

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
September 17, 2019**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order at 6:00 p.m. on Tuesday, September 17, 2019 in the Town 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, Connie Ulmer, Sam Furguele, and Marshall Ashcraft. Staff present included Town Manager John Ward, Town Clerk Nicole Harmon, Public Works Director Rick Miller, Finance Director Amy Davis, Fire Chief Jimmy Isaacs, Police Chief Dana Crawford, Public Works Deputy Director Todd Moody, and Planning Director Jane Shook. Town Attorney Allison Meade was also in attendance.

ANNOUNCEMENTS

RECOGNITION OF CORPORAL J. KNAPP AND OFFICER J. ENGLISH

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

Chief Crawford presented certificates to Corporal Joseph Knapp and Officer Justin English for successfully completing the Traffic Enforcement and Investigation certificate program through the North Carolina Justice Academy.

TENTATIVE AGENDA ADOPTION

Upon a motion by Council Member Mason, seconded by Mayor Pro-Tem Clawson, Council voted to approve the agenda as presented.

VOTE: Aye: All
 Nay: None

Ms. Meade suggested that since the public hearing regarding the potential MSD expansion was advertised to begin at 6:00 p.m., Council consider rearranging the agenda to open the public hearing after public comment concluded. Ms. Mason made a motion to this effect, which was seconded by Mayor Pro-Tem Clawson.

VOTE: Aye: All
 Nay: None

PUBLIC COMMENT

Freida Greene, treasurer for the Southern Appalachian Historic Association spoke to inform Council that for the past two years, AMB/We Can So You Can have used the Daniel Boone Park to put on a haunted trail event and have promised to donate money to SAHA, but no money had been received to date. Mr. Ward clarified that he recently was informed of a verbal agreement between the former executive director of SAHA and AMB/We Can So You Can, and that the Town had no knowledge of these agreements and that they were completely separate from the Town's license agreement for the event. He noted that Cultural Resources staff and the interim executive director at SAHA had a meeting scheduled with AMB/We Can So You Can representatives regarding a fundraiser and that this matter would also be discussed. Mr. Furguele felt that if there was conversation about money being transferred between the parties, that should be reflected in the license, even if the Town was not involved, and that the property that was off-limits and on-limits should be defined in the agreement as well. Ms. Mason clarified that the cabins on the property were owned by SAHA and that the rest of the property was owned by the Town. Ms. Meade noted that SAHA had certain license rights to other areas and that there was an overlap that could be discussed in the future. She added that she was not comfortable with payments being exchanged between the two parties in this situation.

PUBLIC HEARING - MSD EXPANSION

Mayor Brantz opened the public hearing regarding a potential MSD expansion at 6:15 p.m. and presented the following to Council:

1. Draft Ordinance to Extend the Boundaries of the Town of Boone MSD
2. Maps of the service district and adjacent territory, showing the present and proposed boundaries of the district.
3. Statement showing that the area to be annexed is contiguous to the district, with at least one-eighth of the area's aggregate external boundary coincident with the existing boundary of the district, and that the area to be annexed requires the services of the district
4. Plan for extending services to the area to be annexed

Mr. Ward noted that the implementation of the MSD tax would be delayed until the 2020/2021 fiscal year, and added that action was taken several years ago to include the Rivers property in the MSD but that the ball was dropped. Mr. Ward clarified that as a condition of approval, the Riverswalk owner had agreed to be included in the MSD as soon as the two parcels were combined, and that the parcels now met that standard. He further noted that there had been previous requests from businesses at the 965 Rivers Street property, but that they were denied since they were not a member of the MSD. Mr. Ward clarified that the reason for including the property located at 143 Appalachian Street, even though it was tax exempt, was for map clean up. Mayor Pro-Tem Clawson asked how the brownfields regulations would come into play for the Riverswalk property. Mr. Ward stated that tax payments would be phased in as usual with a brownfields property. Mr. Furguele wondered what effect this potential extension would have on sales tax if the County continued the ad-valorem tax distribution method. Mr. Ward answered that although the potential extension would raise a small amount of funding, it would be a favorable allocation to the Town.

Judy Davis, homeowner and treasurer of the Daniel Boone Homeowners Association read the following statement submitted by vice president Jim Marsh:

*THE DANIEL BOONE HOMEOWNERS ASSOC.
THE DANIEL BOONE CONDOMINIUMS
116 - 3Z GRAND BLVD.
BOONE, N. C. 28607
(828) 265-6613
2018 – 2019 BOARD OF DIRECTORS
SID CAMPBELL, PRESIDENT JAMES P. MARSH, JR. VICE-PRESIDENT
JUDY O. DAVIS, TREAS. TOM HADLEY, SEC.
LARRY KOVALCIN, MEMBER*

September 16, 2019

*Mr. John Ward
Town Manager
Town of Boone
567 W. King St.
Boone, NC 28607*

Dear John,

Our association and most members have received the notice advising us of the intent to include the Daniel Boone Condominiums as part of the Downtown Municipal Service District.

I have met with and discussed the Town's intent to include our property within this district with the Board and some owners of the association. The owners do not understand the reason or see any advantage to being placed within this district. It appears there are several other apartment complexes being added to the district as well.

The Daniel Boone Condos is the only complex in downtown Boone being considered for the municipal service district which is totally residential living. The other apartment complexes are mixed-use development or retail only establishments which could benefit from such things as advertising or public entertainment, but we are strictly

residential. We do not and will not benefit from any advertising and the public entertainment that should be able to be enjoyed by all residential customers without an extra tax. We also do not receive trash pick-up or leaf pick-up free of charge like other residential customers. We are forced to pay extra now, and don't see the need for another tax.

Let me give you a brief history of our complex: The first owner to purchase a unit was Charles Blackburn on May 15, 1985 and his family is still the owner. During those thirty-four years it has been the home of a sister, granddaughter, and now a young man from Hickory who is a student calling the unit home. We still have many owners or families who live in their unit, provide friends a getaway for a vacation, or rent to professionals, faculty, or students. If the unit is rented, it provides income to some original owners, who in some cases use it now for retirement care, other expenses families incur or simply to pay the mortgage on the unit where they live.

The complex is in a major repair schedule which is planned for the next three years. After 34 years, there is siding, walkways and roofing being scheduled for repair. The cost to each owner this year and next year is \$2,160 or \$180 per month. The third year is when the roof replacement which could cost each owner another \$3,000 to \$4,000 will occur. During the next three years, the owners are expecting special assessments of approximately \$8,000 or \$225 per month. Any extra expense during this time will make a difference to many owners. The positive aspect of these repairs is that Downtown Boone will receive a facelift where the condos are.

If this action passes the Council, the added tax which is estimated to be \$500 to \$600 a year, will be an expense to the owner or an added expense to a renter in a town where affordable housing is hard to come by.

During my visit with you we did discuss a few items that could benefit our complex, the town, citizens, and visitors if the Council sees no other alternative to adding this extra tax to residents and again, not a retail establishment. Our property along King Street does not have streetlights as does the rest of downtown. We would be interested in this addition for the safety of our residents and the public as a whole. We also have a landscaped area between the sidewalk and the complex's sidewalk. This area has conduit which could be used to wire lights without removing concrete or pavement by the town. If these light fixtures are the same as what is now being used with another light on the back, it would help light our area for safety. Easements, cost for the lighting, and legal issues were also discussed last week. Other items which could benefit our complex were improved drainage as well as curbing/sidewalks on the east side of Grand Boulevard.

I hope if Town Council does decide to include the Daniel Boone Condominiums in the Municipal Service District, an outline could be given to our property owners as to how this extra tax will benefit our complex, such as the items above.

I appreciate your time and insight into what will benefit Downtown Boone, and the community as a whole. This is truly a beautiful place that we can all be proud to call Boone, our hometown.

Yours truly,

*Jim Marsh
Vice President
Property Manager*

Tucker Deal, attorney for the Riverswalk development stated that his client did not object to being included in the MSD, but asked that they be deferred until 2022. He noted that his clients would be completing some streetscape work themselves in the meantime.

Mr. Furgiuele stated that he believed certain properties who were already within the MSD were being slighted in terms of receiving street scape improvements. Mr. Ward noted that his goal in accelerating the street scape was to try to accelerate it, which he believed had been achieved with the help of new DBDA Coordinator, Lane Moody. He noted that improvements had been taking place within the MSD core and that the plan had been accelerated by

completing street scape improvements as other repairs were being done. Mr. Furgiuele agreed and stated that he was encouraged at the speed by which street scape projects were being completed. Mr. Ward noted that by including Daniel Boone Condos in the MSD, this would allow for curb and gutter improvements along that side of Grand Boulevard which would address stormwater runoff issues in the area. Ms. Meade added that property owners enjoyed increased property values as a result of the MSD already. Mr. Furgiuele expressed concern with the sidewalk along King Street in front of Boone Bagelry, with Mr. Ward stating that it had been discussed that if approved, street lights could be installed in the raised landscaping beds in front of the condos. Ms. Mason believed that all the properties listed were a part of an existing community and that they benefitted by receiving police and fire services downtown. Mr. Furgiuele felt that the proposed expansion was consistent with the Community Appearance Commission's downtown core concept. Mr. Ashcraft asked whether improvements being installed by property owners at Riverswalk would be built to Town standards. Ms. Shook answered that along Water Street, standards would be the same as along King Street, but that for the side fronting Poplar Grove Road, the sidewalks would be simple sidewalks with no brick, and that similar street lighting would be installed all at the developer's expense. Hearing no further comments, Mayor Brantz closed the public hearing at 6:55 p.m.

REQUESTED APPEARANCES

SHERRY ADAMS - N.C. MAIN STREET PROGRAM

Sherry Adams, Downtown Programming and Technical Assistance Coordinator with the North Carolina Main Street Program gave Council a briefing on the state Main Street program. She stated that in the 2018/2019 fiscal year, Boone saw approximately 1.1 million dollars in public investment, 6.2 million dollars in private investments and 727 volunteer hours with a value of over \$17,000. DBDA Coordinator Lane Moody and DBDA President Kendra Sink thanked Council for their support, with Ms. Sink stating that she believed the DBDA had accomplished more in the past year with Ms. Moody as the new coordinator than had been accomplished in previous years. Ms. Sink added that the group had been working hard with Town staff on street scape improvements and downtown events. Mr. Furgiuele applauded DBDA for their new logo and stated that it was an excellent design.

NANCY LAPLACA

Nancy LaPlaca of Boone gave the following presentation entitled: "Clean Energy and NRLP"

Clean Energy and NRLP: where are we now, where do we want to go, and how do we get there? Net Metering is Key

Nancy LaPlaca, J.D.
Regulatory Consultant
Adjunct Faculty, AppState
Laplaca.nancy@gmail.com

What's the hurry?

Climate Change: It's Here, NOW

- CBS News: natural disasters cost the [U.S. \\$306 BILLION in 2018 alone](#)
 - 362 deaths, significant economic impacts
 - 2017 was the third hottest year ever on Earth, only 2016 and 2012 were warmer
 - **2018: North Carolina had warmest year ever recorded**
 - NOAA: [July 2019: the hottest month](#) on Earth-ever
 - Hurricane Dorian: 185 mph sustained wind speeds

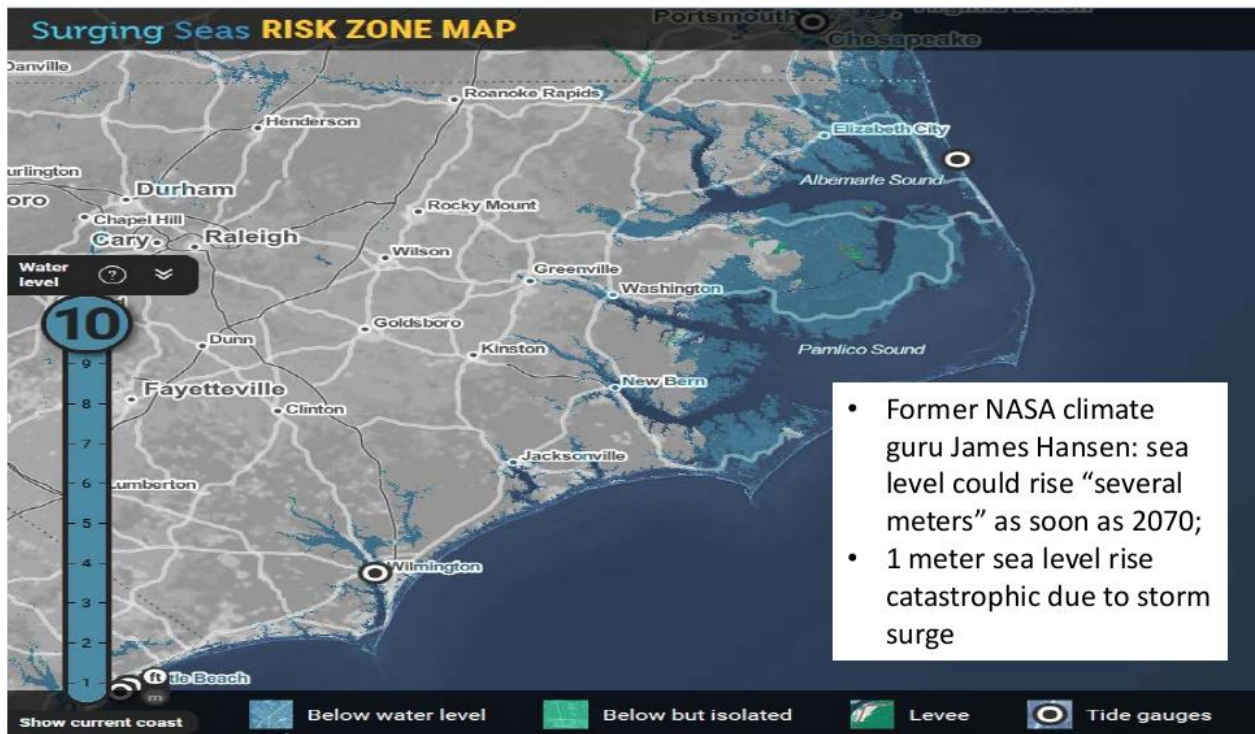
Leaked IPCC Report: “...oceans poised to unleash misery” Worldwide

- [August 2019](#): leaked United Nations IPCC (Intergovernmental Panel on Climate Change) Special Report on the State of the Oceans:
“...the same oceans that nourished human evolution are poised to unleash misery on a global scale unless the carbon pollution destabilizing Earth’s marine environment is brought to heel...”

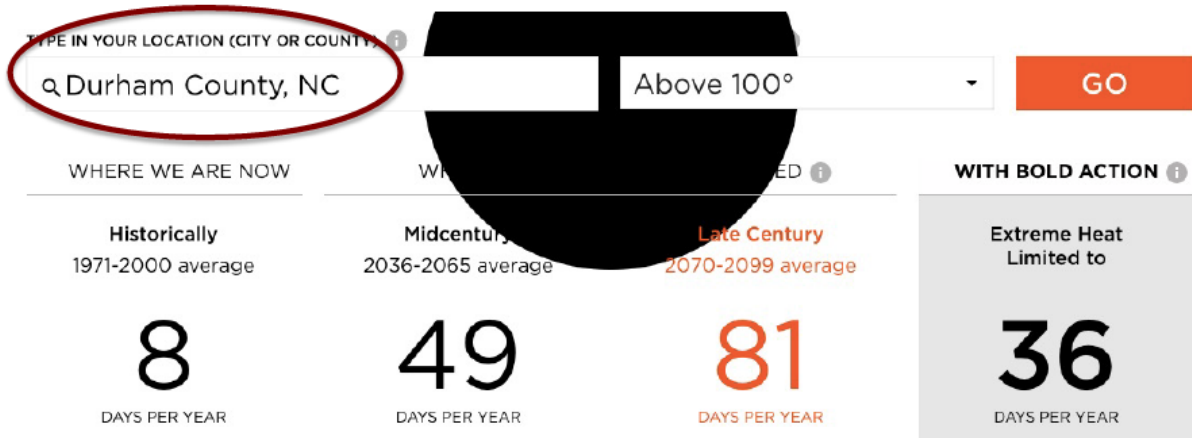
Majority of U.S. Teens: Worried That Climate Change Will Harm Them

- 9/19 [Washington Post-Kaiser Family Foundation poll](#): **1 in 4 teens have participated in a walkout, attended a rally or written to a public official to express their views on global warming** — remarkable levels of activism for a group that can’t vote
- Levels of stress and anxiety are very high among youth
- North Carolina is very much at risk from climate change due to eastern third of the state is very low; lots of exposed coast and barrier islands
- 3 major hurricanes since 2014, causing billions in damage

Sea-level rise in North Carolina

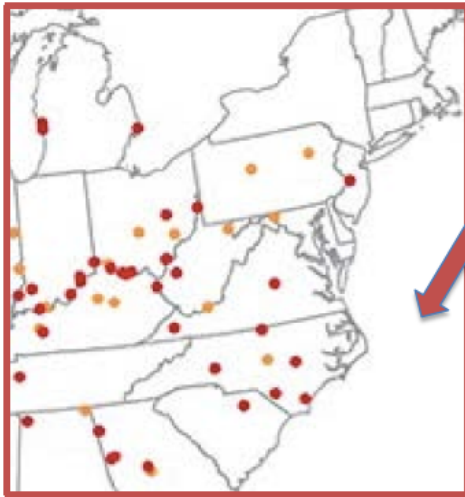


Days Over 100 Degrees F To Increase Dramatically



- TODAY: **8 days** per year over 100 degrees F
- 2036-2065 average: **49 days** per year
- 2100: **81 days** per year

NC: Coal Ash is Climate Threat



- U.S.: 100 toxic coal ash sites
 - Current flood maps ***underestimate*** danger from heavier rains and floods
 - NC: [6 coal ash sites](#)
 - Cost to clean up NC's coal ash: [\\$5-6 billion](#)
 - Coal ash: mostly ***unregulated***
-
- [Duke Energy doesn't want to pay](#) for coal ash cleanup; ash contaminates groundwater, toxic brew of contaminants and heavy metals, i.e. arsenic, lithium, cobalt, radium, thallium, molybdenum etc.

Got Hog Waste? 9.7 Million Pigs

- NC: 9.7 million pigs/hogs; 700 million chickens
- NC [has 3,300 waste lagoons](#)
- [Hog waste leaked from 30 ponds after Hurricane Florence hit in September 2018](#)
- An additional 75 lagoons close to overflowing
- In 2016, Hurricane Matthew inundated 14 hog waste lagoons
 - Millions of animals died in flooding

People of color and the poor are disproportionately harmed – and least able to cope

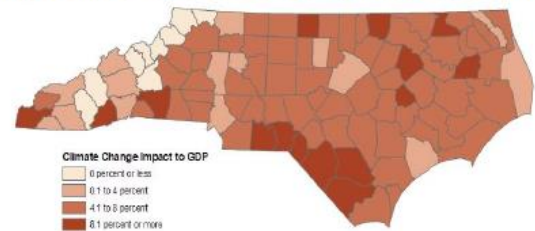


Photo: Sean Sheridan for Mercy Corps



Climate Change Affects the Economy of Each County in N.C.

Analysis shows economic inequality will be aggravated



@ncbudgetandtax

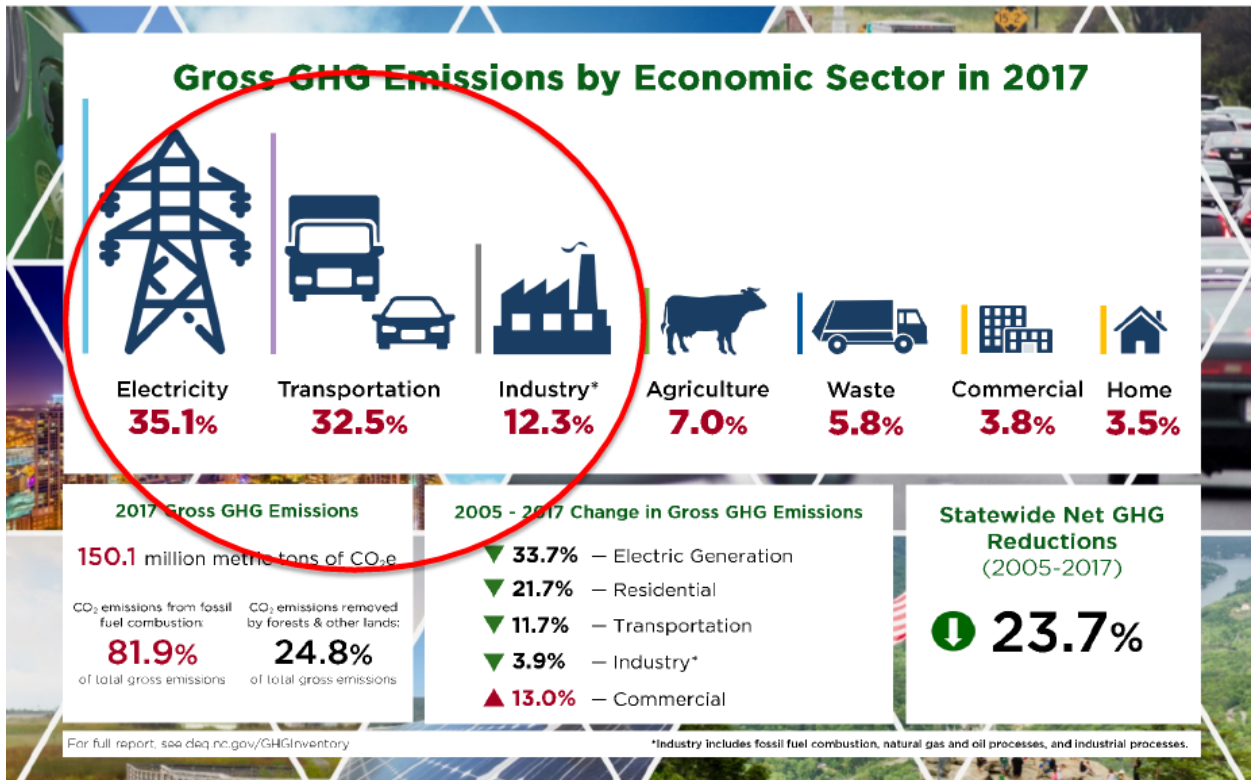
@ncjustice

Source: GOVERNING, Science

U.N.: By 2050, world could have 1 BILLION climate refugees

Quick Facts

2005- 2017 North Carolina Greenhouse Gas (GHG) Inventory



Where does Boone's Electricity Come from?

