not limited to lines for electrical, gas, telephone, or cable services, except after prior written approval by Grantee. Grantor shall be entitled to landscape the area within the permanent utility easement with materials such as flowers, grass, shrubbery and/or mulch, so long as Grantor does not damage the Grantee's utility lines or accessories. Grantor shall be entitled to use the easement area as part of any building setback, green area, or livability ratio in order to comply with Grantee's zoning ordinances. Grantor retains the right to fully utilize the permanent utility easement area in any development plan submitted to the Town of Boone so long as it does not conflict with this easement and the provisions herein.

B. Grantee's Duties of Restoration and Repair. Grantee shall restore the topography of the Easement Area, after installation, and any future replacement, of any lines and accessories, to approximately the same condition as existed before said installation. The Grantee further agrees to repair any damage it causes to the Grantor's property as the result of any future uses of the Easement Area undertaken in accordance with this Easement instrument.

C. Grantee's Acknowledgment of Consent. Grantee, by its execution of this Agreement, acknowledges its consent to the terms of the Easement as set forth above.

IN WITNESS WHEREOF, the Parties have executed this Easement Deed on the dates shown below.

[SIGNATURES FOLLOW ON THE NEXT PAGE(S)]

GRANTOR:

K-5 ASSOCIATES, LLC

By: Daniel Kadis, Managing Member

STATE OF NORTH CAROLINA
COUNTY OF ~~WATAUGA~~ WAKE KB

I, certify that Daniel Kadis personally appeared before me this day, and acknowledged that s/he is the Managing Member of K-5 ASSOCIATES, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of such entity, s/he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this 28th day of May, 2019.

KENETHA W BAILEY
Notary Public, North Carolina
Nash County
My Commission Expires
March 11, 2024

Official Signature of Notary Public

Kenetha W Bailey
Notary's Printed/Typed Name

(Affix Seal)

My Commission Expires: March 11, 2024

GRANTEE:

The foregoing instrument is approved, this ____ day of _____, 2015.

Town of Boone

By:_____
Mayor

Attested By: _____(SEAL)
Clerk, Town of Boone

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

I, a Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this day and acknowledged that she is the Clerk for the Town of Boone, a North Carolina municipality, and that by authority duly given and as an act of the Town of Boone, the foregoing instrument was signed in its name by its Mayor, _____, and attested by her as the Town Clerk.

Witness my hand and official stamp or seal, this ____ day of _____, 2015.