- 95% of NC's electricity: from Duke Energy
- Utilities like Blue Ridge Electric or New River Power and Light simply **buy the electricity wholesale** (5 cents/kWh) and **sell it to us at retail** (10 cents/kWh)
- Today I want to discuss **NET METERING**, which only occurs at the **retail** level
- Who are NRLP retail customers? Homeowners, renters, King Street businesses – anyone that does NOT buy at wholesale rates

KEY: NC Has 2 Solar Markets, Retail and Wholesale

- In NC – and all states – there are two distinct solar markets: RETAIL and WHOLESALE
 - They are completely different markets
- **RETAIL:** homes, businesses, commercial district downtown Boone
- **WHOLESALE:** one utility sells to another (i.e. Duke Energy sells electricity to BREMCO or NRLP, who then sell to retail customers)

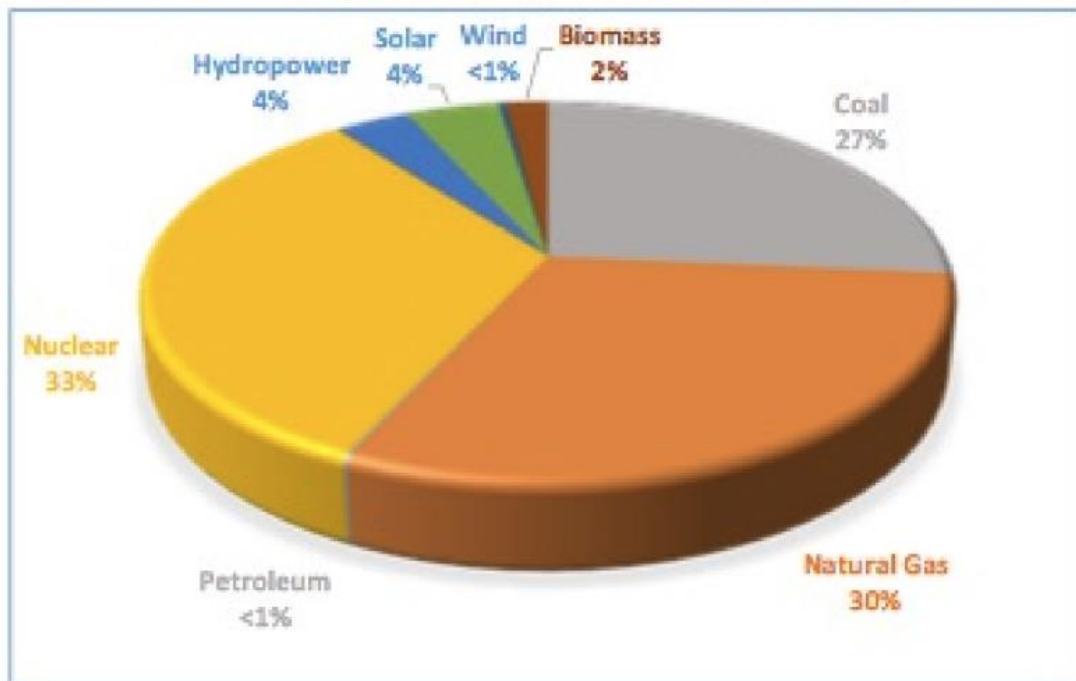
Boone's Electricity Mix – 2017

NRLP: 0.14% on-campus-generated clean energy; ~4% overall (including purchased power)

BREMCO: 0.5% clean energy

Sources: <https://www.seia.org/state-solar-policy/north-carolina-solar> and <https://energync.org/ncs-energy-mix/> , and <https://www.eia.gov/state/print.php?sid=NC>)

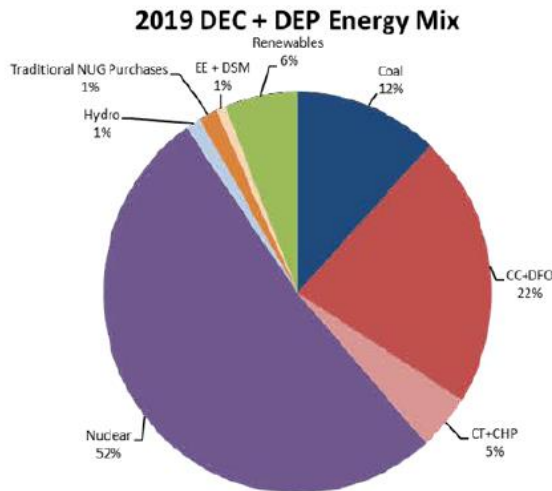
2017 Electricity Generation



***Figure 1: North Carolina's Electricity Statistics
by Resource Type***

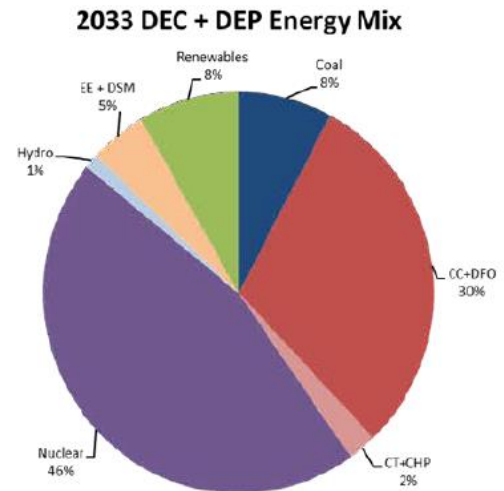
Source: <https://files.nc.gov/ncdcd/climate-change/clean-energy-plan/Clean-Energy-Plan--DRAFT-REPORT-08162019.pdf> page 33

Duke Energy's Plans: Inadequate



Duke Energy: Electricity 2019:

- 6% Renewables
- 1% Energy Efficiency (EE)
- 12% coal
- 25% natural gas (CC, CT and CHP)



Duke Energy: Electricity: 2033

- **8% Renewables**
- **1% Energy Efficiency (EE)**
- 8% coal
- 32% natural gas (CC, CT and CHP)

What is Net Metering; Why Care?

Net Metering: the meter that measures electricity use runs forward and backward

- Meter runs *forward* when you buy electricity from the grid, which costs you **~10 cents/kWh**
- Meter runs *backward* if you have solar, and solar electricity you don't use in your home is fed back into the grid. **The utility pays you 5 cents/kWh**

Utility Would Sell Your “Excess” Solar Electrons to Your Neighbor

- **Why does the utility pay you only half of what you pay them?**
- They say solar is “cost” and has no “benefit.”
- However, the utility benefits greatly from solar fed into the grid because if you don’t use those electrons, your neighbor does. So while the utility gives you 5 cents/kWh for the solar, they charge your neighbor 10 cents/kWh.
- **Need to “beat the peak”? Use solar!**
- **More hot days means more electricity use; using fossil fuels means we heat up faster, using more electricity etc. The cycle can only stop if we use clean energy.**

Putting Solar on Your Home in Duke Energy Territory Costs Half as Much

- It costs half as much to put up solar in Duke Energy territory as in western NC: why?
- In other words, if you lived in Duke Energy territory, and put up solar, Duke Energy would pay you **retail** rate (~12 cents/kWh) for the solar you feed into the grid – the same as you pay them.
- Blue Ridge Electric is even worse – they pay you only 5 cents/kWh, and also charge you \$23/month for the “privilege” of putting solar YOU paid for on your roof
- www.ratesofsolar.com shows how much solar costs in nearly all utilities in southeaster states

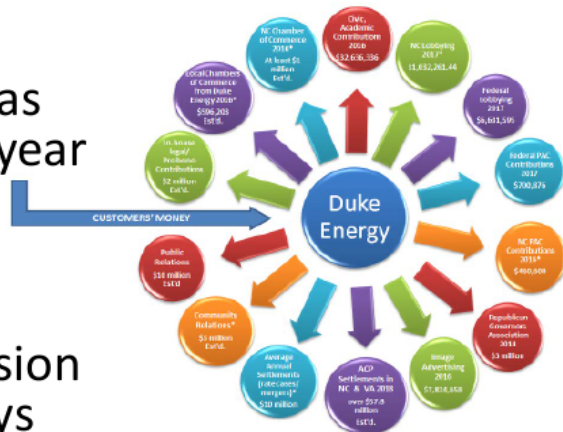
NRLP: New Contract Starting 2022

- NRLP will be purchasing solar from 'merchant' plant operator and builder NTE starting in 2022.
 - NTE: 98% of electricity it sells is [natural gas](#)
- BIG QUESTIONS:
 1. **How much will NRLP pay NTE for solar?** Duke Energy is currently contracting for solar at [~3.5 cents/kWh](#). Will NTE meet that price?
 2. What percentage of power bought by NRLP will be clean?
 3. Will homes and businesses be able to put up their own clean energy?

Why is there NO retail or commercial solar in western NC?

- Net metering rules are so bad it's not cost effective
- No competition
- Duke Energy spends heavily -- \$80 million per year on PR, giveaways, lobbying – to ensure monopoly
- **Without fair net metering, we will never have a residential or business district with solar**

- NC Enviro group files complaint with NCUC because Duke Energy has spent ~\$80 million per year in “influence” money;
- Expert witness is the former Chair of the NY Public Utilities Commission Peter Bradford, who says “utility influence spending is a long-running national problem....”
- NCUC just started a rule-making to limit this type of spending



2005-2017, Duke Energy's decarbonization rate: 2.63% per year CO2e but that rate is currently at 1% per year, from now until 2030.

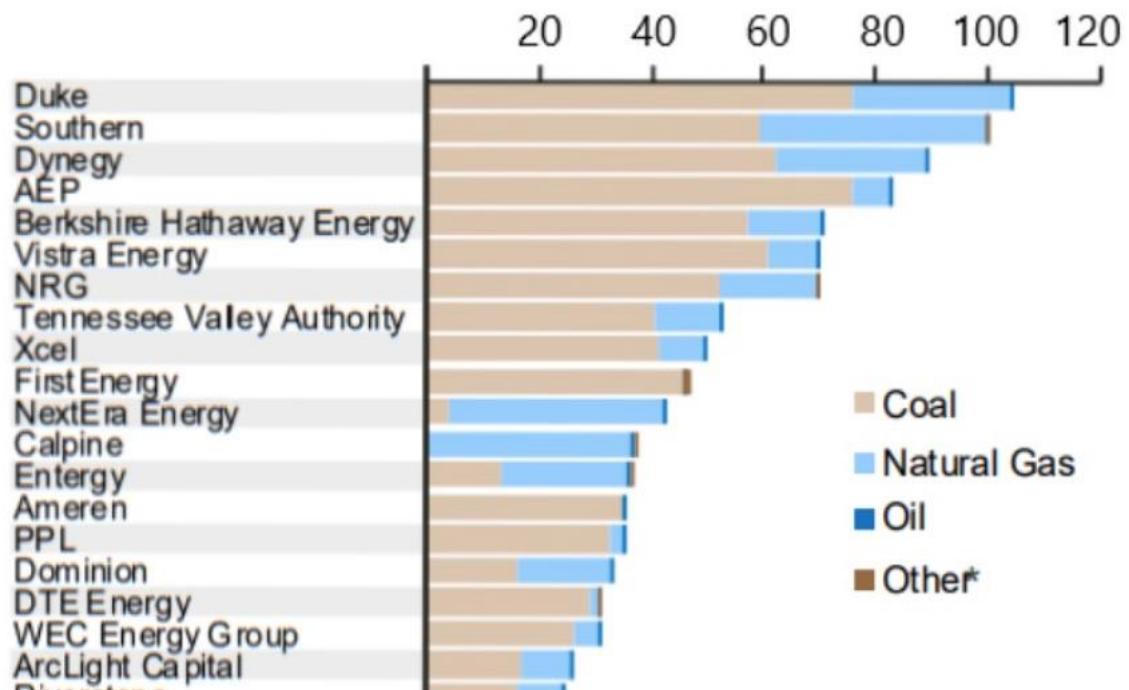


Is Coal Really “Cheap”?

- External costs of coal, i.e. pollution, health and environmental damages: 17-27 cents/kWh
- Duke Energy is simply replacing coal with natural gas; don't even need a hearing or new permit
- Utilities ignore the fact that natural gas, mostly fracked, is far worse for the climate than coal

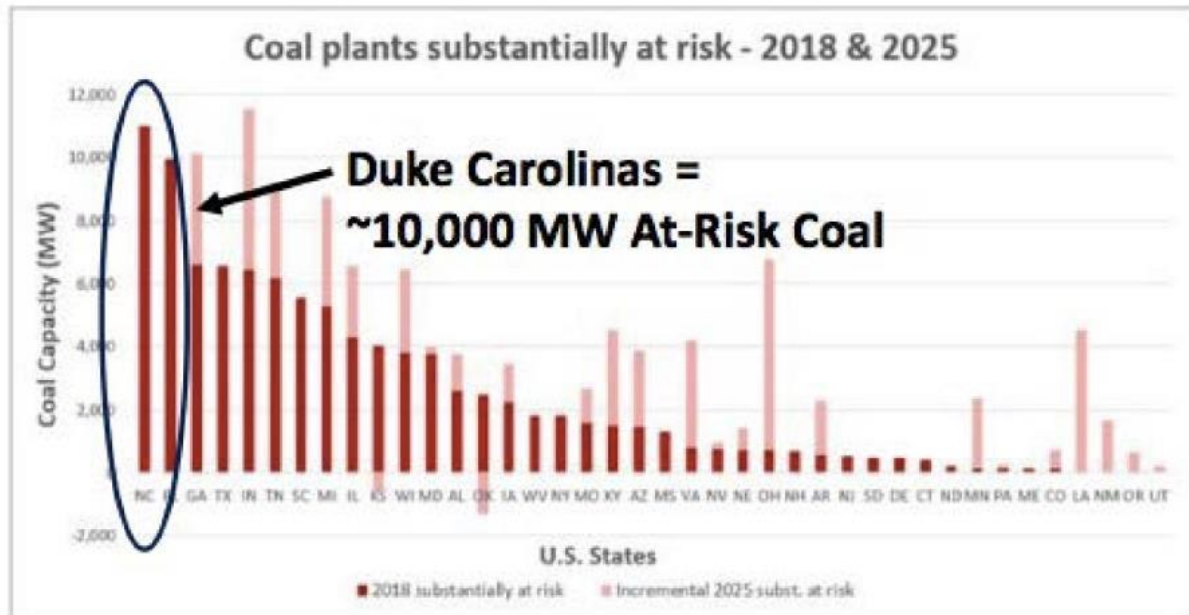
Annual CO2 Emissions - Million Tons, 2017

(all generating facilities)



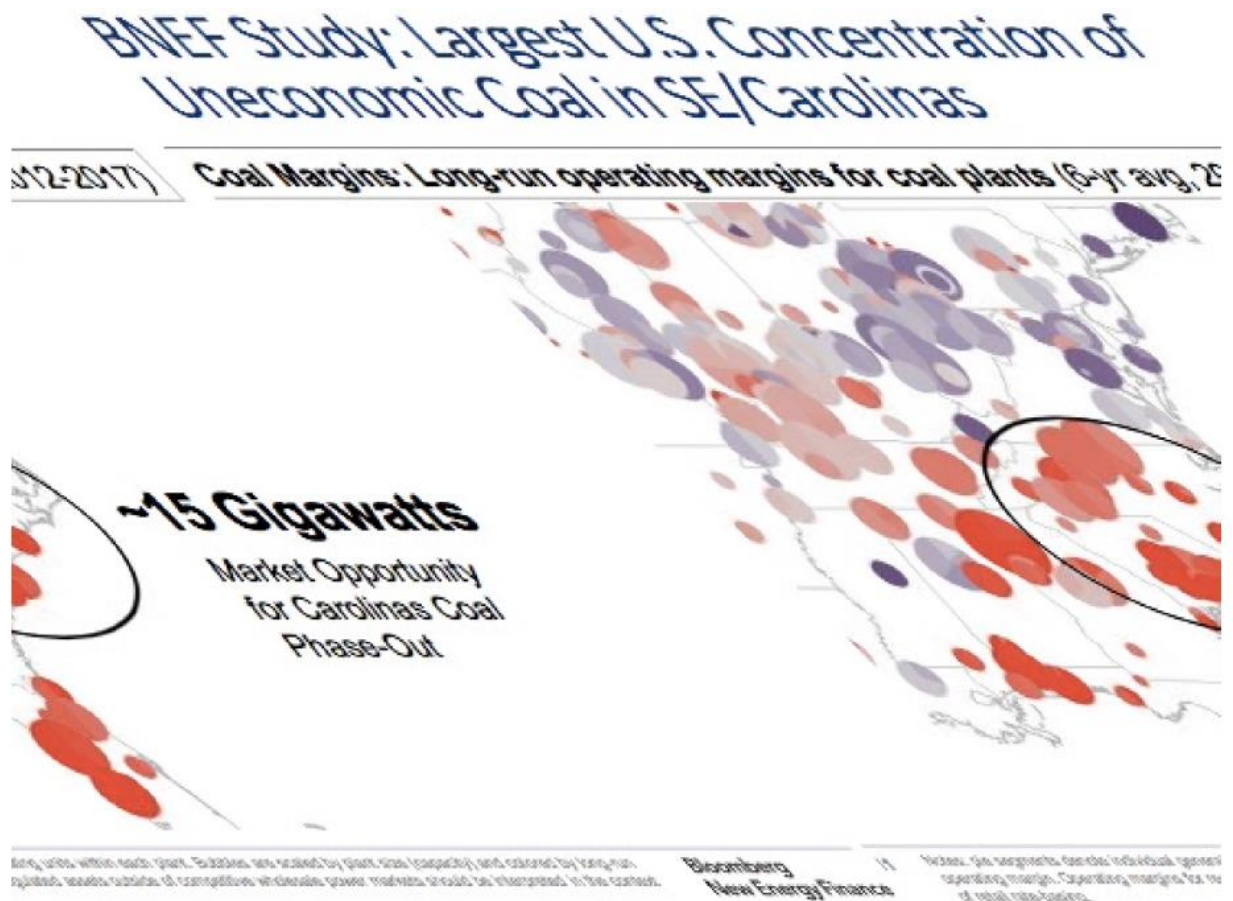
Source: <https://www.mjbradley.com/content/emissions-benchmarking-emissions-charts>

New Study Finds Duke Carolinas is #1 in the United States for At-Risk Coal

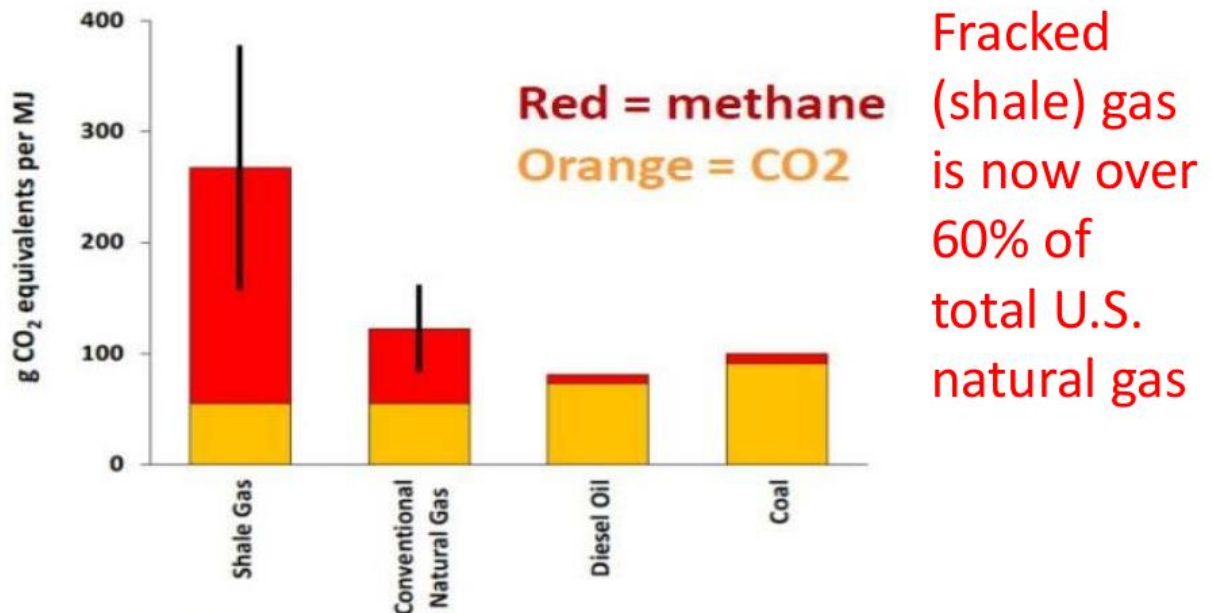


Source: "The Coal Cost Crossover: Economic Viability of Existing Coal Compared to New Local Wind and Solar Resources." Energy Innovation, LLC and Vibrant Clean Energy, LLC. March 2019.



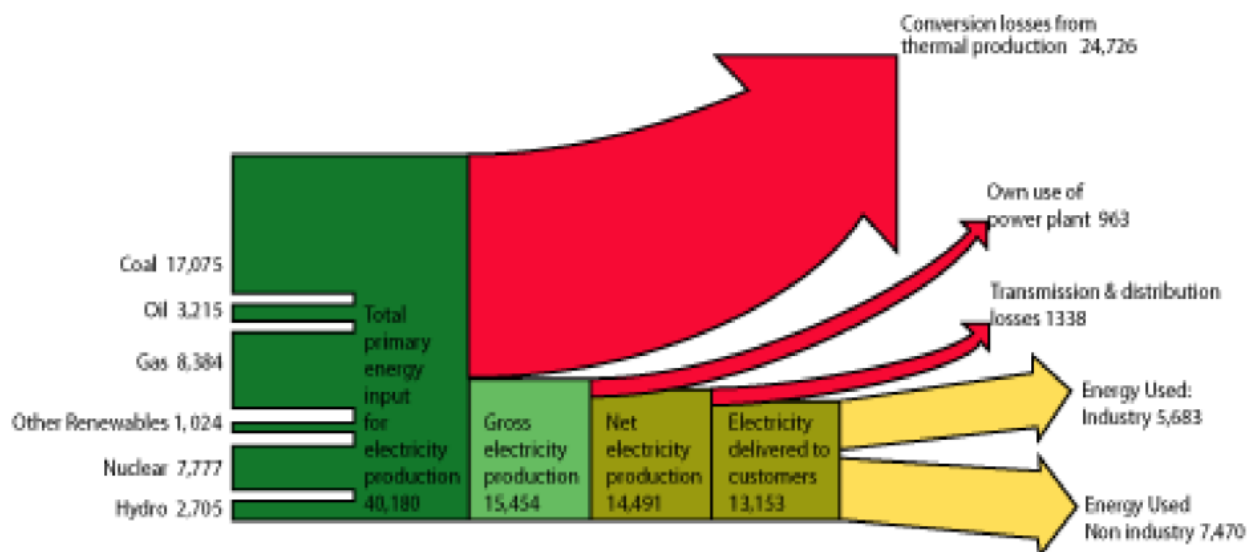


Dr. Robert Howarth: Fracked Gas Worse For Climate Than Coal



Source: <http://www.rosalux.eu/topics/social-ecological-transformation/methane-emissions/> and www.eia.gov

66% of Energy Lost When Converting Heat to Electricity in Power Plan



Clean Energy Investment By County-2019

County	Millions \$\$ Invested 2007- 2016	Total Millions \$\$ Invested Up to 2019
Duplin	\$750 million	\$797 million
Robeson	\$483 million	\$690 million
Catawba	\$430 million	\$430 million
Edgecomb	\$287 million	\$287 million
Rutherford	\$242 million	\$246 million
Watauga	\$0	\$0

Source: RTI Economic Impact Analysis of Clean Energy Development in North Carolina - 2017 Update and 2019 Update [https://energync.org/wp-content/uploads/2019/05/v3NCSEA Economic Impact Analysis of Clean Energy Development in North Carolina 2019.pdf](https://energync.org/wp-content/uploads/2019/05/v3NCSEA_Economic_Impact_Analysis_of_Clean_Energy_Development_in_North_Carolina_2019.pdf)

Property Taxes from Solar

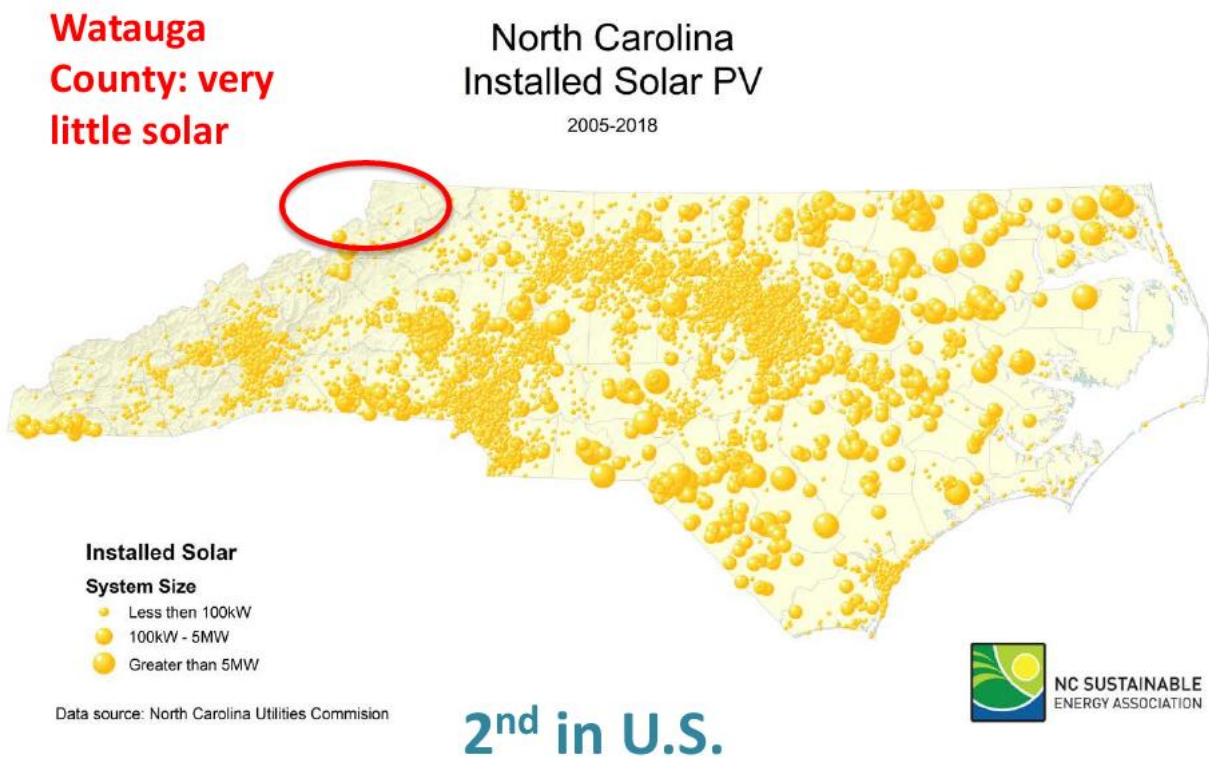
Annual Property Taxes Paid on Real Estate Parcels with Solar Projects

County	Before Solar	After Solar	# Solar Projects	Total Solar Capacity (2016)
Caswell	\$1,366	\$71,077	3	15 MW
Catawba	\$19,371	\$469,902	13	105 MW
Cumberland	\$2,135	\$478,497	6	93 MW
Johnston	\$9,053	\$377,889	15	66 MW
Rutherford	\$6,228	\$256,343	6	91 MW
Total	\$38,153	\$1,653,708	43	370 MW

*Data represents taxes collected in the year after a large solar project was developed
Source: County Tax Offices and NCSEA Renewable Energy Database

NC Counties: 2,000% Increase In Property Taxes from Solar

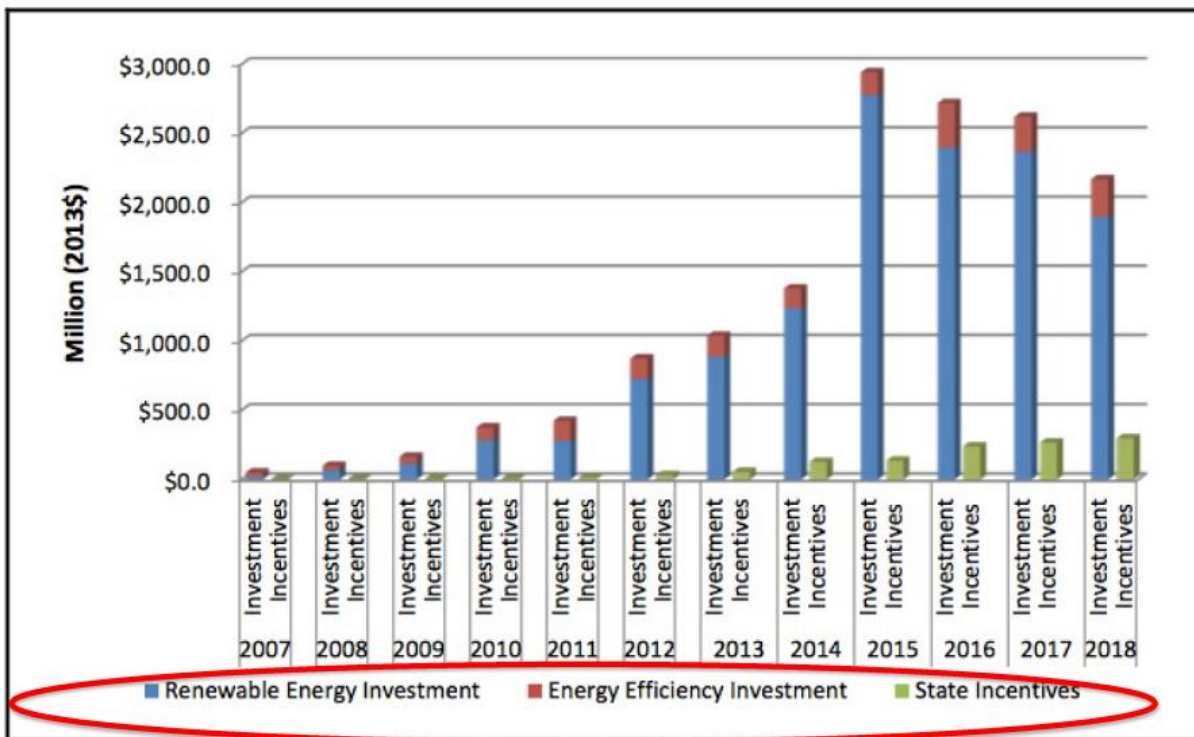
- 50 counties: huge increase in property tax revenues
- Cumulative property tax revenue before solar: **\$513,000**. After solar: **\$10.6 MILLION**
- Total taxes collected are actually higher because business personal property tax isn't included (can't be parsed out from other taxes paid to NC Department of Revenue)



Why Does Cloudy Germany Have So Much Clean Energy?

Germany: currently at [35-40% clean energy](#) (solar, wind, biomass). **What did Germany do? 3 things:**

1. ANYONE can buy and sell electricity
2. ANYONE can connect to the grid
3. Clean energy is unlimited and goes to the TOP of the dispatch list, i.e. the order that power plants are turned on and off. NC dispatch list is based on utility profit, no concern for pollution, clean energy etc. (In NC, clean energy is very limited either with caps, i.e. no more than 5%, or by adding extra fees that make clean energy \$\$\$

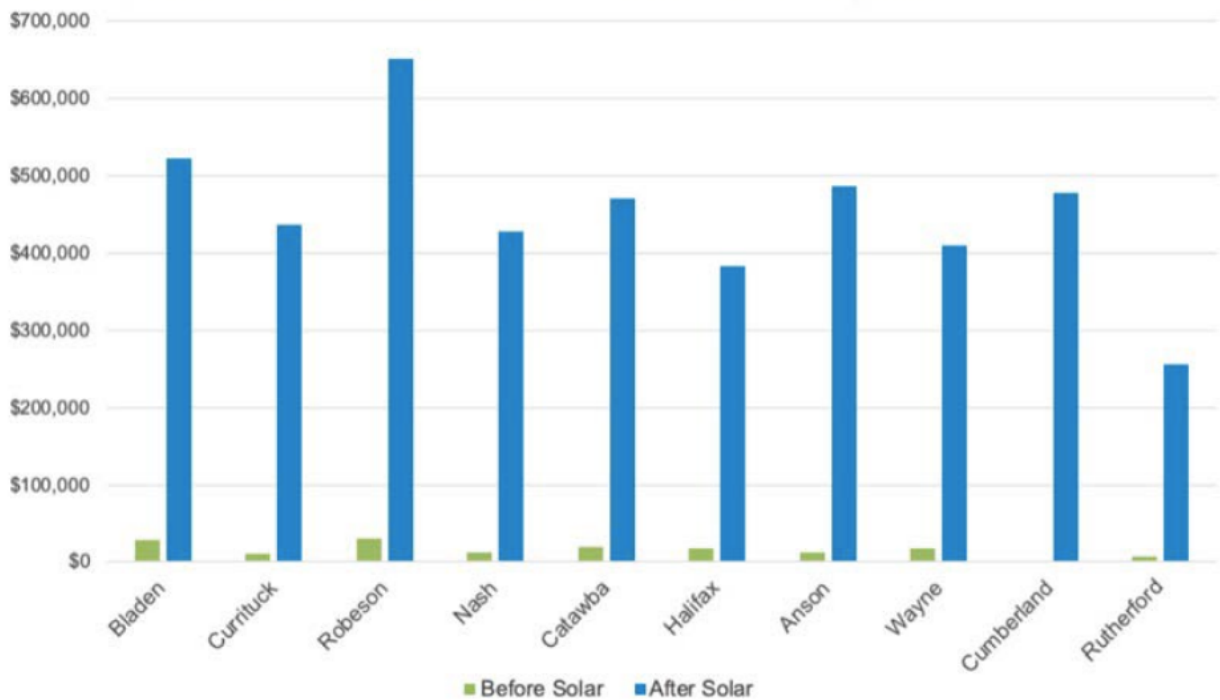
*Economic Impact Analysis of Clean Energy Development in North Carolina—2019 Update***Figure 2-1. Clean Energy Investment in North Carolina, 2007–2018**

See Appendix A for data sources. **Note:** State Incentives for 2018 are estimated based on growth from fiscal year 2016-2017.

Chart 1. Annual Property Taxes Paid on Real Estate Parcels with Solar Projects

*Data represents taxes collected in the year before and after a large solar project was built.

Source: County Tax Offices, North Carolina Utilities Commission and NCSEA Renewable Energy Database



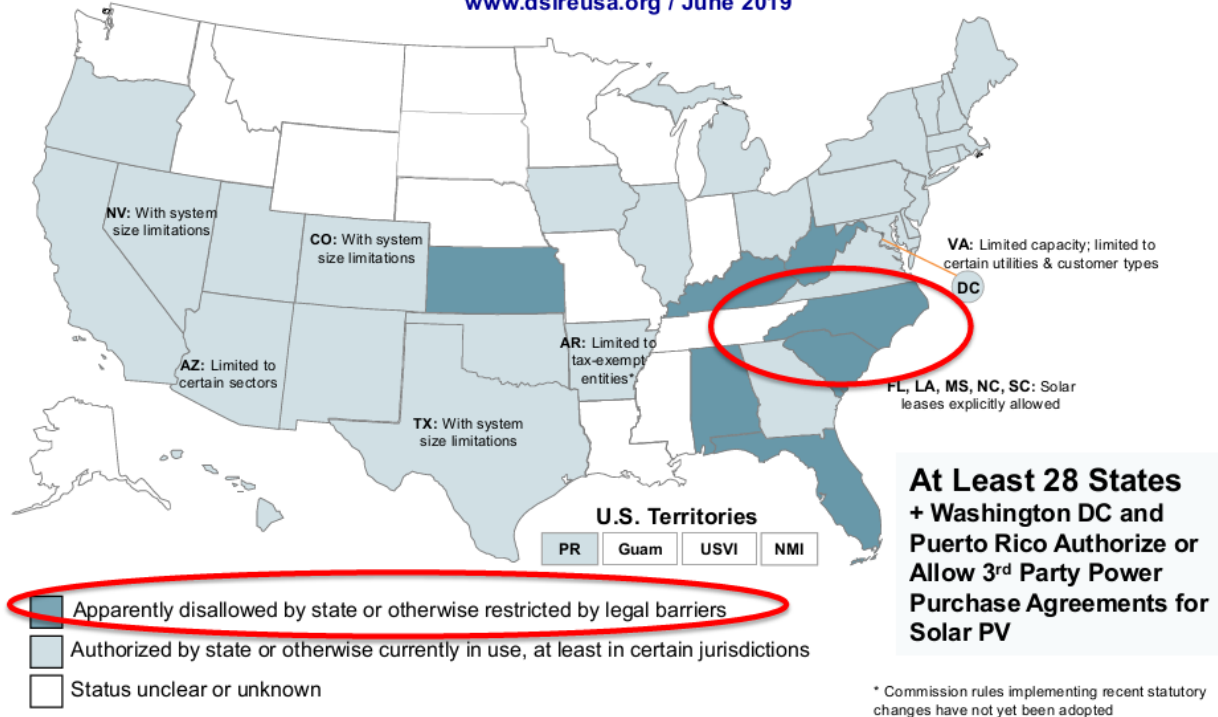
Source: <https://pv-magazine-usa.com/2019/07/30/solar-brings-in-the-big-bucks-for-local-governments/>

NCUC to Duke Energy: Show Us Coal Plant Costs

- In August 2019, regulators (North Carolina Utilities Commission or NCUC) ordered Duke Energy to [reveal the cost](#) to run each of its seven currently operating coal plants
- Experts determined that the cost to run Duke Energy's NC coal plants range from \$36.50/MWh to \$65.73/MWh
- Duke Energy has signed contracts to purchase solar \$37 to \$38/MWh, considerably cheaper than the cost to run coal
- **North Carolina Attorney General Josh Stein** has joined Duke Energy's critics, arguing that the utility's plans for more natural gas plants are not justified, and Duke Energy has failed to consider economic and environmental risks of increasing natural gas.

3rd Party Solar PV Power Purchase Agreement (PPA) - In plain language, this means that NO ONE but incumbent (i.e. NRLP, Duke Energy, BREMCO call sell electricity

www.dsireusa.org / June 2019



Solar PV at Educational Institutions



Catawba College
(1,400 students)
has
8 systems totaling
about 1 MW
(1,000 kW)

**AppState (18,000
students) has
174 kW – far
less than much
smaller
Catawba
College**

Net Zero Buildings



Sandy Grove Elementary School has a 560 kW solar PV system, geothermal ground source heat pump, efficient lighting, and EV charging stations



Sandy Grove Elementary School has **THREE TIMES more solar** than AppState University

AppState's 2010 Solar Goal: 10 Times Current Amount

- [AppState's 2017 Strategic Energy and Water Management Plan](#): goal is the "elimination of all carbon sources" from "directly controlled sources" as well as "purchased electricity." (page 1)
- However, AppState's 2017 goal for *clean energy generated on-campus* is 0.5% (one half of one percent)
- **AppState's actual achievement is 0.15%. (page 4)**
- AppState's earlier climate action plan, published in [September 2010, titled Towards Climate Neutrality](#) goal for "Now, Tomorrow" is 2 MW (**2,000 kW**) of solar PV. "Now" = 2010 to 2015, "Tomorrow" = 2015 to 2025.
- Actual solar AppState: **174 kW (page 12)**
- **2010 climate plan also acknowledged that renewable energy might need to be located off campus.**

ERIC PLAAG - PRESENTATION OF DOWNTOWN BOONE SURVEY REPORT AND REQUEST FOR GUIDANCE

Dr. Eric Plaag presented Council with the completed draft of the Downtown Boone Survey Report and asked for direction on the boundaries of the proposed historic district, as well as how the process should be handled. He noted that he agreed when starting the project in 2014 that he would provide the survey free of charge except for equipment and interns, but that the report was his work product. He added that the report was not a binding document but that it would be beneficial for the Downtown Boone Development Association to reference when working on facade grants or other business development or rehabilitations. Dr. Plaag stated that if Council wished to move forward to explore designating a historical district the next step would be to direct him to do so. He recommended that Council hold community information sessions and offered his assistance with the process. Mr. Ward indicated that by creating a historic district, a certificate of appropriateness process would be required which would require a quasi-judicial hearing with the Historic Preservation Commission. He added that this meant that additional meetings would be added to Council's schedule and that the meetings would potentially have to be rescheduled to the evening hours to allow people to attend. Mr. Ward cautioned that the program would potentially require additional funds for legal counsel and asked Council to consider how these items would be funded. He noted that the Historic Preservation Commission had previously been designated funding which had been utilized in recent years, but if a new district is created, an ongoing budgeted line would need to be created. Mr. Furgiuele indicated that he strongly supported the creation of a historical district and applauded Dr. Plaag for an excellent product. Dr. Plaag stated that normally, a survey of this size would be an eight to twelve month project for a team of two or three. He added that he had at least a year's worth of labor hours plus the intern's time on this project. Mr. Furgiuele was heartbroken to see pictures in the report of buildings that had been lost, and believed Council should move forward with the project. Ms. Mason stated that the report told the history of Boone and commended Dr. Plaag for a great project. She added that she hoped that it could be worked out to make the report available to the general public. Mr. Ward asked that if Council decided to move forward what the time frame for approval would be. Dr. Plaag stated that due to high turnover

in the State Historic Preservation Offices, requests were backlogged by approximately two years. Ms. Meade indicated that in the designation report process, the Town had a right to proceed if there were no objections within thirty days, and that it would eventually go through the public hearing process. Dr. Plaag confirmed that the process was constrained by a timeline since it was an advisory process. Mayor Brantz asked if Council chose to move forward what the designation would be. Dr. Plaag answered that while Council would be asking for feedback from the state, Council would be the ones to ultimately make the designation. He stated that he had originally proposed the area between the First Baptist Church to Galileo's but was told by state officials that this would never be approved. Dr. Plaag added that in 2017 he had recommended the area between Appalachian Street and the Ram's Rack on King Street and from Rivers Street to Queen Street. He stated that during the joint sessions between Council and the Historic Preservation Commission discussion took place regarding how the designation would potentially restrict work with the UNCSOG Development Finance Initiative project. Dr. Plaag indicated that during the joint sessions, discussion occurred regarding a historic core district from the north side of Howard Street to the south side of Queen Street, and a warehouse district including areas to the south of Howard Street. He further noted that the Community Appearance Commission had come back to recommending a single historic district that would include King, Howard Depot, Appalachian, Queen, Rivers and Water Streets, plus the Smithey's building on the south side of King Street and recommended that Council direct GIS staff to prepare a map reflecting this. Ms. Mason asked how this potential historic designation would protect the downtown area. Dr. Plaag answered that the designation would create a certification process for development and modification with design guidelines, and noted that there were currently default standards in the UDO. Mr. Furguele added that the other power the designation would provide was that the Town would be able to declare a moratorium to delay potential tear-downs in an attempt to save a building, and referenced the recent tear-down of the former Wade Brown building. Mr. Furguele made a motion to authorize Dr. Plaag to proceed to submit the survey report to the state for their consideration, review and feedback, and to authorize that he construct a concrete proposal in terms of the dimensions of the historic district with the understanding that the implementation date could be adjusted as necessary. Mayor Pro-Tem Clawson seconded the motion and stated that serving on the Historic Preservation Commission had been an eye-opening experience for her and thanked Dr. Plaag for his work. Mayor Brantz agreed and felt that the designation would help the Town recover its history. Mr. Furguele expressed concern that the document was copyrighted by a private entity, and stated that he would not object if the Town were simultaneously given a perpetual license for its use for whatever purpose it chose. Ms. Meade stated that if Dr. Plaag was willing, he would be able to grant that request. Dr. Plaag stated that copyrights were common in the historic preservation scene and noted that the federal forms could not be copyrighted, only his report and comments. He added that he had no objection to granting the Town a license and that he was only trying to protect himself from outside parties using his work for books, etc. Dr. Plaag was agreeable to Ms. Meade drafting a document for his review and consideration for the Town's use of the document for posting on the Town website, etc. Ms. Meade clarified that even though the report had been published as part of the meeting packet and was a public record did not mean that Dr. Plaag had given up his property rights to the document, and believed that a simple license agreement would address any issues that may arise. She asked for further clarification as to whether the idea was to have Dr. Plaag and the Historic Preservation Commission come back to Council with specifics on the boundary of the district before submitting the designation report to the state. Mr. Furguele responded that this was correct and should take place at the next meeting, but that he was endorsing the boundaries as described in the motion, to which Mayor Pro-Tem Clawson agreed. Ms. Meade asked with whom, where and when public information sessions would take place. Dr. Plaag answered that the sessions would be similar to the ones held in the past by the commission and would be funded out of existing Historic Preservation Commission funds. Mr. Furguele added that the sessions should take place in the Council Chambers and that they should be scheduled at the regular October Council meeting. Mr. Ashcraft thanked Dr. Plaag for his exemplary work on the project. Mayor Brantz declared a break at 8:05 p.m. Council reconvened at 8:14 p.m.

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

APPROVAL OF ITEMS ON CONSENT AGENDA

Mr. Ward presented the following items on the consent agenda:

1. Consideration of License Agreement - 2019 Haunted Horn
2. Consideration of Amendment to Budget Ordinance - Fee Schedules
3. Consideration of DBDA Contract

Mr. Ward noted that if changes needed to be made to the Haunted Horn License Agreement, that he hoped they could be made before the Thursday regular meeting to allow for time to advertise. Mr. Furgiuele presented some changes, including a date change in the first paragraph, and more detail to the area being used for the event in paragraph sixteen. He indicated that he was comfortable endorsing the agreement and allowing staff to work out the details, but felt that if payment between SAHA and We Can So You Can was exchanged, it should be indicated in the license agreement. Mr. Ward stated that he was not capable of speaking in detail about any second-hand deals that may have occurred between the two parties, but that he believed there to be an expectation of an unfinalized agreement last year. He added that there was a meeting between all parties on Wednesday at 10 a.m. and that this matter could be discussed. Mr. Furgiuele stated that in the future he would rather see if there would be money changing hands for the use of Town property, that documentation needed to be remitted to the Town, but did not believe that a group should be able to charge for the use of Town-owned space. Ms. Meade felt that the license could be drawn more narrowly so that on free days, the space could accommodate other events. Since We Can So You Can would be using part of SAHA's licensed areas, the parties felt that SAHA needed to sign off on the Haunted Horn license agreement. Ms. Meade felt that the agreement should be narrowed down so that SAHA was not in control of the area when they were not actually using it. Mr. Furgiuele agreed, but noted that the Town had tried the narrow approach in the past but was met with dissatisfaction from the SAHA community. Mr. Furgiuele made a motion to approve the agreement subject to SAHA and We Can So You Can signing off, and to give staff the ability to make necessary modifications, and that if there is a payment made between SAHA and We Can So You Can that it be reflected in the agreement. Mr. Ward asked for clarification on what was being given in exchange for the payment. Freida Greene of SAHA stated that they were told that AMB was leasing cabins and costumes owned by SAHA to do a haunted event and that they would pay \$3,000 as a rental fee for these items. Mr. Furgiuele felt that if SAHA was charging rent for their property, that would be between them and the other party. Mayor Pro-Tem Clawson asked why SAHA no longer held the haunted trail event as they did in previous years. Ms. Greene answered that the board decided not to do it anymore. Ms. Meade stated that she was uncomfortable with the ad-hoc nature of this agreement and felt that the Town should consider creating a policy with respect to the use of the facilities. Brief discussion took place before Mr. Furgiuele restated his motion. Ms. Greene apologized to Council for the confusion, but stated that the organization needed help and that she had concerns with the shape of the cabins. She also indicated there was an issue with the power bill not being divided correctly, to which Mr. Ward responded that staff would work with SAHA to address that issue. Mr. Furgiuele withdrew his motion. Mayor Pro-Tem made a motion to approve the Amendment to the Budget Ordinance - Fee Schedules as presented. Ms. Mason seconded the motion.