_____
Notary Public

_____
Printed Name of Notary Public

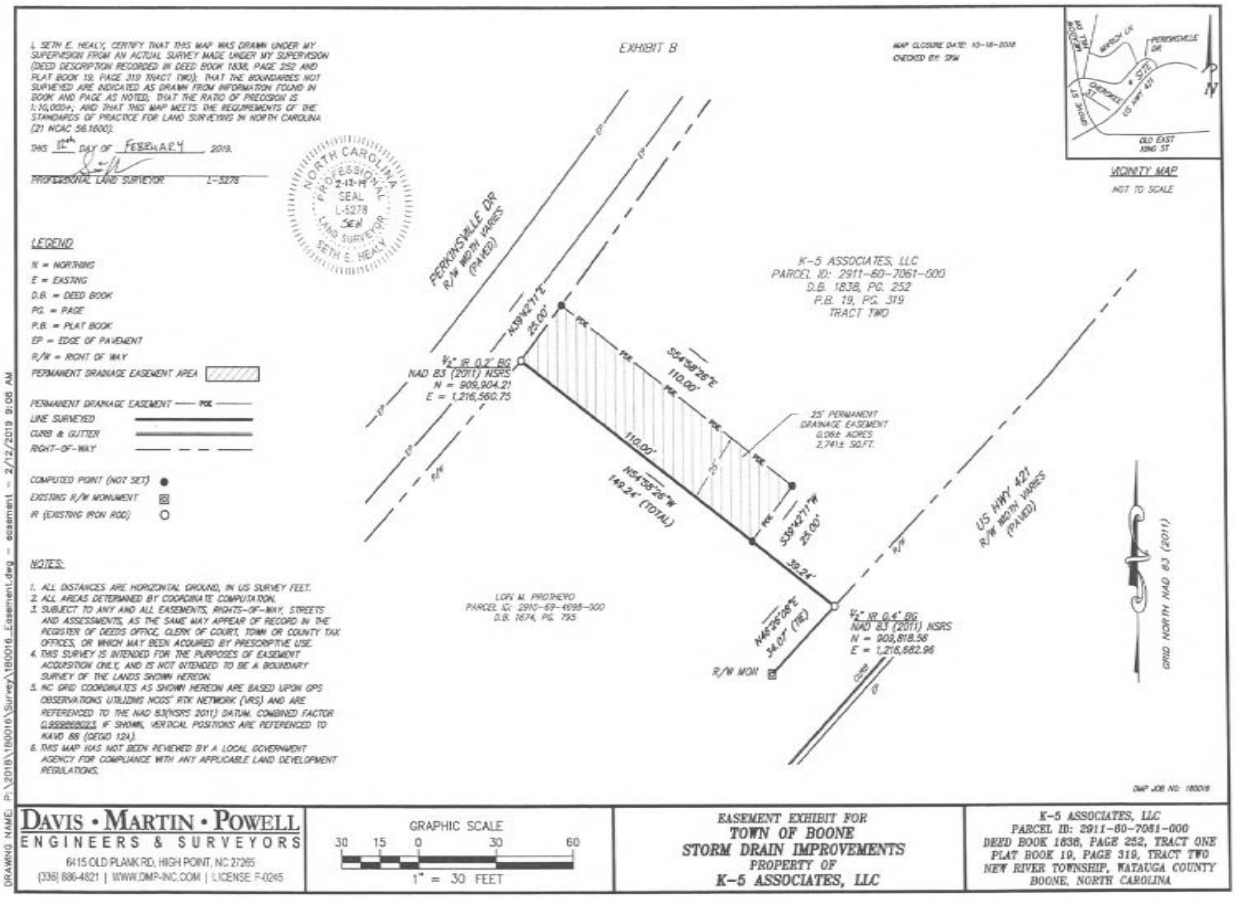
My Commission Expires: _____

EXHIBIT A

Parcel Id: 2911-60-7061-000
Permanent Drainage Easement

Beginning at an existing 1/2" iron rod, said iron rod having NAD 83 (2011) coordinates of N: 909,904.21 and E: 1,216,560.75, being located in the eastern right-of-way line of Perkinsville Drive, being the southwest corner of K-5 Associates, LLC, Parcel Id: 2911-60-7061-000 (Deed Book 1838, Page 252 and Plat Book 19, Page 319 – Tract Two) and being the northwest corner of Lori M. Prothero, Parcel Id: 2910-69-4698-000 (Deed Book 1674, Page 795); thence leaving said Lori M. Prothero property and along said Perkinsville Drive eastern right-of-way line and said K-5 Associates, LLC western property line, N 39°42'11" E 25.00 feet to a computed point; thence leaving said Perkinsville Drive right-of-way line the following two (2) courses and distances: 1) S 54°58'26" E 110.00 feet to a computed point; 2) S 39°42'11" W 25.00 feet to a computed point, said computed point being located in the southern property line of said K-5 Associates, LLC, also being the northern property line of said Lori M. Prothero; thence along said southern property line of said K-5 Associates, LLC and northern property line of said Lori M. Prothero, N 54°58'26" W 110.00 feet to the point of **Beginning**.

Containing 0.06± acres, 2,741 Sq. Ft±



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

REQUEST TO SCHEDULE MEETING TO DISCUSS R3/R4 ZONED PROPERTIES

Upon a motion by Mr. Furgiuele, seconded by Mayor Pro-Tem Clawson, Council voted to schedule a meeting on August 2, 2019 at 9:00 a.m. at Council Chambers in order to continue previous discussion regarding R3/R4 zoned properties.

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

REQUEST TO SCHEDULE MEETING - NEIGHBORHOOD WALKS

It was the consensus of Council to schedule neighborhood walks on August 29 and August 30, 2019 beginning at 3:30 p.m. each day.

RESULT:	**CONSENSUS**

CONSIDERATION OF OUTLINE FOR ORDINANCE ADDRESSING AMORIZATION OF NON-CONFORMING USES

Mr. Furgiuele presented a proposed outline for an ordinance to address the amortization of non-conforming uses in residential zoning districts. He believed the draft ordinance would provide for a legally created use that had obtained conditional district zoning to continue until the use was terminated. Mr. Furgiuele believed it would be unfair for a property owner who had unsuccessfully tried to rent a property to lose the right to continue the use due to this interruption and that conditional district zoning could address this situation. He disagreed with previous statements that one could not tell if a property was non-conforming from the street, and added that he was suggesting including properties in the R2 zoning district in the ordinance since it was also a low-density neighborhood district. Mr. Furgiuele wanted to make clear that he was not proposing the banning of non-conforming "situations" such as set-backs as opposed to "uses" and further outlined his proposal. Mr. Ashcraft felt that legally created structures should be left alone, with Mr. Furgiuele arguing that the Town had an interest in having as many non-conformities as possible eliminated. He felt that the solution to most of these problems would be rezoning. Ms. Meade stated that case law specifically precluded taking the position that just because an apartment did not rent for a year made it an abandoned use. She asked why Council would necessarily wish to rezone non-conforming properties in single-family districts to multi-family zoning districts, since by rezoning these properties, Council would be reducing the size of R1 neighborhoods in perpetuity. Mr. Furgiuele stated that conditional district zoning appealed to him more, but that it depended on the property. Ms. Mason was concerned that by rezoning an R1 zoned property to R3 next to R1 zoned property, that occupancy protections would be lost. She added that she wanted to protect the integrity of neighborhoods and wanted to look at issues that could be dealt with by police power. Mr. Furgiuele felt that zoning rules should be enforced and said that he was trying to bring clarity to a situation that had become more ambiguous by recent General Assembly modifications to State law. Ms. Ulmer expressed concern that the ordinance was not clear, with Ms. Shook expressing concern with enforcement due to a recent change in state law that required staff to prove a property was in violation, and wondered if staff would now have to prove that a property owner was **not** in violation. Occupancy violations were briefly discussed, with Mr. Furgiuele stating that he believed the Town's ability to enforce its zoning laws was damaged by the recently adopted statute of limitations. Ms. Meade felt that if the