VOTE:	Aye:	All
	Nay:	None

ORDINANCE # _____

**AMENDMENT TO TOWN OF BOONE, NORTH CAROLINA
2019-2020 BUDGET ORDINANCE (ORDINANCE # _____)**

BE IT ORDAINED by the Town Council of the Town of Boone, North Carolina that the 2019-2020 Budget Ordinance is hereby amended by inserting the following additional provision into the aforesaid ordinance following Section 6 of the same:

SECTION 7: The fees and other charges of the Town's various departments shall be established as set forth in the fee schedules attached hereto as Exhibit B, which is incorporated as part of this Ordinance. These fees and charges will remain in effect until repealed or modified by the Town Council.

ADOPTED this the _____ day of _____, 2019 by the Town Council of the Town of Boone, North Carolina.

Rennie Brantz, Mayor

ATTEST:

Town Clerk



*Town of Boone
Fire Department
2019 Fee Schedule*

FIRE FEES COLLECTED BY BOONE FIRE DEPARTMENT

Fireworks Display	\$150.00
Insecticide fogging/fumigation	\$40.00
Blasting Permit - 48 hours	\$50.00
Blasting Permit - 90 days	\$100.00
Special Assemblies (Craft shows)	\$50.00
Temporary kiosks/displays	\$40.00
Tents and air structures	\$50.00
Any additional inspection required/requested	\$40.00
Day Care inspection (other than annual)	\$40.00
Fire Flow Test	\$100.00
Re-inspection or any event requiring a FD inspection	\$40.00
Annual Inspections - Level 1 (Non-residential)	\$40.00
Annual Inspections - level 2 (Non-residential)	\$60.00
Annual Inspections - level 3 (Non-residential)	\$120.00
Annual Inspections - Multi tenant commercial (0 to 6 tenants)	\$40.00
Annual Inspections - Multi tenant commercial (7 to 12 tenants)	\$80.00
Annual Inspections - Multi tenant commercial (Greater than 12 tenants)	\$120.00
Annual Inspection - Commercial Residential per building (0-12 units)	\$40.00
Annual Inspection - Commercial Residential per building (13-24 units)	\$60.00
Annual Inspection - Commercial Residential per building (25-49 units)	\$80.00
Annual Inspection - Commercial Residential per building (50-99 units)	\$130.00
Annual Inspection - Commercial Residential per building (100-149 units)	\$180.00
Annual Inspection - Commercial Residential per building (150-199 units)	\$230.00
Annual Inspection - Commercial Residential per building (Greater than 199 units)	\$280.00
Fire Alarm Equipment Malfunction Fee	\$300.00

FIRE FEES COLLECTED BY PLANNING & INSPECTIONS

ABC Inspection	\$60.00
New Fire Alarm Systems	\$100 up to 10,000 square feet, .01 per sf thereafter
Fire Alarm System Renovation	\$50.00
New Fixed Fire Suppression System	\$100.00
Fixed Fire Suppression System Renovation	\$50.00
New Sprinkler system	\$200 up to 10,000 square feet, .02 per sf thereafter
Sprinkler System Renovation	\$100.00
New Standpipe Systems	\$200.00
Commercial Site Plan Review	\$75.00
Building Plan Review (per square foot)	\$0.03
New Underground Tanks install (per tank)	\$100.00
Underground Tank Removal (per tank)	\$50.00
Building Plan Review-renovation	\$50.00



New Underground Tank Install (per tank)	\$100
Underground Tank Removal (per tank)	\$50.00
Building Plan Review for renovation	\$50.00

APPARATUS and PERSONNEL FEE SCHEDULE (per hour)

Aerial	\$250.00
Car/pickup	\$50.00
Engine (Type 1)	\$200.00
Engine (Type 6)	\$75.00
Haz-mat trailer	\$200.00
Rescue Truck	\$200.00
Tanker	\$100.00
Utility Service Vehicle	\$75.00
Personnel	At actual cost



*Town of Boone
Planning & Inspections
2019 Fee Schedule*

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Fee Code:

○ = Common Single-Family Fees

◆ = Common Commercial Fees

Frequently Asked Questions

Many projects require Town of Boone permits before construction may commence. The permit and inspection process is designed to ensure that the development of land and construction of buildings are in compliance with applicable codes. Please see below for additional guidance on how to use this fee schedule. For any questions on whether or not a permit is required or for more information on a permit, please contact the Town of Boone Planning and Inspections Department.

When are fees due? Fees are due when the application is submitted. Any additional fees assessed prior to the issuance of a permit shall be paid prior to the release of the requested permit, and any subsequent fees assessed shall be paid prior to the final inspection, issuance of a certificate of compliance, or issuance of a certificate of occupancy.

Fee Responsibility & Communications. The applicant shall be responsible for all associated fees. Additionally, all communications will only be sent to the applicant.

Inspection Fees. Where the Department stipulates a maximum number of inspections for a permit, applicants requiring inspections beyond that count incur an added charge per inspection.

A re-inspection fee shall be assessed when the project is not ready for inspection, deficiencies exist or access to the site is not available at the time the inspection has been scheduled to be conducted.

Other Town Department Fees. Fees may be collected on behalf of other Town of Boone Departments for project reviews and inspections as listed herein.

Refund Requests. Refund requests shall be submitted in writing from the applicant. Refund requests for applications not yet reviewed will be processed at 10% of permit costs (up to \$100.00 per permit) to cover administrative costs. All other refund requests will be reviewed by the Director or his/her designee, who shall evaluate the amount of work completed by the Town as compared to the cost of the permit to ensure the Town has recovered the costs incurred with the processing, review, and inspections associated with the application.

Application Review Time Policy. The Town will strive to process all submittals in a timely fashion, with the knowledge that some submittals are more complex and will require additional review time than those set forth below. Additionally, applications are processed in the order in which they are received. See below for estimated review times (please note, the day of submittal is not counted in the estimated review time):

Application Type	Estimated Review Time	Application Type	Estimated Review Time
Sign Permits	5 business days	Board/Hearing	25 business days
Short-Form Building Permit	5 business days	Commercial	25 business days
Single-Family	10 business days	All Other	20 business days

Please note, subsequent reviews times are anticipated to be shorter than the initial application review.

Submittals which contain any of the following elements may require additional review time: properties located in a B1 zoning district, Department of Insurance review, encroachment agreements, geologic hazard, historic landmark, historic district, special flood hazard area, steep (or very steep) slope, traffic impact analysis, watershed, viewshed.

Review Fees. Each application is allowed two (2) reviews under the initial fee, the first review and a second (2nd) review if revisions or supplemental information is required based upon the first review. Each subsequent review after the 2nd review will be charged at 50% of the original fees charged for the application. These fees shall be paid at the time of resubmittal.

Working without Permits Penalty. Initial submittal fees are doubled if the activity or site change requested has already occurred or has been started unless the Director or his/her designee finds that there are mitigating circumstances.

SECTION 1. BOARD/HEARING FEES**Board of Adjustment**

Special Use Permit – Base Fee	\$700.00
+ \$0.63 per Adjacent Property Owner Notification letter	TBD
+ Prorated cost of legal advertising for case	TBD
Variance – Base Fee (per requested variance)	\$460.00
+ \$0.63 per Adjacent Property Owner Notification letter	TBD
+ Prorated cost of legal advertising for case	TBD
Appeal of Administrative Decision – Base Fee	\$400.00
+ \$0.63 per Adjacent Property Owner Notification letter	TBD
+ Prorated cost of legal advertising for case	TBD
Major Subdivision Preliminary Plat Review – Base Fee	\$700.00
+ \$0.63 per Adjacent Property Owner Notification letter	TBD
+ Prorated cost of legal advertising for case	TBD

Planning Commission/Public Hearing

Text Amendment – Base Fee	\$400.00
General Use Zoning Map Amendment – Base Fee	\$340.00
+ \$0.63 per Adjacent Property Owner Notification letter	TBD
+ Prorated cost of legal advertising for Case	TBD
Conditional District Zoning Map Amendment – Base Fee	\$765.00
+ \$0.63 per Adjacent Property Owner Notification letter	TBD
+ Prorated cost of legal advertising for Case	TBD

SECTION 2. SUBDIVISION FEES

Exempt Division of Land	\$75.00
+ Water Supply Watershed Review	\$15.00
Minor Subdivision	\$135.00
+ Water Supply Watershed Review	\$15.00
Major Subdivision Final Plat	\$230.00

SECTION 3. ANNEXATION FEES

Voluntary Annexation Petition- Base Fee	\$210.00
+ Cost of legal advertising for Case (fee due prior to date of public hearing)	TBD

Page Subtotal \$ _____

SECTION 4. ZONING PERMIT FEES**Single-Family & Duplex (Use 1.06)**

o New Construction & Additions with < 1 acre of land disturbance – Base Fee	\$214.00
<i>If triggered, the following fees shall be assessed in addition to the base fee set forth above.</i>	
+ Land disturbance ≥ 1 acre, per acre or part thereof	\$60.00
+ Minor Special Flood Hazard Review ¹	\$30.00
+ Major Special Flood Hazard Review ²	\$140.00
+ Water Supply Watershed Review	\$15.00
+ Viewshed Protection Overlay Review	\$15.00
+ Steep or Very Steep Slope Review	\$15.00
o Accessory Use or Change of Use with < 1 acre of land disturbance – Base Fee	\$176.00
<i>If triggered, the following fees shall be assessed in addition to the base fee set forth above.</i>	
+ Land disturbance ≥ 1 acre, per acre or part thereof	\$60.00
+ Minor Special Flood Hazard Review ¹	\$30.00
+ Major Special Flood Hazard Review ²	\$140.00
+ Water Supply Watershed Review	\$15.00
+ Viewshed Protection Overlay Review	\$15.00
+ Steep or Very Steep Slope Review	\$15.00
o Open Decks, Parking/Yard Modifications, Sheds w/ < 1 acre of land disturbance -Base Fee	\$110.00
<i>If triggered, the following fees shall be assessed in addition to the base fee set forth above.</i>	
+ Land disturbance ≥ 1 acre, per acre or part thereof	\$60.00
+ Minor Special Flood Hazard Review ¹	\$30.00
+ Major Special Flood Hazard Review ²	\$140.00
+ Water Supply Watershed Review	\$15.00
+ Viewshed Protection Overlay Review	\$15.00
+ Steep or Very Steep Slope Review	\$15.00

Page Subtotal \$ _____

Commercial/All Other Residential	
♦ New Construction, Additions, Accessory Structures - Base Fee	\$470.00
(< 1 acre of land disturbance, ≤ 2,500 total building square footage)	
<i>If triggered, the following fees shall be assessed in addition to the base fee set forth above.</i>	
+ Land disturbance ≥ 1 acre, per acre or part thereof	\$275.00
+ Minor Special Flood Hazard Review ¹	\$30.00
+ Major Special Flood Hazard Review ²	\$205.00
+ Water Supply Watershed Review	\$30.00
+ Viewshed Protection Overlay Review	\$30.00
+ Steep or Very Steep Slope Review	\$30.00
♦ New Construction, Additions, Accessory Structures - Base Fee	\$560.00
(< 1 acre of land disturbance, 2,501-20,000 total building square footage)	
+ Land disturbance ≥ 1 acre, per acre or part thereof	\$275.00
+ Minor Special Flood Hazard Review ¹	\$30.00
+ Major Special Flood Hazard Review ²	\$205.00
+ Water Supply Watershed Review	\$30.00
+ Viewshed Protection Overlay Review	\$30.00
+ Steep or Very Steep Slope Review	\$30.00
♦ New Construction, Additions, Accessory Structures - Base Fee	\$800.00
(< 1 acre of land disturbance, > 20,000 total building square footage)	
<i>If triggered, the following fees shall be assessed in addition to the base fee set forth above.</i>	
+ Land disturbance ≥ 1 acre, per acre or part thereof	\$275.00
+ Minor Special Flood Hazard Review ¹	\$30.00
+ Major Special Flood Hazard Review ²	\$205.00
+ Water Supply Watershed Review	\$30.00
+ Viewshed Protection Overlay Review	\$30.00
+ Steep or Very Steep Slope Review	\$30.00
♦ Change of Use, no site plan review required – Base Fee	\$110.00
<i>If triggered, the following fees shall be assessed in addition to the base fee set forth above.</i>	
+ Minor Special Flood Hazard Review ¹	\$30.00

Page Subtotal \$ _____

♦ Change of Use or Renovation – Site Plan Review Required (Tier 1) – Base Fee	\$200.00
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If triggered, the following fees shall be assessed in addition to the base fee set forth above.

+ Land disturbance ≥ 1 acre, per acre or part thereof	\$275.00
+ Minor Special Flood Hazard Review ¹	\$30.00
+ Major Special Flood Hazard Review ²	\$205.00
+ Water Supply Watershed Review	\$30.00
+ Viewshed Protection Overlay Review	\$30.00
+ Steep or Very Steep Slope Review	\$30.00
♦ Change of Use or Renovation – Site Plan Review Required (Tier 2) – Base Fee	\$300.00
<i>If triggered, the following fees shall be assessed in addition to the base fee set forth above.</i>	
+ Land disturbance ≥ 1 acre, per acre or part thereof	\$275.00
+ Minor Special Flood Hazard Review ¹	\$30.00
+ Major Special Flood Hazard Review ²	\$205.00
+ Water Supply Watershed Review	\$30.00
+ Viewshed Protection Overlay Review	\$30.00
+ Steep or Very Steep Slope Review	\$30.00
♦ Change of Use or Renovation – Site Plan Review Required (Tier 3) – Base Fee	\$400.00
<i>If triggered, the following fees shall be assessed in addition to the base fee set forth above.</i>	
+ Land disturbance ≥ 1 acre, per acre or part thereof	\$275.00
+ Minor Special Flood Hazard Review ¹	\$30.00
+ Major Special Flood Hazard Review ²	\$205.00
+ Water Supply Watershed Review	\$30.00
+ Viewshed Protection Overlay Review	\$30.00
+ Steep or Very Steep Slope Review	\$30.00
Change of Use or Renovation – Site Plan Review Required (Tier 4) – See Fees for New Construction	
♦ Lighting or Parking or Landscape Modification (modification of existing infrastructure)	\$150.00
Accessory Structure – See Fees for New Construction	
♦ Special Flood Hazard Area - Map Revisions/Amendments	\$170.00
+ \$0.63 per property owner notification letter	TBD
+ Cost of Legal Advertising	TBD

Page Subtotal \$

Small Wireless Facility (Per NC SL 2017-159)

Technical Fee (applied to first facility in each batch of 25)

\$500.00

+Facilities 1-5 (in the same batch)	\$100.00
+Facilities 6-25 (in the same batch)	\$50.00
Wireless Transmission Facility	
Co-location or Eligible Facility Modification	\$170.00
All Others	\$675.00
<i>If triggered, the following fees shall be assessed in addition to the base fee set forth above.</i>	
+Land disturbance ≥ 1 acre, per acre or part thereof	\$275.00
+Special Flood Hazard Review Minor	\$30.00
+Special Flood Hazard Review Major	\$205.00
+Water Supply Watershed Review	\$30.00
+Viewshed Protection Overlay Review	\$30.00
+Steep or Very Steep Slope Review	\$30.00
Other Zoning Fees	
Home Occupation	\$90.00
Zoning Confirmation Letter	\$120.00
Pavement Sealant	\$115.00
+Additional Inspection for Pavement Sealant with Coal Tar	\$50.00
Neighborhood Conservation District Parking Sticker	No Charge
SECTION 5. SIGN FEES	
♦ Permanent Sign, per sign	\$165.00
+Additional Fee for Freestanding Sign	\$50.00
+Additional Fee for Lighted Sign	\$50.00
SECTION 6. BUILDING PERMIT FEES	
Single-Family & Duplex (Use 1.06)	
◦ New Construction up to 2,500 square feet	\$446.00
+ Additional fee each square foot over 2,500 square feet	\$0.15
+ Homeowners Recovery Fee ³	\$10.00
◦ Addition, Renovation, Repair; separate charge for each inspection trip	\$85.00
+ Homeowners Recovery Fee ³	\$10.00
+ \$50.00 per inspection trip	TBD
+Renovations & Repair Minor Special Flood Hazard Area Review	\$30.00
Page Subtotal \$	
◦ Manufactured Home in Park (Inclusive of Zoning Review)	\$280.00
+ Minor Special Flood Hazard Review ¹	\$30.00
+ Major Special Flood Hazard Review ²	\$140.00

Commercial/All Other Residential	
♦ New Construction Base Fee	\$565.00
+ Per Square Foot	\$0.27 x ____
♦ Addition, Renovation & Repair- Base Fee (1-5,000 square feet total building square footage)	\$170.00
+ \$50.00 per inspection trip	TBD
+ Renovation & Repair Minor Special Flood Hazard Area Review (if Major SFHA review triggered, a separate zoning permit is required.) ¹	\$30.00
♦ Addition, Renovation & Repair- Base Fee (5,001 – 20,000 square feet of total building)	\$285.00
+ \$50.00 per inspection trip	TBD
+ Renovation & Repair Minor Special Flood Hazard Area Review (if Major SFHA review triggered, a separate zoning permit is required.) ¹	\$30.00
♦ Addition, Renovation & Repair- Base Fee (20,001+ square feet of total building)	\$565.00
+ \$50.00 per inspection trip	TBD
+ Renovation & Repair Minor Special Flood Hazard Area Review (if Major SFHA review triggered, a separate zoning permit is required.) ¹	\$30.00
♦ Change of Occupancy – no modification to building necessary	\$115.00
♦ Change of Occupancy with renovations. See Addition, Renovation & Repair Fees	
Other Building/Construction Related Fees	
Equipment Changeout; per unit charge; includes 1 inspection.	\$120.00
+ \$50.00 per inspection trip after 1st	TBD
+ Minor Special Flood Hazard Area Review (if Major SFHA review triggered, a separate zoning permit is required.) ¹	\$30.00
Renovation & Repair Small Project Work	
♦ This fee is for a project that involves only one trade (electrical, gas, mechanical, plumbing) for changes to existing systems where the project cost is less than \$30,000.00. Includes 1 inspection.	\$120.00
+ \$50.00 per inspection trip after 1st	TBD
+ Minor Special Flood Hazard Area Review (if Major SFHA review triggered, a separate zoning permit is required.) ¹	\$30.00
Construction Trailer (Inclusive of Zoning Review)	\$130.00
+ Minor Special Flood Hazard Area Review (if Major SFHA review triggered, a separate zoning permit is required.) ¹	\$30.00
Total Demolition/Moving	\$120.00
Special Footing/Foundations	\$195.00
+ \$50.00 per inspection trip	TBD

Page Subtotal \$ _____

SECTION 7. PLANNING AND INSPECTIONS - ALL OTHER FEES & PENALTIES

Other

Encroachment Agreement (per encroachment agreement)	\$50.00
Miscellaneous	\$75.00
ABC Compliance Inspection	\$175.00

Additional Review Fees- Due at time of Resubmittal

Subsequent Zoning Review Fee for each review after 2nd, 50% of original fees

-

Subsequent Building Review Fee for each review after 2nd, 50% of original fees

-

Other Inspections

Re-inspection Fee (per Inspector/Planner, per trip)

\$50.00

On-site consultation (per Inspector/Planner)

\$50.00

Penalties

Working without Permits @ double the permit cost (per permit for both building and zoning)

Other Zoning Penalties – See UDO Section 12.07

-

Other Town Code Penalties – See Appropriate Town Code Reference

-

SECTION 8. DEVELOPMENT RELATED FIRE DEPARTMENT FEES

♦ New Construction (per square foot)	\$0.03 x ____
♦ Building Permit Renovation Review Fee	\$50.00
♦ Multi-Family and Commercial Zoning - Site Plan Review	\$75.00
♦ New Fire Alarm System up to 10,000 square feet	\$100.00
+ Additional fee each square foot over 10,000 square feet	\$0.01
♦ Fire Alarm System Renovation	\$50.00
♦ New Fixed Fire Suppression System	\$100.00
♦ Fixed Suppression System Renovation	\$50.00
♦ New Sprinkler System up to 10,000 square feet	\$200.00
+ Additional fee each square foot over 10,000 square feet	\$0.02
♦ Sprinkler System Renovation	\$100.00
♦ New Standpipe System	\$200.00
New Underground Tank Install (per tank)	\$100.00
Underground Tank Removal (per tank)	\$50.00

*Additional Fee to a Zoning Permit
due to land-disturbing activities.*

Page Subtotal \$ _____

SECTION 9. DEVELOPMENT RELATED PUBLIC WORKS DEPARTMENT FEES**Utilities Division Fees**

♦ Building Permit – Pretreatment Review	\$75.00
♦ Building Permit – Utility Systems Review	\$75.00
♦ Zoning Permit – Site Plan Review for Utility Connections	\$75.00

Services Division Fees

♦ Town of Boone Driveway Permit (per driveway)	\$50.00
♦ Zoning Permit – Site Plan Review	\$75.00

Page Subtotal \$ _____

Total Fees Due \$ _____

¹ A minor special flood hazard review is for a project which:

1. Is for an equipment change-out only that is like for like in the exact same location; or
2. Contains no land disturbing activities in the special flood hazard area; or
3. Contains renovations of a structure in which renovation costs do not exceed 50% of the structure value
4. Any other situation in which approval is obtained by the Administrator.

² A major special flood hazard review is for all projects which either exceed or do not meet the requirements set forth for a minor special flood hazard review as outlined above. Any project which triggers a major special flood hazard review shall be required to obtain a zoning permit.

³ Required when a licensed General Contractor is used.

DRAFT



*Town of Boone
Department of Public Works
2019 Fee Schedule*

**BRUSH, DEBRIS & LEAF PICKUP SERVICES
RATE INCREASE as of JULY 1, 2019**

	SERVICE FEE	DESCRIPTION
BRUSH	\$80.00	GRAPPLE TRUCK
	\$50.00	2 EMPLOYEES
	\$130.00	@25.00/HR
	\$65.00	TOTAL PER HOUR HALF-HOUR MINIMUM
DEBRIS	\$80.00	GRAPPLE TRUCK
	\$50.00	2 EMPLOYEES
	\$130.00	@25.00/HR
	\$65.00	TOTAL PER HOUR HALF-HOUR MINIMUM
LEAF	\$43.00	VACUUM TRUCK
	\$25.00	1 EMPLOYEE
	\$68.00	@25.00/HR
	\$34.00	TOTAL PER HOUR HALF-HOUR MINIMUM
DEVELOPMENT PLAN REVIEW & INSPECTION FEE		\$75.00
DRIVEWAY PERMIT FEE		\$50.00
ENCROACHMENT AGREEMENT FEE		\$50.00

**UTILITY SERVICES
RATE INCREASE as of July 1, 2019**

METER DEPOSITS	
(outside city limits deposits are double rates listed below):	
Residential	\$150.00
Commercial	\$500.00

PRE-TREATMENT PLAN REVIEW & INSPECTION FEE	\$75.00
WATER & SEWER PLAN REVIEW & INSPECTION	\$75.00
PRETREATMENT FEE (previous violation)	\$100.00
BOD SURCHARGE (per pound)	\$0.376
TSS SURCHARGE (per pound)	\$0.433
BIO-SOLID SALES (per ton)	\$1.00
WTP SAMPLE CHARGE (per sample)	\$20.00
SYSTEM DEVELOPMENT FEES (per gallon):	
WATER	\$7.89
SEWER	\$7.99
CONSTRUCTION METER (temporary):	
3/4"	\$500.00
2" or 3"	\$1,600.00
METER CONNECT/DISCONNECT/RECONNECT (each)	\$20.00
RETURNED CHECK CHARGE	\$20.00
METER RE-READ CHARGE	\$10.00
LATE PENALTY CHARGE	\$10.00
SEPTIC DISPOSAL FEE (per gallon):	
Residential	\$7.00
Commercial	\$10.00
MINIMUM FEE (each) WATER & SEWER	
(Outside city limit's minimums are double rates listed below):	
Minimum Residential 3/4" includes 0-1,000 gallons	\$14.25
Minimum Residential 1" includes 1,001-2,000 gallons	\$15.75
Minimum Commercial 3/4" includes first 2,000 gallons	\$21.50
Minimum Commercial 1" includes first 2,000 gallons	\$26.50
Minimum Commercial 1 1/2" includes first 2,000 gallons	\$31.50
Minimum Commercial 2" includes first 2,000 gallons	\$31.50
Minimum Commercial 3" includes first 2,000 gallons	\$41.50
Minimum Commercial 4" includes first 2,000 gallons	\$51.50
Minimum Commercial 6" includes first 2,000 gallons	\$71.50
Minimum Commercial 8" includes first 2,000 gallons	\$91.50
DISTRIBUTION – WATER	
(Outside city limit's use is double rates listed below):	
2,001 - 4,999 gallons	\$6.15
5,000 - 9,999 gallons	\$6.40
10,000 - 14,999 gallons	\$6.65
15,000 – 19,999 gallons	\$6.90
Over 20,000 gallons	\$7.15
COLLECTION – SEWER	
(Outside city limit's use is double rates listed below):	
Residential – Over 2,000 per 1,000 gallons	\$5.50
Commercial – Over 2,000 per 1,000 gallons	\$5.75

Mr. Furgiuele made a motion to approve the 2019 Haunted Horn agreement subject to SAHA and We Can So You Can signing off, and to give staff the ability to make necessary modifications, and that if there is a payment made between SAHA and We Can So You Can that it be reflected in the agreement. Mayor Pro-Tem Clawson seconded the motion.

VOTE: Aye: All
 Nay: None

**STATE OF NORTH CAROLINA
COUNTY OF WATAUGA**

LICENSE

THIS License is granted effective the 24th day of September, 2019, by the Town of Boone, a North Carolina Municipal Corporation (hereinafter referred to as "Town" or "Licensor,") and We Can So You Can, Inc., a North Carolina non-profit corporation (hereinafter referred to as "Licensee"), collectively referred to as the "parties." The Southern Appalachian Historical Association ("SAHA"), a North Carolina nonprofit corporation, also signs this license to acknowledge its approval of Licensee's use of area as to which SAHA has rights pursuant to its license with the Town dated October 18, 2018. The term "Licensee" shall include, but is not limited to, Licensee's officers, agents, employees, participants, patrons, invitees and contractors. The term "person" as used herein includes any natural person or entity.

1. **Express Limitations:** This License is not intended to restrict in any way Licensor's use of the premises, nor to restrict Licensor's access to any part of the premises as it sees fit, including, but not limited to inspection to determine compliance by Licensee with the limitations and requirements of this License; maintenance, repair, alterations to the premises; safety inspections of any and all improvements as Licensor may deem necessary; and use of the premises as it sees fit.
2. **License area:** As detailed in Attachment "A," and shown on Attachment "B" attached herto and incorporated by reference herein, Licensee shall be entitled to the use of the described portions of "Daniel Boone Park," that certain piece, parcel or lot of land situated, lying and being in Boone Township, Watauga County, North Carolina, and the described improvements thereto, hereinafter collectively referred to as "the License area," during the times described and for the purposes provided herein.
3. **Term:** This License authorizes the described uses by Licensee during the times specified in Attachment "A". Additional dates for preparation or clean up may be authorized by written approval of the Town Manager or his or her designee. As used in this agreement, "written approval" includes approval communicated via email.
4. **Scope of License:**
 - A. The License area may be used by Licensee for the primary purposes of: hosting the 2019 Haunted Horn: "Stalker"
 - B. This License includes and authorizes other and secondary activities conducted in association with the allowed uses as well as the use of such other and secondary facilities which are integral and necessary to support the authorized uses, so long as they are integral to the approved uses or constitute only an incidental and insubstantial part of the total activity; they are commonly associated with the use; and they are confined to the License areas and terms of use authorized in "Attachment A". Associated support activities shall include use of the parking lot in appropriate locations during appropriate times and use of the restrooms on the property, as furthers described in Attachment "A".
 - C. Any specific uses beyond the primary ones listed are permitted only with the advance written approval of the Town Manager.
 - D. When not in use by Licensee during the term and at the conclusion of each authorized period permitted by this License, Licensee shall properly:

- i. Clean and make safe all structures to which it is entitled to only non-exclusive use;
 - ii. Clean, secure and make safe all structures to which it is entitled to exclusive use; and
 - iii. Remove any portable structures, or, if they do not interfere with potential use by other licensees, secure and make them safe.
 - iv. For purposes of this section, the term "make safe" shall include remediation of hazards which do not involve alterations of facilities or repair work which requires a permit or an expert to perform; and removal of litter, debris, scrap materials, junk, trash, and other items which could cause injury to a person, promote rodent infestation, or the like.
 - v. For purposes of this section, "clean" shall mean restoring all interior and exterior surfaces and floors of structures and facilities to a condition of cleanliness and sanitation which will allow a subsequent or intermittent licensee to utilize the structure and facilities with no more than a minimal amount of cleaning.
- E. Licensee shall not use or knowingly permit any part of the License area to be used for any purpose which violates any law, and Licensee shall familiarize itself and comply with all Town ordinances, including the Town's "Noise Control" ordinance, and the North Carolina State Building Code.
- F. Licensee acknowledges that Licensor may authorize other licensees to use portions of the License area in ways which do not unduly interfere with Licensee's licensed use and that Licensor shall be the sole arbiter of what constitutes undue interference. Licensor itself may also use, as it deems appropriate, any portion of the License area.
- G. During an emergency, as determined by Licensor, Licensor may utilize the License area to its full extent even if it substantially interferes with this License.
- H. Licensee will take no action(s) which is in any way inconsistent with Licensor's ownership interest in the property.
- I. Licensee will take no action(s) which is not in accordance with the procedures mandated by its duly adopted by-laws.
5. **Rules for Operation:** In addition to any rules adopted by Licensor for the use of the License area, which rules shall be effective when adopted even if they are adopted during the term of this license, Licensee shall have the right to promulgate such rules and regulations as it may deem appropriate for the behavior of its employees, participants, patrons and invitees during its authorized use of the License area so long as they are not inconsistent with any rules promulgated by Licensor and are otherwise consistent with this License. Licensee shall provide Licensor with a copy of its rules and regulations, if any, sufficiently prior to their effective date to be kept on file with a signed copy of this license agreement.
6. **Licensing Fee:** For purposes of this License, the License fee has been waived. In consideration of Licensor granting this license and waiving the fee, Licensee agrees that (i) the Town will be granted all rights and privileges as a main sponsor of the event being hosted; and (ii) Licensee will donate to the Town, for the repair, maintenance, and/or improvement of the Daniel Boone Park, the net proceeds raised from the event, by which is meant gross revenues less all expenses less reasonable

overhead. Within 10 business days of termination of the activities authorized by this License, Licensee will share with Licensor's Cultural Resources Director such financial information as is reasonably necessary to explain and document the net proceeds calculation, including gross revenues, the nature and amount of expenses, and its overhead charges. Licensee further understands and acknowledges its obligations under N.C.G.S. § 55 A-16-24

7. **Utilities:** Licensee shall be responsible for paying directly or reimbursing Licensor or SAHA, as applicable, all utility costs incurred in connection with its use of the License area. If more than one licensee is authorized to use all or a portion of the License area concurrently, Licensor may apportion these costs in an equitable way in proportion to the relative use of the License area by different licensees, and Licensee shall promptly reimburse Licensor for its share of these costs. Should Licensee fail to pay its share of utility costs within the time set by Licensor, this License shall terminate. To the extent Licensee's use of the License area is exclusive and the utilities used relative to that exclusive use can be placed in an account in Licensee's name by the relevant utility company, Licensor may require that Licensee obtain such utility service in its own name. If Licensee obtains utility service in its name, it must keep its account in good standing and notify Licensor immediately if it receives any notice of the possible disconnection of service or if service is actually disconnected.
8. **Maintenance:** During and after its use of the License area, Licensee shall provide all maintenance necessary to keep the License area in a good and sanitary condition and to restore said good and sanitary condition following any use by Licensee. Such maintenance shall be performed as often as necessary to insure that any other licensee authorized to use the License area will find the License area in a sanitary and orderly state. For purposes of this section, "maintenance" shall include collection and removal of trash, garbage, and litter, regular cleaning of facilities and structures, including bathrooms, which are to be cleaned after every performance and event, and other activities required to conserve the condition of the property while minimizing wear and tear. Should Licensee fail to properly maintain the License area, Licensor may terminate the License or itself provide the maintenance, but if Licensor provides such maintenance, it will be at the expense of Licensee, which shall promptly reimburse Licensor for its expenses in doing so.
9. **Repairs:** Licensee must notify Licensor, in writing, of any and all conditions in need of correction or repair which it discovers, whatever the origin of the conditions (caused by the Licensee, its employees, contractors, invitees, or others). Licensee shall make no repairs nor hire any person or entity to evaluate, assess or undertake any repairs without first notifying Licensor in writing and providing a minimum of 48 business hours advance notice of Licensee's intention to evaluate, assess or undertake or make such repairs, or in the event of an emergency, without first notifying the Licensor by telephone at (828) 268-6200 of the condition and repairs contemplated. Repairs may only be performed by Licensee with express authorization of the Town Manager. Any repairs made to the license area shall be done in a workmanlike manner and shall become the property of Licensor. In making any authorized repairs, Licensee shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all relevant federal and state laws relating to its operation of a facility and enterprise open to the public, and to its use of paid employees therein. Should Licensee be given permission to make repairs to the License area, for repairs requiring skilled workers, such as electrical repairs, plumbing repairs, structural repairs, and the like, Licensee shall only employ appropriately licensed workers to make the repairs. If Licensor itself undertakes needed repairs of conditions which are the result of Licensee's failure to discharge its maintenance responsibility; Licensee negligence; an intentional act of destruction by Licensee's participants, employees, patrons, invitees, agents or contractors; or other breach of its

responsibilities under this License; Licensee shall be responsible for reimbursing Licensor the cost of such repairs, and its failure to promptly reimburse Licensor shall constitute a basis for the termination of this License. For purposes of this section, "repairs" shall refer to fixing something which has been damaged, broken, or is not working correctly, so that it is in good condition and working properly.

10. **Alterations:** Licensee agrees to neither make nor arrange for any alterations to the License area without the advance written approval of Licensor. Should any alterations be approved by Licensor, they shall be done in a workmanlike manner, and they shall become the property of Licensor. Should Licensee be given permission to make alterations to the License area, or should it make for alterations requiring skilled workers, such as electrical installations, plumbing installations, construction activities, and the like, Licensee shall only employ appropriately licensed workers to make the alterations. In making any alterations, Licensee shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all other relevant federal and State laws. For purposes of this section, "alterations" includes, but is not limited to: removal of vegetation, other than weeds removed as part of normal maintenance, permanent modification or improvement of any existing structures, and construction of new structures.
11. **Compliance with Laws:** In particular, and not by way of exclusion, in any and all its actions and Activities, Licensee will comply and hereby certifies its compliance with the Americans with Disabilities Act, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Fair Labor Standards Act, as amended, the Occupational Safety and Health 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 Licensee or any of its activities. Should Licensee's corporate status be revoked by the North Carolina Secretary of State, this License shall immediately terminate. Licensee commits that it will act in accordance with all laws related to its status as a non-profit North Carolina Corporation.
12. **Information Required to be Furnished:** Licensee shall provide Licensor with its current by-laws at any time requested. Within ten days of any change, Licensee shall provide to Licensor any change to its by-laws, shall notify Licensor of any change to its management staff, and at the execution of this license and any time such composition changes, upon request shall advise Licensor of the names and addresses of each member of its board of directors.
13. **Termination or Expiration:** This License is terminable at will by either party. Upon termination of this license for any reason or upon its expiration, Licensee shall remove its personal property from the License area and shall surrender the License area to Licensor in good order and repair, reasonable wear and tear excepted.
14. **Abandoned Property:** Following the termination or expiration of this License, any property left by Licensee in the License area shall be considered abandoned and may be retained by or disposed of by Licensor as it sees fit. However, Licensee shall have a ten day period following the termination of this License to remove any building(s) which it owns. Thereafter, such building(s) will be deemed donated to Licensor. Licensee shall not leave, place, or store any personal property unrelated to the scope of the License in the License area, and any such property shall be considered abandoned and may be disposed of by Licensor.
15. **Waiver and Exculpation, Indemnification:** Licensor shall not be liable for, and Licensee

hereby waives all claims against Licensor for damage to its property, or for injury, illness or death of any person in, upon or about the License area arising from any act or neglect of Licensee or caused to or suffered by any person using the License area pursuant to Licensee's authority.

In addition, Licensee shall indemnify, defend, protect and hold harmless Licensor from and against any and all claims, actions, losses, costs, damages, expenses, and liability associated with personal injury, damage to property, or any other matter arising out of any occurrence in, upon, or at the License area, or associated with any act or omission of the Licensee, or associated with Licensee's use, occupancy or activities in the license area or access thereto by Licensee; provided, however, that the foregoing indemnity shall not be applicable to claims arising by reason of the gross neglect or willful misconduct of Licensor. In the event that the Licensor is made a party to any litigation brought against the Licensee or by reason of or related to the Licensee's use or occupancy of the License area, the Licensee shall defend, protect and hold harmless the Licensor from any and all liability that may result therefrom, including Licensor's costs in defending itself against any claim, action, litigation or other assertion of liability.

16. **Insurance:** Licensee shall provide and maintain insurance coverage, including general liability and host liquor liability insurance, in an amount of no less than one-million dollars (\$1,000,000.00), against all risks for which Licensee is required to indemnify and hold Licensor harmless, including but not limited to personal injury, bodily harm, or death of third parties and damage to the property of third parties as more fully set out and which includes injury or death of third parties and damage to the property of third parties, as more fully set out in paragraph 15, as well as damage which Licensee, its participants, employees, patrons, invitees, agents, or contractors may cause to the real or personal property of Licensor. Licensor shall be named as an additional insured on every liability insurance policy of Licensee relating to the License area. Certificates of insurance for each policy required to be obtained by Licensee in compliance with this paragraph shall be filed and maintained with Licensor. Licensee shall provide the aforesaid insurance policies to Licensor for its review at least 10 calendar days prior to the initiation of any activity on the licensed premises authorized by this License. Licensee shall immediately advise Licensor of any injury, damage, or assertion of claim or litigation that may result in a claim of liability against Licensor.
17. **Modification of License:** There shall be no modification of this License unless the modification is in writing and signed by both parties; provided, however, that Licensor has the right to modify the License unilaterally as it may determine necessary in its sole discretion, such modification to take effect 30 days following written notice to Licensee unless Licensor, in its discretion, determines that the modification must go into effect immediately upon or at some earlier time following notice of the same to Licensee.
18. **Assignments:** This License may not be assigned.
19. **Not a Lease or Estate:** The parties agree and acknowledge that in no event shall this License constitute a lease or grant or create any leasehold estate or other estate in the License area. This License is intended and shall be construed as granting a License or right of use in the License area, and Licensee's use and occupancy of the License area shall not be deemed to be a tenancy under the laws of North Carolina, and Licensee shall not enjoy, and hereby waives, any protections afforded tenants under federal, state, or local laws or regulations. Furthermore, the parties expressly disavow that this instrument creates any contractual responsibilities on the part of the Licensor.

20. **Governing Law:** This License shall be governed by and construed in accordance with the laws of the State of North Carolina. Venue concerning any dispute regarding this License shall be in Watauga County, North Carolina.
21. **Severability:** If any provision of this License or the application thereof to any person or circumstance shall, for any reason and to any extent, be held invalid or unenforceable, that provision shall be severed, and the remainder of this License and the application of that provision to other persons or circumstances shall not be affected, but rather shall be enforced to the extent permitted by law.
22. **Parties' Relationship:** Nothing contained in this License shall be deemed or construed by the parties or by any third party to create the relationship of principal and agent, employer and employee, or of partnership or joint venture or of any association whatsoever between Licensor and Licensee other than as is contained herein, it being expressly understood and agreed that none of the provisions contained in this License nor any act or acts of the parties hereto shall be deemed to create any relationship between Licensor and Licensee other than the relationship of a Licensor and Licensee.
23. **Waiver:** Licensor's failure to strictly enforce its rights under this License shall not constitute a waiver of such rights.
24. **Entire Agreement:** This License contains all of the terms and conditions concerning the licensing and use of the License area by Licensee. There are no oral terms or conditions agreed to by the parties which are not contained in this License. Licensor has not made and is not making, and Licensee, in executing and delivering this License, is not relying upon any warranties, representations, promises or statements, except those that are expressly set forth in this License. All prior verbal agreements previously made by and/or between the parties, if not contained herein, are hereby expressly null and void, and insofar as such prior agreements and understandings between the parties are included herein, the same have merged into this License, which alone fully and completely expresses the current terms of this License.
25. **Execution:** Licensee represents and warrants that all necessary authorizations and approvals required for execution and performance of this License have been given and that the undersigned individual is duly authorized to execute this License and bind the Licensee to the conditions set forth.
26. **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 **Licensor**, to: John Ward
Town Manager
Town of Boone
P.O. Drawer 192
Boone, NC 28607

If to **Licensee**, to: Sean Spiegelman, Registered Agent
182 Kalmia Lane
Boone, NC 28607

Copy to: Danny Wilcox, We Can So You Can Foundation
281 Coffey Knob Rd.

Boone, NC 28607

27. **Execution in counterparts:** This license agreement may be executed in separate counterparts, all of which together shall constitute and be effective as an original.

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

[signatures on following page]

Town of Boone, Licensors

Rennie Brantz, Mayor

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

We Can So You Can, Inc., Licensee, by

Sean Spiegelman, President

Attest: _____ (Seal)
Secretary

[Print name: _____]

ACKNOWLEDGED AND CONSENT TO:

Southern Appalachian Historical Association, Inc.,

G. Perry (Skip) Greene, Chair Board of Directors

Attest: _____ (Seal)
Secretary

ATTACHMENT "A"

1. The License area shall consist of the outdoor Structures, Grounds, and Parking Lots at Daniel Boone Park as shown in "Attachment B", on the following dates: Friday October 11; Saturday, October 12; Friday, October 18; Saturday, October 19; Friday, October 25; Saturday, October 26; and Thursday, October 31, 2019, beginning at 6:00 p.m., and extending through 10:00 p.m., excluding six parking spaces in the upper parking lot reserved for the Southern Appalachian Historical Association, Inc., and four spaces in the lower parking lot reserved for the Daniel Boone Native Gardens. Additional dates for preparation include September 27, 28, 29, October 5-10, 2019. Dates for clean-up include November 2, 3, 2019. Additional clean up may be authorized by written approval of the Town Manager or his or her designee.

Licensee agrees that it will prevent participants and patrons from parking in such a manner as to interfere with access or emergency access to the License area or other areas accessed through the License area. Licensee will ensure that its participants and patrons promptly honor any request by any law enforcement officer, fire official, and/or any representative of Licensor that vehicles be moved.

2. Licensee is responsible for cleaning the walkways, paths, restrooms and stage areas before, during, and after each use.
3. Licensee will provide trash containers for the event, and will provide for the removal of all trash and trash receptacles at the conclusion of the event.
4. Licensee is responsible for securing all necessary permits and scheduling all applicable inspections.
5. Food trucks may be incorporated into this event, but their location(s) must be approved by the Town of Boone Fire Marshall prior to their operation, and they must have all required permits and inspections, including but not necessarily limited to those required by the Watauga County Health Department.
6. Licensee and all its contractors, employees, agents, partners, and vendors will abide by all applicable rules, regulations and laws, including but not limited to those of the Town of Boone and the NC ABC Commission.
7. Wine, beer, and/or hard cider may be sold and served, but only after Licensee has obtained all necessary licenses and permits at such location(s) as are approved in advance by the Town Manager or his or her designee.

Building/Facilities Agreement

Overview

This agreement represents a one-time event, The Haunted Trail, between *Southern Appalachian Historical Association (SAHA)* and the *We Can So You Can Foundation (WCSYC)* to be held on the following dates of 2019:

- October 11, 7:00 – 11:00pm
- October 12, 7:00 – 11:00pm
- October 18, 7:00 – 11:00pm
- October 19, 7:00 – 11:00pm
- October 25, 7:00 – 11:00pm

We Can So You Can Foundation agrees to provide:

- A truck-load of firewood for use during their event.
- They will provide their own trash pick-up and removal from Hickory Ridge premises each night of the event.
- They will pay two Hickory Ridge Living History Museum employees to be on hand for all event dates as overseers for the cabins.

In return, SAHA will be receiving a \$500 donation from WCSYC. In addition, SAHA has the option to sell concessions and keep all proceeds from said sales held at the Horn in the West Concession Stand.

Use of cabins is as follows:

- Gift Shop: Haunted Trail Entrance (Intro/walk-through)
- Coffey Cabin: Walk-through
- WPA Cabin: Walk-by (no entry)
- Tatum Cabin: Walk-by (no entry)
- The Tavern: Walk in and out
- The Blacksmith Shop: Possible Walk-through, to be determined
- The Ticket Office: Manned by WCYC staff for Haunted Trail Ticket Sales

Disclaimer

SAHA will not be liable in any capacity in the event of injury of patrons and employees during set-up, event dates, and the closing activities of said event.

WCYC will be responsible for any damage to SAHA's cabins and their contents (historical artifacts). In addition, WCYC will be invoiced for any Haunted Trail items and/or materials that have not been removed or disposed of by November 1, 2019.