Council were to enact the ordinance as presented, that the program would be in some legal doubt. She added that if Council wanted to enforce against newly created non-conformities, they would still need to consider a back-up program. Mr. Ward reminded Council of the increase in legal costs, as well as staff time dealing with complaints, enforcement and record requests. Mr. Furgiuele felt that enacting the ordinance would be a step toward protecting neighborhoods. He stated that he had talked to a property owner with non-conforming uses, and while the property owner initially disagreed with the ordinance, after discussion, the owner was in agreement and was in favor of the protections the ordinance would offer. Mr. Ashcraft stated that he wanted to try to work on addressing nuisance issues within the R1 zoning district, and believed that structures that were built a certain way and had always been used that way should be left alone. He felt that number three of Mr. Furgiuele's proposal would work well for covering the rest of the non-conforming situations. Mr. Ashcraft also noted rentals within the R1 district that ended up applying for conditional district zoning would have the same end result. Mr. Furgiuele agreed, but stated that the Town would then have a record and a commitment from the owner that when they discontinued the non-conforming use, the use would revert back to the uses allowed in the underlying zoning district. He believed that conditional district zoning with conditions were enforceable, with Ms. Meade clarifying that Mr. Furgiuele was proposing that conditional district zoning could continue in perpetuity. Ms. Meade further clarified that Mr. Furgiuele was of the opinion that he believed that conditional district zoning was not subject to spot zoning laws. Mr. Furgiuele stated that there were appeals court decisions that suggested this, and that he believed conditional district zoning could actually result in a property becoming more compatible with the adjacent zoning district. He added that he believed Mr. Ashcraft made a good point about structures that could not be easily converted into single family homes. Ms. Mason felt more comfortable with starting with a more narrow scope, focusing on single family homes in the R1 that were converted to some non-conforming use and to require them to come into conformity. She continued by stating that she wanted to address the nuisance issues, but believed it made sense to try and utilize police powers first, then look at other options if that approach was not successful. Mr. Furgiuele asked how this approach would be enforced, and stated that just because people did not complain did not mean they should not enjoy zoning enforcement. He stated that if there was not support for the issue from the rest of Council, that he would pull his request. Ms. Mason hoped that people from both sides of the issue would attend the upcoming public hearing to voice their opinion in order to help Council construct the best way to move forward. Mayor Pro-Tem Clawson echoed this statement. Ms. Mason believed that Council should proceed with the previously scheduled public hearing, but was concerned with how to deal with properties in the R1 district with non-conforming uses which had become a nuisance. Ms. Meade reminded Council that utilizing police powers to mitigate nuisances had previously been discussed, and that she planned to come back to Council with ideas on how to address the issue. Mr. Furgiuele felt that Council, staff and Ms. Meade were reluctant to adopt such an ordinance as the one presented. Ms. Shook replied that her only concern was that the ordinance be clear and manageable for staff, with Mr. Ward adding that he was concerned with the broadness of the proposed ordinance and was worried that staff would be unable to meet Council's expectations. He suggested that Council consider starting with Mr. Ashcraft's proposal to work on nuisances in the R1 district and to potentially phase in Mr. Furgiuele's other suggestions in the future.

Mr. Ashcraft left the meeting at 11:10 p.m. to tend to another obligation.

CONSIDERATION OF AMENDING THE OUTSIDE AGENCY FUNDING PROCESS

RESULT:	**TABLED [UNANIMOUS]**	**Next: 6/20/2019 6:00 PM**
MOVER:	Sam Furgiuele, Council Member	
SECONDER:	Lynne Mason, Council Member	
AYES:	Mason, Clawson, Furgiuele, Ulmer	
ABSENT:	Ashcraft	

DIRECT THAT THE TOWN ATTORNEY RESEARCH AND ADVISE COUNCIL ABOUT BANNING THE USE OF STYROFOAM

RESULT:	**TABLED [UNANIMOUS]**	**Next: 6/20/2019 6:00 PM**
MOVER:	Sam Furgiuele, Council Member	
SECONDER:	Lynne Mason, Council Member	
AYES:	Mason, Clawson, Furgiuele, Ulmer	
ABSENT:	Ashcraft	

ADJOURNMENT

Upon a motion by Mr. Furgiuele, seconded by Ms. Mason, Council voted to direct the Town Attorney to draft code amendments as discussed at the Water Use Committee meeting held earlier in the day and to bring them back for Council's consideration during Thursday's regular Council meeting.

VOTE: Aye: Furgiuele, Mason, Clawson, Ulmer
Nay: None
Absent: Ashcraft

Upon a motion by Ms. Ulmer, which was seconded by Ms. Mason, Council voted to adjourn the meeting at 11:15 p.m.

VOTE: Aye: Furgiuele, Mason, Clawson, Ulmer
Nay: None
Absent: Ashcraft

Nicole Harmon, Town Clerk

Rennie Brantz, Mayor