Shauna Godwin, Rep. for WCSYC

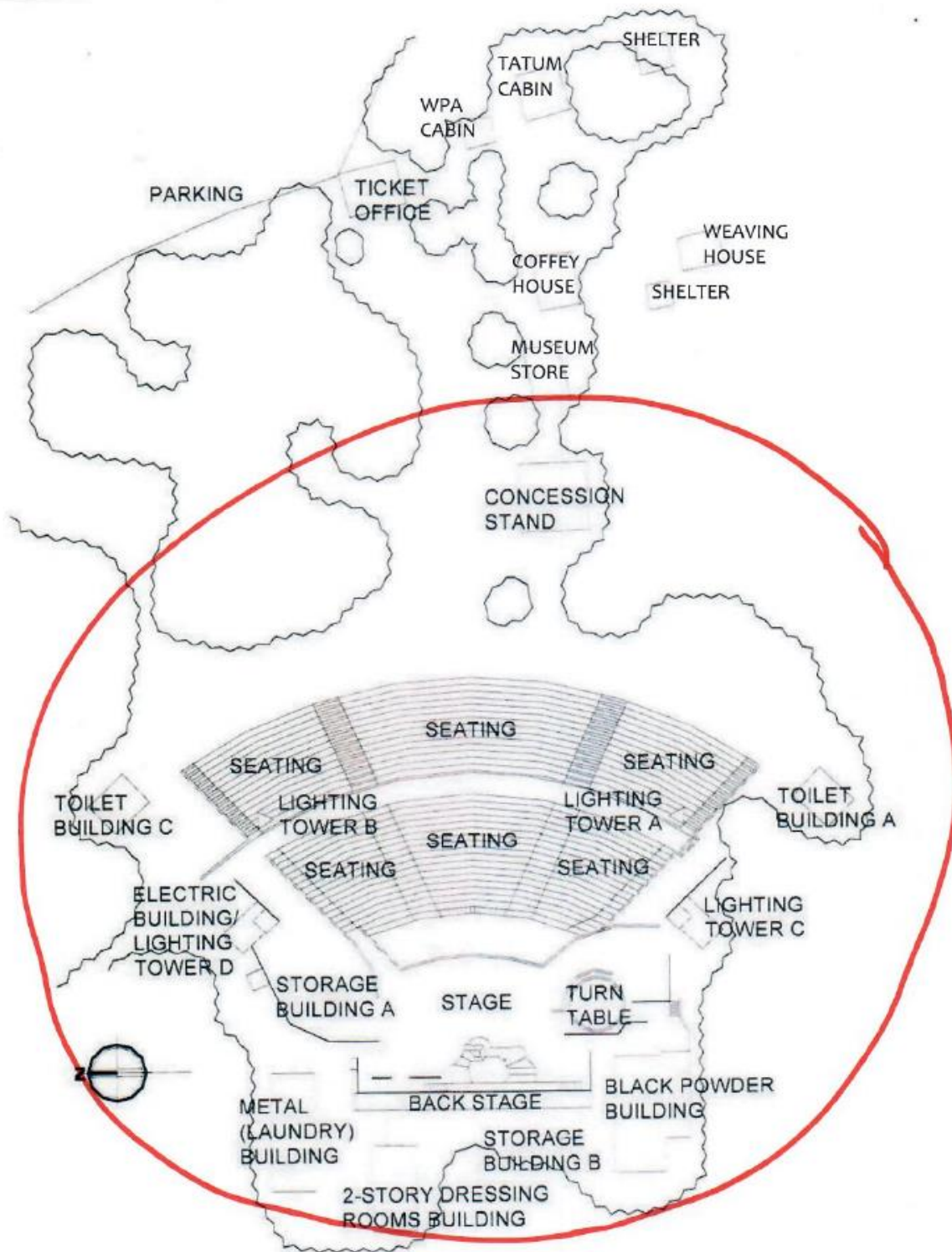
Date: 09.24.19

Stephen Canipe, Rep. for SAHA

Date: 9-24-19

Witness

Date: 9-24-19

"ATTACHMENT B"

HAUNTED HORN: THE ACCUSED DANIEL BOO EVENT PROPOSAL

EVENT DATES

Friday October 12th

Saturday October 13th

Friday October 19th

Saturday October 20th

Friday October 26th

Saturday October 27th

VENUE

Daniel Boone Amphitheatre

AUDIENCE

While Daniel Boo is marketed to families with children, the audience for the trail tends to be more varied (high school and college students, local adults, etc.)

CONCEPT

Haunted Horn: The Accused is a unique outdoor escape experience. Travel back in time when a simple lie could have you burned at the stake! A small mountain settlement has been rocked by accusations of witchery and sorcery. Are the women all truly witches or innocent bystanders of a more sinister plot?

Use your intellect and wit and to help Luna Longsten, a young girl trying to escape the settlement. To maneuver through, you will need to solve puzzles and disarm diabolical traps. Can you save Luna and the other women of the settlement without getting caught by the guards and other maniacal characters? Or, will you be forced to sacrifice some of them to save yourself? Do you think you have what it takes to solve the puzzles and disarm the traps to unravel whether there is any truth to this witch hysteria?

Haunted Horn 2018| 08.25.18

PRELIMINARY SCHEDULE

September 22nd: Begin set up (trail)
September 23rd: Set up (trail)
September 28th: Set up (trail)
September 29th: Set up (trail)
September 30th: Set up (trail)
October 3rd: Rehearsal
October 4th: Rehearsal
October 5th: Set up (trail)
October 6th: Set up (trail)
October 7th: Set up (trail)
October 8th: Set up (Daniel Boo)
October 9th: Set up (Dressing Room/Makeup and Concessions)
October 10th: Dress Rehearsal (preview)
October 11th: Set Up (Box Office)/Rehearsal (if needed)
October 12th: Opening Night!
October 13th: Open
October 20th: Open
October 21st: Open
October 26th: Open
October 27th: Closing Night & Strike Part 1
November 3rd: Strike Part 2
November 4th: Strike (if needed)

Mr. Furguele asked whether the DBDA was in compliance with presenting recommendations and quarterly reports

to Council, with Mr. Ward answering that they were as part of the approved budget and the quarterly reports sent out by the Finance department. Mr. Furgiuele felt that the use of MSD funds to pay for certain events was not clear in paragraph four of the agreement. He asked why the agreement was being dated retroactively, to which Mr. Ward replied that staff had planned to update this contract every three years as they usually do, and it did not get picked up for renewal when it was changed to be renewed every year. In regards to paragraph five, Mr. Furgiuele assumed that there was a policy on façade grants, and believed that for future agreements, the language should be revised pursuant to current policy. Mr. Furgiuele felt that the language in section F did not make sense since the DBDA no longer controlled all the MSD funds, and believed some of the terms to be outdated. He added that paragraph four was vague in his opinion, and felt the DBDA should attend Council meetings every quarter to give a report. Mr. Ward noted that he included upcoming DBDA events in his monthly manager's update, but Mr. Furgiuele stated that he would like to hear the reports from the DBDA directly, not necessarily the coordinator, in an attempt to get the information out to the community and to allow for dialogue. Mr. Furgiuele added that the agreement should clearly dictate what sufficient insurance coverage would be. Mr. Ward responded that the DBDA did not engage in any activities that would not be included in the Town's current insurance coverage. Mr. Furgiuele made a motion to approve the agreement as presented with the understanding that it would be revisited next year. Mayor Pro-Tem Clawson seconded the motion. Mr. Ashcraft asked whether there had been discussed about the DBDA picking up the full cost of the coordinator's salary, to which Mr. Ward responded that that discussion would take place during budget meetings next year, and that it could be phased in as the MSD is expanded.

VOTE: Aye: All
 Nay: None

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

THIS AGREEMENT ("Agreement") is entered into this 30th day of June, 2019, 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, 2019, and ending June 30, 2020.

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 participation 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

Downtown Boone Development Association, Inc., by

President

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

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

Mr. Ward announced that staff had sent letters to all grocery stores in the area. He indicated that he had received information from Publix regarding their offering of reusable bags and recycle stations for plastic bags. Steve Rigell from Earth Fare asked why Council did not simply require businesses to stop offering plastic bags to their patrons, to which Mr. Furgiuele answered that was not an option according to state statute. Mr. Rigell noted that the store he worked at did not make plastic bags available to customers and only offered paper takeout boxes and added that this did not appear to be a problem for customers. He added that the store had a box bin near the checkout so that customers could use boxes instead of bags for their purchases, and that they offered a loyalty program that encouraged the use of reusable bags. Mr. Furgiuele felt that even though the Town was unable to mandate the restriction of plastic bags, that the Town could still incentivize the reduction in their use or the voluntary discontinuation of them by stores in town. After brief discussion, Mr. Furgiuele suggested that an ad-hoc committee be considered to address the matter.

REQUEST FOR CONTINUATION OF AUDIT SERVICES WITH COMBS, TENNANT & CARPENTER, CPA PA

Ms. Davis presented Council with a request for a three-year commitment for the continuation of audit services with Combs, Tennant, and Carpenter, CPA, PA. She stated that the firm had experience with the USDA, which would be valuable with the work the Town would be doing with them on the Howard Street project. Ms. Davis added that there had been recent changes in government standards that a new firm would not be familiar with, and that if a new firm was utilized, two firms would be needed to do the work of the current firm. She continued by stating that the department did not have the staffing levels to comply with new government finance regulations without the help of a competent accounting firm. Mr. Furgiuele expressed understanding that there was a level of comfort with the current firm, but felt that there should not be complete comfort with auditors. He added that with the increasing prices, he had concern with not putting the contract out to bid. Ms. Davis indicated that for several years, the Town had required that the firm rotate the lead auditor, and that every person on the audit team is a CPA instead of just an accountant. She added that the current firm was local and noted that the previous auditors utilized by the Town were not. Mr. Ward stated that usually he would agree with Sam that the audit contract needed to be put out to bid, but with the USDA carryover from the water intake project and with the Howard Street project, he was concerned that if there was much lag time with the application for community facilities grant funding, the Town could lose its eligibility due to population counts

in 2020. He added that he did not see the situation as a comfort issue, but more of a staff, timing and efficiency issue. Mr. Furgiuele asked whether the contract price went up last year, to which Ms. Davis responded that it had due to additional work with the USDA. Mr. Ashcraft made a motion to approve the request as presented. Ms. Mason seconded the motion. Mr. Furgiuele stated that he would vote against it and noted that Council decided last year to put the contract out to bid. Ms. Ulmer asked how long staff thought the USDA work would take, with Mr. Ward responding that he believed the work could be completed in the next year. Mr. Furgiuele asked what the advantage was to a three-year term. Ms. Davis responded that it was not advisable to switch auditors mid-stream, and that for scheduling purposes, the auditors had asked for a three-year commitment. Mr. Furgiuele stated that he would support this request if it were for a one-year commitment. Ms. Davis noted that the request was for three years. Ms. Meade reminded Council that they did not receive pricing information from requests for qualifications if the contract was put out to bid. Mr. Furgiuele felt that the responsible thing to do was to put all contracts out to bid at regular intervals. Mr. Ashcraft stated that he was fundamentally in agreement, but that he trusted staffs judgment to extend the contract and to revisit it in three years. Ms. Ulmer was in agreement with Mr. Ashcraft.

RESULT:	APPROVED [3 TO 2]
MOVER:	Marshall Ashcraft, Council Member
SECONDER:	Lynne Mason, Council Member
AYES:	Mason, Ulmer, Ashcraft
NAYS:	Clawson, Furgiuele

RE-ENCUMBRANCE OF FUNDS FROM FY 2018/2019 TO FY 2019/2020

Ms. Davis presented a listed of re-encumbered funds from fiscal year 2018/2019 to fiscal year 2019/2020. Mr. Furgiuele asked why local grant match funding would not be placed in the general fund and allocated as grant requests came forward, and also whether new funds had been allocated. Ms. Davis answered that new funds had not been allocated in a while, but that this fund was used for small matches, primarily for the Police department. Mr. Ward noted that some grants required a portion of the funding to be set aside. Mr. Furgiuele then asked whether funds for fee waivers were set aside in the budget, to which Ms. Davis responded that they were not since staff knew there would be a carry over of funds available. Mr. Furgiuele asked about the sustainability allocation listed in the re-encumbrances. Ms. Davis informed Council that these funds were left over from an allocation out of the FY 2014/2015 budget. Mr. Ward added that part of the funds were used for a bicycle repair trailer currently housed in the Town Hall employee parking lot, the downtown solar array and a food hub refrigerator. Mr. Furgiuele expressed that he would like to see the fund be used to take steps to reduce the carbon footprint. Mr. Ward noted that the funds were set aside for use as soon as a project was identified. Mr. Furgiuele suggested that a single budgetary line be created for sustainable projects. Mr. Furgiuele inquired about the funds set aside for low-flow toilet rebates. Ms. Davis indicated that there were no new funds allocated since funds were not often used. Mr. Miller confirmed that funds were only used for water and sewer related expenses and that a larger amount was kept aside in case an apartment building decided to change out their toilets and asked for the rebates. Mr. Furgiuele suggested that the program be advertised and that staff should reach out to the owners of older apartment complexes in Town to see if they would be interested in changing out their old toilets for new low-flow toilets in an attempt to zero-out the fund by the end of the year. Ms. Mason made a motion to approve the re-encumbrances as presented. Mr. Furgiuele seconded the motion.

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

CONSIDERATION OF BUDGET AMENDMENTS

Upon a motion by Mr. Furgiuele, seconded by Ms. Ulmer, Council approved the following budget amendments:

Public Works (Public Works Admin Salaries - \$1,811.76)
Public Utilities (Public Utilities Admin Salaries - \$1,811.76)
Police Department (Maintenance Vehicles - \$2,379.00)
Public Works (Engineering - Powell Bill - \$257,657)

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sam Furguele, Council Member
SECONDER:	Connie Ulmer, Council Member
AYES:	Mason, Clawson, Furguele, Ulmer, Ashcraft

CONSIDERATION OF OFFER TO PURCHASE CONTRACT - WINKLER PROPERTY

Mr. Ward presented the offer to purchase contract between John David Winkler and the Town of Boone for 2.95 acres on Horn in the West Drive for the purpose of public disclosure. Mr. Furguele stated that it was exciting for the Town to be purchasing this property for park space given how much development was taking place in Town and made a motion to approve the contract. Ms. Meade noted that the closing date had been pushed back 7 to 10 days to allow for the completion of a survey of the property. Mr. Ashcraft seconded the motion.

OFFER TO PURCHASE AND CONTRACT - VACANT LOT/LAND
 [Consult "Guidelines" (form 12G) for guidance in completing this form]

NOTE: This contract is intended for unimproved real property that Buyer will purchase only for personal use and does not have immediate plans to subdivide. It should not be used to sell property that is being subdivided unless the property has been platted, properly approved and recorded with the register of deeds as of the date of the contract. If Seller is Buyer's builder and the sale involves the construction of a new single family dwelling prior to closing, use the standard Offer to Purchase and Contract—New Construction (Form 800-T) or, if the construction is completed, use the Offer to Purchase and Contract (Form 2-T) with the New Construction Addendum (Form 2A3-T).

For valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Buyer offers to purchase and Seller upon acceptance agrees to sell and convey the Property on the terms and conditions of this Offer To Purchase and Contract and any addendum or modification made in accordance with its terms (together the "Contract").

1. TERMS AND DEFINITIONS: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) "Seller": John David Winkler, Executor of the Estate of Alma C. Winkler

(b) "Buyer": Town of Boone

(c) "Property": The Property shall include all that real estate described below together with all appurtenances thereto including the improvements located thereon.

NOTE: If the Property will include a manufactured (mobile) home(s), Buyer and Seller should consider including the Manufactured (Mobile) Home provision in the Additional Provisions Addendum (Standard Form 2A11-T) with this offer.

Street Address: 2.95 acres Horn in the West Drive

City: Boone

Zip: 28607

County: Watauga, North Carolina

NOTE: Governmental authority over taxes, zoning, school districts, utilities and mail delivery may differ from address shown.

Legal Description: (Complete ALL applicable)

Plat Reference: Lot/Unit, Block/Section, Subdivision/Condominium

, as shown on Plat Book/Slide at Page(s)

The PIN/PID or other identification number of the Property is: 2916-16-9677-000

Other description: 2.95 acres

Some or all of the Property may be described in Deed Book 185 at Page 594

(d) "Purchase Price":

\$ 200,000.00

\$

\$ 1,000.00

\$

\$

\$

\$

\$ 199,000.00

paid in U.S. Dollars upon the following terms:

BY DUE DILIGENCE FEE made payable and delivered to Seller by the Effective Date

BY INITIAL EARNEST MONEY DEPOSIT made payable and delivered to Escrow Agent named in Paragraph 1(f) by ☐ cash ☐ personal check ☐ official bank check ☐ wire transfer, ☐ electronic transfer, EITHER ☐ with this offer OR ☐ within five (5) days of the Effective Date of this Contract.

BY (ADDITIONAL) EARNEST MONEY DEPOSIT made payable and delivered to Escrow Agent named in Paragraph 1(f) by cash, official bank check, wire transfer or electronic transfer no later than

TIME BEING OF THE ESSENCE with regard to said date.

BY ASSUMPTION of the unpaid principal balance and all obligations of Seller on the existing loan(s) secured by a deed of trust on the Property in accordance with the attached Loan Assumption Addendum (Standard Form 2A6-T).

BY SELLER FINANCING in accordance with the attached Seller Financing Addendum (Standard Form 2A5-T).

BALANCE of the Purchase Price in cash at Settlement (some or all of which may be paid with the proceeds of a new loan)

Buyer Initials *RWB* Seller Initials *JDW*

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Should Buyer fail to deliver either the Due Diligence Fee or any Initial Earnest Money Deposit by their due dates, or should any check or other funds paid by Buyer be dishonored, for any reason, by the institution upon which the payment is drawn, Buyer shall have one (1) banking day after written notice to deliver cash, official bank check, wire transfer or electronic transfer to the payee. In the event Buyer does not timely deliver the required funds, Seller shall have the right to terminate this Contract upon written notice to Buyer.

(e) "Earnest Money Deposit": The Initial Earnest Money Deposit, the Additional Earnest Money Deposit and any other earnest monies paid or required to be paid in connection with this transaction, collectively the "Earnest Money Deposit", shall be deposited and held in escrow by Escrow Agent until Closing, at which time it will be credited to Buyer, or until this Contract is otherwise terminated. In the event: (1) this offer is not accepted; or (2) a condition of any resulting contract is not satisfied, then the Earnest Money Deposit shall be refunded to Buyer. In the event of breach of this Contract by Seller, the Earnest Money Deposit shall be refunded to Buyer upon Buyer's request, but such return shall not affect any other remedies available to Buyer for such breach. In the event of breach of this Contract by Buyer, the Earnest Money Deposit shall be paid to Seller as liquidated damages and as Seller's sole and exclusive remedy for such breach, but without limiting Seller's rights under Paragraphs 2(c) and 2(d) for damage to the Property or Seller's right to retain the Due Diligence Fee. It is acknowledged by the parties that payment of the Earnest Money Deposit to Seller in the event of a breach of this Contract by Buyer is compensatory and not punitive, such amount being a reasonable estimation of the actual loss that Seller would incur as a result of such breach. The payment of the Earnest Money Deposit to Seller shall not constitute a penalty or forfeiture but actual compensation for Seller's anticipated loss, both parties acknowledging the difficulty determining Seller's actual damages for such breach. If legal proceedings are brought by Buyer or Seller against the other to recover the Earnest Money Deposit, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney fees and court costs incurred in connection with the proceeding.

(f) "Escrow Agent" (insert name): Dustin Stacey

NOTE: In the event of a dispute between Seller and Buyer over the disposition of the Earnest Money Deposit held in escrow, a licensed real estate broker ("Broker") is required by state law (and Escrow Agent, if not a Broker, hereby agrees) to retain the Earnest Money Deposit in the Escrow Agent's trust or escrow account until Escrow Agent has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, if a Broker or an attorney licensed to practice law in North Carolina ("Attorney") is holding the Earnest Money Deposit, the Broker or Attorney may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of N.C.G.S. §93A-12.

THE PARTIES AGREE THAT A REAL ESTATE BROKERAGE FIRM ACTING AS ESCROW AGENT MAY PLACE THE EARNEST MONEY DEPOSIT IN AN INTEREST BEARING TRUST ACCOUNT AND THAT ANY INTEREST EARNED THEREON SHALL BE DISBURSED TO THE ESCROW AGENT MONTHLY IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.

(g) "Effective Date": The date that: (1) the last one of Buyer and Seller has signed or initialed this offer or the final counteroffer, if any, and (2) such signing or initialing is communicated to the party making the offer or counteroffer, as the case may be. The parties acknowledge and agree that the initials lines at the bottom of each page of this Contract are merely evidence of their having reviewed the terms of each page, and that the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement.

(h) "Due Diligence": Buyer's opportunity to investigate the Property and the transaction contemplated by this Contract, including but not necessarily limited to the matters described in Paragraph 2 below, to decide whether Buyer, in Buyer's sole discretion, will proceed with or terminate the transaction.

(i) "Due Diligence Fee": A negotiated amount, if any, paid by Buyer to Seller with this Contract for Buyer's right to terminate the Contract for any reason or no reason during the Due Diligence Period. It shall be the property of Seller upon the Effective Date and shall be a credit to Buyer at Closing. The Due Diligence Fee shall be non-refundable except in the event of a material breach of this Contract by Seller, or if this Contract is terminated under Paragraph 6(m) or Paragraph 9, or as otherwise provided in any addendum hereto. Buyer and Seller each expressly waive any right that they may have to deny the right to conduct Due Diligence or to assert any defense as to the enforceability of this Contract based on the absence or alleged insufficiency of any Due Diligence Fee, it being the intent of the parties to create a legally binding contract for the purchase and sale of the Property without regard to the existence or amount of any Due Diligence Fee. (j) "Due Diligence Period": The period beginning on the Effective Date and extending through 5:00 p.m. on September 19, 2019

ESSENCE with regard to said date.

Buyer Initials 

Seller Initials 

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(k) "Settlement": The proper execution and delivery to the closing attorney of all documents necessary to complete the transaction contemplated by this Contract, including the deed, settlement statement, deed of trust and other loan or conveyance documents, and the closing attorney's receipt of all funds necessary to complete such transaction.

(l) "Settlement Date": The parties agree that Settlement will take place on or before September 30, 2019
(the "Settlement Date"), unless otherwise agreed in writing, at a time and place designated by Buyer.

(m) "Closing": The completion of the legal process which results in the transfer of title to the Property from Seller to Buyer, which includes the following steps: (1) the Settlement (defined above); (2) the completion of a satisfactory title update to the Property following the Settlement; (3) the closing attorney's receipt of authorization to disburse all necessary funds; and (4) recordation in the appropriate county registry of the deed(s) and deed(s) of trust, if any, which shall take place as soon as reasonably possible for the closing attorney after Settlement. Upon Closing, the proceeds of sale shall be disbursed by the closing attorney in accordance with the settlement statement and the provisions of Chapter 45A of the North Carolina General Statutes. If the title update should reveal unexpected liens, encumbrances or other title defects, or if the closing attorney is not authorized to disburse all necessary funds, then the Closing shall be suspended and the Settlement deemed delayed under Paragraph 10 (Delay in Settlement/Closing).

WARNING: The North Carolina State Bar has determined that the performance of most acts and services required for a closing constitutes the practice of law and must be performed only by an attorney licensed to practice law in North Carolina. State law prohibits unlicensed individuals or firms from rendering legal services or advice. Although non-attorney settlement agents may perform limited services in connection with a closing, they may not perform all the acts and services required to complete a closing. A closing involves significant legal issues that should be handled by an attorney. Accordingly it is the position of the North Carolina Bar Association and the North Carolina Association of REALTORS® that all buyers should hire an attorney licensed in North Carolina to perform a closing.

(n) "Special Assessments": A charge against the Property by a governmental authority in addition to ad valorem taxes and recurring governmental service fees levied with such taxes, or by an owners' association in addition to any regular assessment (dues), either of which may be a lien against the Property. A Special Assessment may be either proposed or confirmed.

"Proposed Special Assessment": A Special Assessment that is under formal consideration but which has not been approved prior to Settlement.

"Confirmed Special Assessment": A Special Assessment that has been approved prior to Settlement whether or not it is fully payable at time of Settlement.

2. BUYER'S DUE DILIGENCE PROCESS:

WARNING: BUYER IS STRONGLY ENCOURAGED TO CONDUCT DUE DILIGENCE DURING THE DUE DILIGENCE PERIOD. If Buyer is not satisfied with the results or progress of Buyer's Due Diligence, Buyer should terminate this Contract, *prior to the expiration of the Due Diligence Period*, unless Buyer can obtain a written extension from Seller. SELLER IS NOT OBLIGATED TO GRANT AN EXTENSION. Although Buyer may continue to investigate the Property following the expiration of the Due Diligence Period, Buyer's failure to deliver a Termination Notice to Seller prior to the expiration of the Due Diligence Period will constitute a waiver by Buyer of any right to terminate this Contract based on any matter relating to Buyer's Due Diligence. Provided however, following the Due Diligence Period, Buyer may still exercise a right to terminate if Seller fails to materially comply with any of Seller's obligations under paragraph 6 of this Contract or for any other reason permitted under the terms of this Contract or North Carolina law.

(a) Loan: Buyer, at Buyer's expense, shall be entitled to pursue qualification for and approval of the Loan if any.

NOTE: Buyer's obligation to purchase the Property is not contingent on obtaining a Loan. Therefore, Buyer is advised to consult with Buyer's lender prior to signing this offer to assure that the Due Diligence Period allows sufficient time for the appraisal to be completed and for Buyer's lender to provide Buyer sufficient information to decide whether to proceed with or terminate the transaction.

(b) Property Investigation: Buyer or Buyer's agents or representatives, at Buyer's expense, shall be entitled to conduct all desired tests, surveys, appraisals, investigations, examinations and inspections of the Property as Buyer deems appropriate, including but NOT limited to the following:

Buyer Initials KB Seller Initials JSW

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- (i) **Soil And Environmental:** Reports to determine whether the soil is suitable for Buyer's intended use and whether there is any environmental contamination, law, rule or regulation that may prohibit, restrict or limit Buyer's intended use.
- (ii) **Septic/Sewer System:** Any applicable investigation(s) to determine: (1) the condition of an existing sewage system, (2) the costs and expenses to install a sewage system approved by an existing Improvement Permit, (3) the availability and expense to connect to a public or community sewer system, and/or (4) whether an Improvement Permit or written evaluation may be obtained from the County Health Department for a suitable ground absorption sewage system.
- (iii) **Water:** Any applicable investigation(s) to determine: (1) the condition of an existing private drinking water well, (2) the costs and expenses to install a private drinking water well approved by an existing Construction Permit, (3) the availability, costs and expenses to connect to a public or community water system, or a shared private well, and/or (4) whether a Construction Permit may be obtained from the County Health Department for a private drinking water well.
- (iv) **Review of Documents:** Review of the Declaration of Restrictive Covenants, Bylaws, Articles of Incorporation, Rules and Regulations, and other governing documents of any applicable owners' association and/or subdivision. If the Property is subject to regulation by an owners' association, it is recommended that Buyer review the completed Owners' Association And Addendum (Standard Form 2A12-T) provided by Seller prior to signing this offer. It is also recommended that the Buyer determine if the owners' association or its management company charges fees for providing information required by Buyer's lender or confirming restrictive covenant compliance.
- (v) **Appraisals:** An appraisal of the Property
- (vi) **Survey:** A survey to determine whether the property is suitable for Buyer's intended use and the location of easements, setbacks, property boundaries and other issues which may or may not constitute title defects.
- (vii) **Zoning and Governmental Regulation:** Investigation of current or proposed zoning or other governmental regulation that may affect Buyer's intended use of the Property, adjacent land uses, planned or proposed road construction, and school attendance zones.
- (viii) **Flood Hazard:** Investigation of potential flood hazards on the Property, and/or any requirement to purchase flood insurance in order to obtain the Loan.
- (ix) **Utilities and Access:** Availability, quality, and obligations for maintenance of utilities including electric, gas, communication services, storm water management, and means of access to the Property and amenities.
- (x) **Streets/Roads:** Investigation of the status of the street/road upon which the Property fronts as well as any other street/road used to access the Property, including: (1) whether any street(s)/road(s) are public or private, (2) whether any street(s)/road(s) designated as public are accepted for maintenance by the State of NC or any municipality, or (3) if private or not accepted for public maintenance, the consequences and responsibility for maintenance and the existence, terms and funding of any maintenance agreements.

NOTE: NC General Statutes Section 136-102.6(f) (the "Statute") requires that under circumstances described in the Statute, a buyer must be provided a subdivision streets disclosure statement prior to entering into an agreement to buy subdivided property described in the Statute. If Buyer or Seller are uncertain whether the sale of the Property described in this Contract is subject to the Statute, consult a NC real estate attorney.

(c) **Buyer's Obligation to Repair Damage:** Buyer shall, at Buyer's expense, promptly repair any damage to the Property resulting from any activities of Buyer and Buyer's agents and contractors, but Buyer shall not be responsible for any damage caused by accepted practices applicable to any N.C. licensed professional performing reasonable appraisals, tests, surveys, examinations and inspections of the Property. This repair obligation shall survive any termination of this Contract.

(d) **Indemnity:** Buyer will indemnify and hold Seller harmless from all loss, damage, claims, suits or costs, which shall arise out of any contract, agreement, or injury to any person or property as a result of any activities of Buyer and Buyer's agents and contractors relating to the Property except for any loss, damage, claim, suit or cost arising out of pre-existing conditions of the Property and/or out of Seller's negligence or willful acts or omissions. This indemnity shall survive this Contract and any termination hereof.

(e) **Buyer's Right to Terminate:** Buyer shall have the right to terminate this Contract for any reason or no reason, by delivering to Seller written notice of termination (the "Termination Notice") during the Due Diligence Period (or any agreed-upon written extension of the Due Diligence Period), **TIME BEING OF THE ESSENCE**. If Buyer timely delivers the Termination Notice, this Contract shall be terminated and the Earnest Money Deposit shall be refunded to Buyer.

(f) CLOSING SHALL CONSTITUTE ACCEPTANCE OF THE PROPERTY IN ITS THEN EXISTING CONDITION UNLESS PROVISION IS OTHERWISE MADE IN WRITING.

3. BUYER REPRESENTATIONS:

Buyer Initials PMB Seller Initials JMK

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(a) **Loan:** Buyer ☐ does ☒ does not intend to obtain a new loan in order to purchase the Property. If Buyer is obtaining a new loan, Buyer intends to obtain a loan as follows: ☐ Conventional ☐ Other: _____ loan at a ☐ Fixed Rate ☐ Adjustable Rate in the principal amount of _____ for a term of _____ year(s), at an initial interest rate not to exceed _____ % per annum (the "Loan").

NOTE: Buyer's obligations under this Contract are not conditioned upon obtaining or closing any loan.

NOTE: If Buyer does not intend to obtain a new loan, Seller is advised, prior to signing this offer, to obtain documentation from Buyer which demonstrates that Buyer will be able to close on the Property without the necessity of obtaining a new loan.

(b) **Other Property:** Buyer ☐ does ☒ does not have to sell or lease other real property in order to qualify for a new loan or to complete purchase.

NOTE: If Buyer does have to sell, Buyer and Seller should consider including a Contingent Sale Addendum (Standard Form 2A2-T) with this offer.

(c) **Performance of Buyer's Financial Obligations:** To the best of Buyer's knowledge, there are no other circumstances or conditions existing as of the date of this offer that would prohibit Buyer from performing Buyer's financial obligations in accordance with this Contract, except as may be specifically set forth herein.

4. BUYER OBLIGATIONS:

(a) **Responsibility for Proposed Special Assessments:** Buyer shall take title subject to all Proposed Special Assessments.

(b) **Responsibility for Certain Costs:** Buyer shall be responsible for all costs with respect to:

- (i) any loan obtained by Buyer, including charges by an owners association and/or management company as agent of an owners' association for providing information required by Buyer's lender;
- (ii) charges required by an owners' association declaration to be paid by Buyer for Buyer's future use and enjoyment of the Property, including, without limitation, working capital contributions, membership fees, or charges for Buyer's use of the common elements and/or services provided to Buyer, such as "move-in fees";
- (iii) determining restrictive covenant compliance;
- (iv) appraisal;
- (v) title search;
- (vi) title insurance;
- (vii) any fees charged by the closing attorney for the preparation of the Closing Disclosure, Seller Disclosure and any other settlement statement;
- (viii) recording the deed; and
- (ix) preparation and recording of all instruments required to secure the balance of the Purchase Price unpaid at Settlement.

(c) **Authorization to Disclose Information:** Buyer authorizes the Buyer's lender(s), the parties' real estate agent(s) and closing attorney: (1) to provide this Contract to any appraiser employed by Buyer or by Buyer's lender(s); and (2) to release and disclose any buyer's closing disclosure, settlement statement and/or disbursement summary, or any information therein, to the parties to this transaction, their real estate agent(s) and Buyer's lender(s).

5. SELLER REPRESENTATIONS:

(a) **Ownership:** Seller represents that Seller:

- ☒ has owned the Property for at least one year.
- ☐ has owned the Property for less than one year.
- ☐ does not yet own the Property.

(b) **Assessments:** To the best of Seller's knowledge there are no Proposed Special Assessments except as follows (Insert "None" or the identification of such assessments, if any): None.

Seller warrants that there are no Confirmed Special Assessments except as follows (Insert "None" or the identification of such assessments, if any): None.

(c) **Owners' Association(s) and Dues:** To best of Seller's knowledge, ownership of the Property ☐ subjects ☒ does not subject Buyer to regulation by one or more owners' association(s) and governing documents, which impose various mandatory covenants,

Buyer Initials [Signature] Seller Initials [Signature]

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conditions and restrictions upon the Property and Buyer's enjoyment thereof, including but not limited to obligations to pay regular assessments (dues) and Special Assessments. If there is an owners' association, then an Owners' Association Disclosure and Addendum For Properties Exempt from Residential Property Disclosure Statement (Standard Form 2A12-T) shall be completed by Seller, at Seller's expense, and must be attached as an addendum to this Contract.

(d) **Sewage System Permit:** (☐ Applicable ☒ Not Applicable) Seller warrants that the sewage system described in the Improvement Permit attached hereto has been installed, which representation survives Closing, but makes no further representations as to the system.

(e) **Private Drinking Water Well Permit:** (☐ Applicable ☒ Not Applicable) Seller warrants that a private drinking water well has been installed, which representation survives Closing, but makes no further representations as to the well. (If well installed after July 1, 2008, attach Improvement Permit hereto.

6. SELLER OBLIGATIONS:

(a) Evidence of Title, Payoff Statement(s) and Non Foreign Status:

(i) Seller agrees to use best efforts to provide to the closing attorney as soon as reasonably possible after the Effective Date, copies of all title information in possession of or available to Seller, including but not limited to: title insurance policies, attorney's opinions on title, surveys, covenants, deeds, notes and deeds of trust, leases, and easements relating to the Property.

(ii) Seller shall provide to the closing attorney all information needed to obtain a written payoff statement from any lender(s) regarding any security interest in the Property as soon as reasonably possible after the Effective Date, and Seller designates the closing attorney as Seller's agent with express authority to request and obtain on Seller's behalf payoff statements and/or short-pay statements from any such lender(s).

(iii) If Seller is not a foreign person as defined by the Foreign Investment in Real Property Tax Act, Seller shall also provide to the closing attorney a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act). In the event Seller shall not provide a non-foreign status affidavit, Seller acknowledges that there may be withholding as provided by the Internal Revenue Code.

(b) **Authorization to Disclose Information:** Seller authorizes: (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys, and (3) the closing attorney to release and disclose any seller's closing disclosure, settlement statement and/or disbursement summary, or any information therein, to the parties to this transaction, their real estate agent(s) and Buyer's lender(s).

(c) **Access to Property:** Seller shall provide reasonable access to the Property (including working, existing utilities) through the earlier of Closing or possession by Buyer, including, but not limited to, allowing the Buyer and/or Buyer's agents or representatives an opportunity to (i) conduct Due Diligence, (ii) verify the satisfactory completion of negotiated repairs/improvements, and (iii) conduct a final walk-through inspection of the Property. To the extent applicable, Seller shall also be responsible for timely clearing that portion of the Property required by the County to perform tests, inspections and/or evaluations to determine the suitability of the Property for a sewage system and/or private drinking water well.

NOTE: See WARNING in paragraph 2 above for limitation on Buyer's right to terminate this Contract as a result of Buyer's continued investigation of the Property following the expiration of the Due Diligence Period.

(d) **Removal of Seller's Property:** Seller shall remove from the Property, by the date possession is delivered, (i) all personal property which is not a part of the purchase and (ii) unless otherwise agreed, all garbage and debris.

(e) **Affidavit And Indemnification Agreement:** Seller shall furnish at Settlement an affidavit(s) and indemnification agreement(s) in form satisfactory to Buyer and Buyer's title insurer, if any, executed by Seller and any person or entity who has performed or furnished labor, services, materials or rental equipment to the Property within 120 days prior to the date of Settlement and who may be entitled to claim a lien against the Property as described in N.C.G.S. §44A-8 verifying that each such person or entity has been paid in full and agreeing to indemnify Buyer, Buyer's lender(s) and Buyer's title insurer against all loss from any cause or claim arising therefrom.

(f) **Designation of Lien Agent, Payment and Satisfaction of Liens:** If required by N.C.G.S. §44A-11.1, Seller shall have designated a Lien Agent, and Seller shall deliver to Buyer as soon as reasonably possible a copy of the appointment of Lien Agent. All deeds of trust, deferred ad valorem taxes, liens and other charges against the Property, not assumed by Buyer, must be paid and satisfied by

Buyer Initials Seller Initials

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Seller prior to or at Settlement such that cancellation may be promptly obtained following Closing. Seller shall remain obligated to obtain any such cancellations following Closing.

(g) **Good Title, Legal Access:** Seller shall execute and deliver a GENERAL WARRANTY DEED for the Property in recordable form no later than Settlement, which shall convey fee simple marketable and insurable title, without exception for mechanics' liens, and free of any other liens, encumbrances or defects, including those which would be revealed by a current and accurate survey of the Property, except: ad valorem taxes for the current year (prorated through the date of Settlement); utility easements and unviolated covenants, conditions or restrictions that do not materially affect the value of the Property; and such other liens, encumbrances or defects as may be assumed or specifically approved by Buyer in writing. The Property must have legal access to a public right of way.

NOTE: Buyer's failure to conduct a survey or examine title of the Property prior to the expiration of the Due Diligence Period does not relieve the Seller of their obligation to deliver good title under this paragraph.

NOTE: If any sale of the Property may be a "short sale," consideration should be given to attaching a Short Sale Addendum (Standard Form 2A14-T) as an addendum to this Contract.

(h) **Deed, Taxes, and Fees:** Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Contract, and for state and county excise taxes, and any deferred, discounted or rollback taxes, and local conveyance fees required by law. The deed is to be made to: Town of Boone.

(i) **Agreement to Pay Buyer Expenses:** Seller shall pay at Settlement \$ -0- toward any of Buyer's expenses associated with the purchase of the Property, at the discretion of Buyer and/or lender, if any, including any FHA/VA lender and inspection costs that Buyer is not permitted to pay.

(j) **Owners' Association Fees/Charges:** Seller shall pay: (i) any fees required for confirming Seller's account payment information on owners' association dues or assessments for payment or proration; (ii) any fees imposed by an owners' association and/or a management company as agent of the owners' association in connection with the transaction contemplated by this Contract other than those fees required to be paid by Buyer under paragraph 4(b) above; and (iii) fees incurred by Seller in completing the Residential Property and Owners' Association Disclosure Statement, and resale or other certificates related to a proposed sale of the Property.

(k) **Payment of Confirmed Special Assessments:** Seller shall pay all Confirmed Special Assessments, if any, provided that the amount thereof can be reasonably determined or estimated. The payment of such estimated amount shall be the final payment between the Parties.

(l) **Late Listing Penalties:** All property tax late listing penalties, if any, shall be paid by Seller.

(m) **Owners' Association Disclosure and Condominium Resale Statement Addendum** (Standard Form 2A12-T): If applicable, Seller shall provide the completed Owners' Association Disclosure and Condominium Resale Statement Addendum to Buyer on or before the Effective Date.

(n) **Seller's Failure to Comply or Breach:** If Seller fails to materially comply with any of Seller's obligations under this Paragraph 6 or Seller materially breaches this Contract, and Buyer elects to terminate this Contract as a result of such failure or breach, then the Earnest Money Deposit and the Due Diligence Fee shall be refunded to Buyer and Seller shall reimburse to Buyer the reasonable costs actually incurred by Buyer in connection with Buyer's Due Diligence without affecting any other remedies. If legal proceedings are brought by Buyer against the Seller to recover the Earnest Money Deposit, the Due Diligence Fee and/or the reasonable costs actually incurred by Buyer in connection with Buyer's Due Diligence, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney fees and court costs incurred in connection with the proceeding.

7. PRORATIONS AND ADJUSTMENTS: Unless otherwise provided, the following items shall be prorated through the date of Settlement and either adjusted between the parties or paid at Settlement:

- (a) **Taxes on Real Property:** Ad valorem taxes and recurring governmental service fees levied with such taxes on real property shall be prorated on a calendar year basis;
- (b) **Rents:** Rents, if any, for the Property;
- (c) **Dues:** Owners' association regular assessments (dues) and other like charges.

Buyer Initials FW Seller Initials JSW

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8. CONDITION OF PROPERTY AT CLOSING: Buyer's obligation to complete the transaction contemplated by this Contract shall be contingent upon the Property being in substantially the same or better condition at Closing as on the date of this offer, reasonable wear and tear excepted.

9. RISK OF LOSS: The risk of loss or damage by fire or other casualty prior to Closing shall be upon Seller. If the improvements on the Property are destroyed or materially damaged prior to Closing, Buyer may terminate this Contract by written notice delivered to Seller or Seller's agent and the Earnest Money Deposit and any Due Diligence Fee shall be refunded to Buyer. In the event Buyer does NOT elect to terminate this Contract, Buyer shall be entitled to receive, in addition to the Property, any of Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property being purchased. Seller is advised not to cancel existing insurance on the Property until after confirming recordation of the deed.

10. DELAY IN SETTLEMENT/CLOSING: Absent agreement to the contrary in this Contract or any subsequent modification thereto, if a party is unable to complete Settlement by the Settlement Date but intends to complete the transaction and is acting in good faith and with reasonable diligence to proceed to Settlement ("Delaying Party"), and if the other party is ready, willing and able to complete Settlement on the Settlement Date ("Non-Delaying Party") then the Delaying Party shall give as much notice as possible to the Non-Delaying Party and closing attorney and shall be entitled to a delay in Settlement. If the parties fail to complete Settlement and Closing within fourteen (14) days of the Settlement Date (including any amended Settlement Date agreed to in writing by the parties) or to otherwise extend the Settlement Date by written agreement, then the Delaying Party shall be in breach and the Non-Delaying Party may terminate this Contract and shall be entitled to enforce any remedies available to such party under this Contract for the breach.

11. POSSESSION: Unless otherwise provided herein, possession, including all means of access to the Property (keys, codes, including security codes, gate openers, electronic devices, etc.) shall be delivered at Closing as defined in Paragraph 1(m). No alterations, excavations, tree or vegetation removal or other such activities may be done before possession is delivered.

12. ADDENDA: CHECK ALL STANDARD ADDENDA THAT MAY BE A PART OF THIS CONTRACT, IF ANY, AND ATTACH HERETO. ITEMIZE ALL OTHER ADDENDA TO THIS CONTRACT, IF ANY, AND ATTACH HERETO.

- | | |
|---|---|
| ☐ Additional Provisions Addendum (Form 2A11-T) | ☐ Owners' Association Disclosure And Condominium Resale Statement Addendum (Form 2A12-T) |
| ☐ Additional Signatures Addendum (Form 3-T) | ☐ Seller Financing Addendum (Form 2A5-T) |
| ☐ Back-Up Contract Addendum (Form 2A1-T) | ☐ Short Sale Addendum (Form 2A14-T) |
| ☐ Contingent Sale Addendum (Form 2A2-T) | |
| ☐ Loan Assumption Addendum (Form 2A6-T) | |

X Identify other attorney or party drafted addenda: See Addendum

NOTE: UNDER NORTH CAROLINA LAW, REAL ESTATE BROKERS ARE NOT PERMITTED TO DRAFT ADDENDA TO THIS CONTRACT.

13. ASSIGNMENTS: This Contract may not be assigned without the written consent of all parties except in connection with a tax-deferred exchange, but if assigned by agreement, then this Contract shall be binding on the assignee and assignee's heirs and successors.

14. TAX-DEFERRED EXCHANGE: In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Buyer and Seller shall execute such additional documents, including assignment of this Contract in connection therewith, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

15. PARTIES: This Contract shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective heirs, successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

Buyer Initials RSB Seller Initials JAR

Page 8 of 12

16. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the Closing, it shall survive the Closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

17. **ENTIRE AGREEMENT:** This Contract contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed herein. All changes, additions or deletions hereto must be in writing and signed by all parties. Nothing contained herein shall alter any agreement between a REALTOR® or broker and Seller or Buyer as contained in any listing agreement, buyer agency agreement, or any other agency agreement between them.

18. **CONDUCT OF TRANSACTION:** The parties agree that any action between them relating to the transaction contemplated by this Contract may be conducted by electronic means, including the signing of this Contract by one or more of them and any notice or communication given in connection with this Contract. Any written notice or communication may be transmitted to any mailing address, e-mail address or fax number set forth in the "Notice Information" section below. Any notice or communication to be given to a party herein, any any fee, deposit or other payment to be delivered to a party herein, may be given to the party or to such party's agent. Seller and Buyer agree that the "Notice Information" and "Acknowledgment of Receipt of Monies" sections below shall not constitute a material part of this Contract, and that the addition or modification of any information therein shall not constitute a rejection of an offer or the creation of a counteroffer.

19. **EXECUTION:** This Contract may be signed in multiple originals or counterparts, all of which together constitute one and the same instrument.

20. **COMPUTATION OF DAYS/TIME OF DAY:** Unless otherwise provided, for purposes of this Contract, the term "days" shall mean consecutive calendar days, including Saturdays, Sundays, and holidays, whether federal, state, local or religious. For the purposes of calculating days, the count of "days" shall begin on the day following the day upon which any act or notice as provided in this Contract was required to be performed or made. Any reference to a date or time of day shall refer to the date and/or time of day in the State of North Carolina.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

This offer shall become a binding contract on the Effective Date. Unless specifically provided otherwise, Buyer's failure to timely deliver any fee, deposit or other payment provided for herein shall not prevent this offer from becoming a binding contract, provided that any such failure shall give Seller certain rights to terminate the contract as described herein or as otherwise permitted by law.

Date: _____	Date: _____
Buyer: _____	Seller: _____
Date: _____	Date: _____
Buyer: _____	Seller: _____
Entity Buyer: Town of Boone (Name of LLC/Corporation/Partnership/Trust/etc.)	Entity Seller: John David Winkler, Executor of the Estate of Alma Winkler (Name of LLC/Corporation/Partnership/Trust/etc.)
By: <u>Rennie Brantz</u>	By: <u>John David Winkler</u>
Name: Rennie Brantz, Mayor	Name: John David Winkler, Executor
Title: _____	Title: _____
Buyer Initials <u>RB</u>	Seller Initials <u>JDW</u>

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Association Form No. 12T © Revised 7/2015, 7/2017
Printed by Agreement with the NC Bar Association

This standard form has been approved jointly by: North Carolina
North Carolina Bar Association – NC Bar Form No. 12T
North Carolina Association of Realtors®, Inc. – Standard Form 12T

Date: _____

Date: _____

NOTICE INFORMATION

NOTE: INSERT AT LEAST ONE ADDRESS AND/OR ELECTRONIC DELIVERY ADDRESS EACH PARTY AND AGENT APPROVES FOR THE RECEIPT OF ANY NOTICE CONTEMPLATED BY THIS CONTRACT. INSERT "N/A" FOR ANY WHICH ARE NOT APPROVED.

BUYER NOTICE ADDRESS:

Mailing Address: 567 West King Street
Boone, NC 28607

Buyer Fax#: _____

Buyer E-mail: _____

SELLING AGENT NOTICE ADDRESS:

Firm Name: _____
 Acting as ☐ Buyer's Agent ☐ Seller's (sub)Agent ☐ Dual Agent
 Firm License #: _____
 Mailing Address: _____

Individual Selling Agent:

☐ Acting as a Designated Dual Agent (check only if applicable)

Selling Agent License
 #: _____

Selling Agent Phone#: _____

Selling Agent Fax#: _____

Selling Agent E-mail: _____

SELLER NOTICE ADDRESS:

Mailing Address: P.O. Box 728
Blowing Rock, NC 28605

Seller Fax#: _____

Seller E-mail: _____

LISTING AGENT NOTICE ADDRESS:

Firm Name: _____
 Acting as ☐ Seller's Agent ☐ Dual Agent
 Firm License #: _____
 Mailing Address: _____

Individual Listing Agent: _____
☐ Acting as a Designated Dual Agent (check only if applicable)

Listing Agent License #: _____

Listing Agent Phone#: _____

Listing Agent Fax#: _____

Listing Agent E-mail: _____

[THIS SPACE INTENTIONALLY LEFT BLANK]

Buyer Initials Paul Seller Initials John

Page 10 of 12

Association Form No. 12T © Revised 7/2015, 7/2017
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This standard form has been approved jointly by: North Carolina
 North Carolina Bar Association – NC Bar Form No. 12T
 North Carolina Association of Realtors®, Inc. – Standard Form 12T

ACKNOWLEDGMENT OF RECEIPT OF MONIES

Seller: _____ ("Seller")

Buyer: _____ ("Buyer")

Property Address: _____ ("Property")

☐ LISTING AGENT ACKNOWLEDGMENT OF RECEIPT OF DUE DILIGENCE FEE

Paragraph 1(d) of the Offer to Purchase and Contract between Buyer and Seller for the sale of the Property provides for the payment to Seller of a Due Diligence Fee in the amount of \$ _____, receipt of which Listing Agent hereby acknowledges.

Date: _____

Firm: _____

By: _____

(Signature)

(Print name)

☐ SELLER ACKNOWLEDGMENT OF RECEIPT OF DUE DILIGENCE FEE

Paragraph 1(d) of the Offer to Purchase and Contract between Buyer and Seller for the sale of the Property provides for the payment to Seller of a Due Diligence Fee in the amount of \$ _____, receipt of which Seller hereby acknowledges.

Date: _____

Seller: _____

(Signature)

Date: _____

Seller: _____

(Signature)

☐ ESCROW AGENT ACKNOWLEDGMENT OF RECEIPT OF INITIAL EARNEST MONEY DEPOSIT

Paragraph 1(d) of the Offer to Purchase and Contract between Buyer and Seller for the sale of the Property provides for the payment to Escrow Agent of an Initial Earnest Money Deposit in the amount of \$ 1,000.00 _____. Escrow Agent as identified in Paragraph 1(f) of the Offer to Purchase and Contract hereby acknowledges receipt of the Initial Earnest Money Deposit and agrees to hold and disburse the same in accordance with the terms of the Offer to Purchase and Contract.

Date: _____

Firm: MEADE LAW

By: _____

(Signature)

(Print name)

☐ ESCROW AGENT ACKNOWLEDGMENT OF RECEIPT OF (ADDITIONAL) EARNEST MONEY DEPOSIT

Paragraph 1(d) of the Offer to Purchase and Contract between Buyer and Seller for the sale of the Property provides for the payment to Escrow Agent of an (Additional) Earnest Money Deposit in the amount of \$ _____. Escrow Agent as identified in Paragraph 1(f) of the Offer to Purchase and Contract hereby acknowledges receipt of the (Additional) Earnest Money Deposit and agrees to hold and disburse the same in accordance with the terms of the Offer to Purchase and Contract.

Date: _____

Firm: _____

Time: _____ ☐ AM ☐ PM

By: _____

(Signature)

(Print name)

Buyer Initials RB Seller Initials JS

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**ADDENDUM TO OFFER TO PURCHASE AND CONTRACT
BETWEEN JOHN DAVID WINKLER, EXECUTOR OF THE ESTATE OF ALMA C.
WINKLER AND TOWN OF BOONE**

This Addendum made this the 27th day of August 2019 is as follows:

1. The Town agrees to recombine the parcel into the adjoining Strawberry Hill parcel known as Watauga County Parcel # 2910252609000 within two years of the date of the recording of the Deed.
2. Any of the Grantors may enforce the Town's obligation within five (5) years of the date of recording of the Deed, by means of an action for specific performance.

Witness our hand and seal this 27th day of August, 2019.

BUYER:

Town of Boone

By: Rennie Brantz (SEAL)
Rennie Brantz, Mayor

SELLER:

Estate of Alma Winkler

By: John David Winkler (SEAL)
John David Winkler, Executor

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

DISCUSSION OF BANNING SMOKING & VAPING AT APALCART STOPS; PROPOSED AMENDMENTS TO CHAPTER 95

Ms. Ulmer began discussion by informing members that AppalCart board members were concerned because they did not know which areas were acceptable to allow patrons to vape on. Ms. Meade explained that there was express authority for the regulation of smoking, and felt that the Town's authority to regulate vaping fell under its general police powers. She believed that AppalCart would have the same powers to regulate vaping as a property owner would have, and believed that the Town could regulate smoking and vaping on its rights of way, but had question about smoking and vaping on open grounds around bus shelters and was unsure about how AppalCart worked legally, and whether or not they had easements. Mr. Furgiuele believed that AppalCart had easements for most of the bus stops, but was unsure about older developments. Ms. Ulmer noted that AppalCart utilized two different types of bus stop shelters, one with three sides and one with no sides. Mr. Furgiuele believed that the term "shelter" should be defined, and proposed a fifty-foot buffer in an attempt to prevent exposure. Ms. Meade noted that other ordinances used a buffer of 25 feet, and that she was personally affected by smoke within 100 feet. Ms. Mason suggested that smoking and vaping be banned on all public sidewalks in Town. Mr. Furgiuele felt that the distance allowable for smoking near bus shelters should be the same as the distance from the entrance to other public places. He added that the Police department was concerned about their ability to enforce these rules if implemented, and believed that it was worse to have rules that we did not enforce than not having the rules at all. Ms. Meade suggested Council applying a ban on smoking on sidewalks to just the downtown area since it was more densely traveled, and added that an additional sign would need to be installed to warn against smoking on downtown sidewalks. Ms. Mason believed that a 25 or 50-foot buffer would make it difficult people to smoke on a downtown sidewalk, and believed that something needed to be done to address the new concerns that had arisen with vaping in order to create a healthy environment. Mr. Ward agreed, but warned Council to get ready for negative feedback. He noted that some businesses downtown had tried to address littering caused by smoking by adding receptacles in front of their businesses for smokers to dispose of their litter. Mr. Furgiuele reiterated the need for a definition of a bus shelter and added that he did not believe that open air shelters could be regulated. Jennifer Greene, Public Health Director at Appalachian District Health Department stated that the department was in full support of adding vaping to the Town of Boone's Chapter 95 because she believed the Town did have authority to regulate vaping as much as smoking. She added that the department would be willing to help with public and business education campaigns and nicotine replacement therapy available for those who were ready to quit smoking or vaping. Mr. Furgiuele asked Ms. Greene if she felt there was a second-hand issue with vaping. Ms. Greene answered that there were carcinogens in vaping products similar to cigarettes. Ms. Meade noted that the health information in the chapter was quoted directly from the surgeon general, and asked whether Ms. Greene had any point of view about AppalCart's authority as far as regulating smoking and/or vaping at its bus shelters. Ms. Greene believed that if the shelters were inside the Town limits in public places the Town should be able to regulate them and noted that the County did have a policy regarding this matter in place already. She offered the Appalachian District Health Department to meet with AppalCart board members to discuss the topic if the Town wished. Mr. Ashcraft asked about a connection with AppalCart's police powers and Appalachian State University, to which Ms. Meade responded that she was unsure about any connection. She did not believe the Town had authority to install signage on private property at bus shelters without permission from the property owner, and added that she felt AppalCart would most likely welcome signage if they were aware there was an ordinance behind it. Ms. Ulmer added that AppalCart was currently trying to figure out what they could legally control and noted that they had recently installed "no vaping" signs on their buses. Dr. Chris Seitz of ASU believed that the Town would never be able to get 100% adherence to a smoke-free policy, and felt that people tended to adhere to a policy due to signage alone. Mr. Ward suggested that the policy be restricted to the MSD. Mr. Furgiuele felt that if Council decided to move forward, that the public and downtown businesses should be invited to give

their input. Mr. Ward stated that notice could be sent out through the DBDA listserv. It was suggested that Ms. Greene be in charge of preparing the public information component of this project. Ms. Meade asked whether Council wanted her to revise Chapter 95 and bring back for their consideration or wait until after a public hearing was held. Mr. Furgiuele answered that he did not have issues with the bus shelter or vaping pieces, only with public sidewalks. He stated that he would feel better having a larger radius around business entrances, and added that he had discomfort with banning smoking and vaping on all Town sidewalks altogether. Ms. Meade answered that she would come back with an ordinance against smoking on sidewalks in the MSD, with Mr. Ward warning that he believed this would cause issues with smoking on patios on private property. Mr. Furgiuele answered that the radius should be larger than 6 feet. Ms. Meade stated that she would coordinate with Ms. Greene on scheduling a public hearing in October on the following topics: no smoking within a certain radius of a public place on a public sidewalk and the banning of smoking on all public sidewalks in the MSD. Mr. Furgiuele felt that it should be communicated with AppalCart that their cooperation was desired with the posting of signs at bus stop shelters. It was the consensus of Council to move forward in this fashion.

RESULT:	CONSENSUS
----------------	------------------

AMENDMENT OF TOWN CODE CHAPTER 50 RELATING TO THE PURCHASE & INSTALLATION OF METER BOXES

Mr. Ward pointed out that there were several items on the agenda that Mr. Miller needed to be present for and that time was running short. Mr. Ashcraft suggested that the proposed Chapter 50 revisions be discussed next and made a motion to approve the amendment of Town Code Chapter 50 relating to the purchase and installation of meter boxes. Ms. Mason seconded the motion. Mr. Furgiuele asked what the differences were from what was presented and what was discussed at the water committee meeting. Mr. Ward stated that staff could work with Finance to adjust the policy to maintain control of meter purchases and as funds come in do budget adjustments. Mr. Furgiuele asked whether a time requirement should be included, with Ms. Meade confirming that a time requirement of 30 days was already included.

ORDINANCE # _____

AN ORDINANCE TO REVISE CHAPTER 50 OF THE TOWN OF BOONE CODE OF ORDINANCES RELATING TO METER INSTALLATION

WHEREAS, the Town of Boone operates public enterprise water and sewer utilities;

WHEREAS, the Boone Town Council finds it appropriate, fair and in the interests of all Boone utility system users to make certain clarifications regarding the installation of meter boxes, and to require that developers be responsible for meter installation (subject to Town inspection) in some instances due to limited Town workforce resources; and

WHEREAS, the Boone Town Council is authorized to enact this Ordinance pursuant to its powers to operate and regulate its public enterprises pursuant to G.S. §160A-311 *et seq.*;

NOW THEREFORE, BE IT ORDAINED BY THE BOONE TOWN COUNCIL THAT:

SECTION 1. Chapter 50, sections 66 and 67 of the Boone Code of Ordinances is hereby amended as follows (additions being underlined in blue and deletions struck through in red):

§ 50.066 METER SETTERS AND BOXES.

(A) ~~M~~Residential meter boxes and copper setters ~~shall~~must be purchased from the town. Copper setters shall be Ford or equal. Copper setters shall be installed with locked rings on the town side of the meter and with check valves.

~~(B)~~ Meter boxes shall be Dewey Brothers or approved equal.

~~(B)~~ Commercial and industrial meters shall be of a size and configuration approved by the town. ~~All meters over one inch shall have a bypass with a lockable valve. Meter bypass lines for fire protection shall have a detector check or if the bypass line is to be used for purposes other than emergency fire protection, a meter shall be installed.~~

~~(C)~~ The town shall provide and install all meter ~~boxes and setters~~ at the owner's or developer's expense except as provided at subsection (D) of this section.

(D) Taking into account the town's workforce resources and any other circumstances deemed relevant, the Administrator may require that the developer install meter boxes and setters for new development or

redevelopment involving either or both of the following: (i) multifamily residential use requiring installation or replacement of more than twelve (12) meters; or (ii) commercial use requiring installation or replacement of meters 1½" or greater in size. Any such installation by a developer must be inspected by and completed to the satisfaction of the Administrator.

§ 50.067 MULTIPLE METER ASSEMBLIES.

The use of multiple meter assemblies must be approved by the ~~Director of Public Utilities~~Administrator. When allowed, meter assemblies shall be as shown in the standard details. ~~All~~ piping ~~shall~~ shall be provided with unions for easy disassembly. ~~All~~ and all pipe shall be of the same quality as used for individual meters. ~~Boxes~~Meter boxes and setters ~~shall~~ must be purchased from the town. Meters ~~shall~~ must be ~~purchased from the town and set by the town~~ installed as provide at section 50.066.

SECTION 2: This Ordinance shall be effective upon the date it is adopted by Town Council.

Adopted this ____th day of _____, _____.

Rennie Brantz, Mayor

ATTEST: _____
Town Clerk

CLEAN VERSION:**§ 50.066 METER SETTERS AND BOXES.**

(A) Meter boxes and copper setters must be purchased from the town. Copper setters shall be Ford or equal. Copper setters shall be installed with locked rings on the town side of the meter and with check valves. Meter boxes shall be Dewey Brothers or approved equal.

(B) Commercial and industrial meters shall be of a size and configuration approved by the town.

(C) The town shall provide and install all meter boxes and setters at the owner's or developer's expense except as provided at subsection (D) of this section.

(D) Taking into account the town's workforce resources and any other circumstances deemed relevant, the Administrator may require that the developer install meter boxes and setters for new development or redevelopment involving either or both of the following: (i) multifamily residential use requiring installation or replacement of more than twelve (12) meters; or (ii) commercial use requiring installation or replacement of meters 1½" or greater in size. Any such installation by a developer must be inspected by and completed to the satisfaction of the Administrator.

§ 50.067 MULTIPLE METER ASSEMBLIES.

The use of multiple meter assemblies must be approved by the Administrator. When allowed, meter assemblies shall be as shown in the standard details; piping shall be provided with unions for easy disassembly; and all pipe shall be of the same quality as used for individual meters. Meter boxes and setters must be purchased from the town. Meters must be installed as provide at section 50.066.

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

REQUEST FOR DIRECTION - MARTIN LUTHER KING, JR. STREET CELEBRATION

Mr. Ward presented a request for direction regarding the scheduling of a celebration for the recent renaming of Martin Luther King, Jr. Street. He noted that many of the scheduled upcoming events occur on Saturdays, and that while he could rush to plan an event, he preferred to take time to plan an event for Martin Luther King, Jr. day in January or even a later date. Mr. Ward added that since the weather would likely be too cold to be outside, the event could be held at the armory. He stated that he would like to work with the mennonite church and other speakers for the event, but they would need adequate time to prepare. Mr. Furguele agreed that he would rather Mr. Ward take his time to plan the event and to confer with the Student Government Association and the Junaluska Heritage Association about the timing and nature of the celebration before moving forward with planning. Mr. Ward added that a date later in the spring would be better since Martin Luther King, Jr. day was a staff holiday.

RESULT:	CONSENSUS
----------------	------------------

CONSIDERATION OF ADDITIONAL REVISIONS TO TOWN CODE CHAPTER 96, STREETS AND SIDEWALKS

After brief discussion, Ms. Mason made a vote, which was seconded by Mayor Pro-Tem Clawson, to approve the text with the revisions as outlined below.

ORDINANCE # _____

**AN ORDINANCE TO FURTHER REVISE CHAPTER 96 (STREETS AND SIDEWALKS)
OF THE TOWN OF BOONE CODE OF ORDINANCES**

WHEREAS, the Boone Town Council recognizes and finds that there is significant public interest in careful and responsible management of public streets, sidewalks, and other public ways, in that (i) there is limited space in such public ways; (ii) protecting the public's safety while using public ways is of great concern; and (iii) the use, occupancy and maintenance of the public ways pose significant concerns regarding health, safety, public welfare, protection of the nature, character and environment of the Town and its neighborhoods, and the public fisc;

WHEREAS, the North Carolina General Assembly has adopted Session Law 2017-159 imposing upon municipalities certain mandates with respect to permitting of small wireless facilities and the use of the public rights-of-way for the same, and Federal Communications Commission Order FCC 18-133 imposes certain time limitations upon municipalities with respect to the review and approval of applications for the installation of small wireless facilities;

WHEREAS, the Boone Town Council is authorized to enact this Ordinance pursuant to, *inter alia*, Session Law 2017-159; its authority over the public ways per G.S. § 160A-296; and its authority and responsibility to manage and protect its public enterprises per G.S. § 160A-311;

NOW THEREFORE, BE IT ORDAINED BY THE BOONE TOWN COUNCIL THAT:

SECTION 1. The previously enacted version of Chapter 96 of Title IX of the Boone Code of Ordinances is hereby amended as follows, with additions being underlined and deletions ~~struck-through~~ and moves shown with green double underlined and ~~double-strikethrough~~:

**CHAPTER 96: STREETS AND SIDEWALKS, AND OTHER PUBLIC WAYS;
ENCROACHMENTS****GENERAL**96.01 Definitions96.02 Obstructions prohibited~~96.0203~~ Overhanging or protruding trees, shrubs, fences, canopies, awnings, signs and the like~~96.0304~~ Drainage-related interference with sidewalks and streets~~96.0405~~ Warnings required for obstructions~~96.0506~~ Depositing injurious materials on ~~streets~~ public ways~~96.0607~~ Required sight distances at intersections~~96.07~~ ~~Fire hydrants~~

96.08 Driveways

96.09 Town indemnified

~~96.10~~ ~~Street closings and right-~~ Abatement ~~of way vacations~~ nuisances;AUTHORIZATION OF ENCROACHMENTS IN THE PUBLIC WAY

96.11 Purpose and Intent

~~96.12~~ ~~Definitions~~

- ~~96.13~~ Written ~~permission~~authorization to encroach is required
- ~~96.14~~13 Application for ~~permission~~authorization to encroach
- ~~96.15~~14 Procedure for consideration of and action on applications
- ~~96.16~~15 Factors for review of applications.
- ~~96.17~~16 Indemnity, insurance and bonding requirements.
- ~~96.18~~17 Responsibilities of persons granted ~~permission~~authorization to encroach
- ~~96.19~~18 Authority to encroach is nonexclusive
- ~~96.20~~19 Remedies
- ~~96.21~~—20 Rights of Appeal
- ~~96.22~~21 General conditions for use of public way
- ~~96.23~~—22 Exemptions
- ~~96.24~~—23 Collocation of small wireless facilities

ACCEPTANCE OF INFRASTRUCTURE FOR MAINTENANCE BY TOWN; ~~REQUEST FOR STREET OR RIGHT-OF-WAY CLOSURE~~

- ~~96.25~~24 Application for acceptance of infrastructure.
- ~~96.26~~25 Final acceptance
- ~~96.27~~26 Prerequisites to acceptance
- 96.27 Street closings and right-of-way vacations

96.99 Penalty

GENERAL PROVISIONS

§ 96.01 DEFINITIONS

For purposes of this chapter, the following words and terms shall have the meaning given below unless the context clearly indicates or requires otherwise.

The terms *abandoned, application, city (town) utility pole, collocation, make-ready work, micro wireless, small wireless facility, utility pole, wireless facility, wireless infrastructure provider, wireless provider, wireless services, and wireless services provider* have the meanings provided at Section 160A-400.51 *et seq.* of the North Carolina General Statutes or in the Federal Communications Commission Order FCC 18-133, whichever is more inclusive or exacting.

Administrator means the person or persons selected by the Town Manager or Town Council to carry out the provisions of this chapter and the designee(s) of that person or persons. If context requires, the Town Council may be deemed the Administrator when it is considering whether to authorize a particular encroachment.

Authorization means permission from the Administrator to do work in the public way or to maintain facilities in the public way and includes but is not limited to a franchise, an easement, an encroachment agreement, a permit, or other written approval. Multiple authorizations may be required for certain activities.

Cause to be obstructed means an action(s) or omission(s) which, whether or not intended to obstruct the ordinary use of a public way, nevertheless interferes with a person's ordinary use of a public way to a degree that passage is prevented or delayed for an unreasonable period of time.

Contractor means and includes any of the following, licensed or unlicensed, performing work on an owner's behalf: contractor; subcontractor; or any employee or agent of a contractor, subcontractor, or owner.

Emergency means a condition that poses a clear and immediate danger to life or health, or a significant loss of property, or requires immediate repair to restore service to a group of users of such service.

Encroach or encroachment means any excavation in the public way, or the placing therein, thereover or below any pipes, poles, wires, fixtures or other appliances or equipment of any kind, either on, above, or below the ground surface. It also includes such digging and placing of pipes, poles, wires, fixtures or other appliances or equipment of any kind on, above or below the ground surface in areas in which the town has a utility or access easement, unless such activity is permitted by the applicable easement.

Excavate or excavation means without limitation any cutting, digging, grading, tunneling, boring, or other alteration of the surface or subsurface material or earth in the public way.

Facilities means poles, pipes, culverts, conduits, ducts, cables, wires, fiber, amplifiers, pedestals, antennae, transmission or receiving equipment, other electronic equipment, electrical conductors, manholes, appliances, signs, poles, pavement structures, irrigation systems, landscaping, signs, mailboxes and any other similar equipment, for public or private use.

Intentionally obstruct means to act or fail to act with the purpose and effect that passage is prevented or delayed.

Minor Encroachment means an encroachment for irrigation systems, fencing and landscape plants and material provided as to which all of the following requirements are met:

- (i) The property owner owns the underlying fee;
- (ii) There is no disruption, even temporarily, of traffic flow;
- (iii) There is no damage to a paved or concrete surface of a public way; and
- (iv) There is no impact to the town's ability to construct, maintain or operate a public way or public facilities located in the public way.

Owner means any property owner, company owner, and/or any entity by which work within the right-of-way has been ordered, or any entity on behalf of which any work within the right-of-way is caused to be performed, or any agent thereof.

Person means an individual, association, firm, partnership, limited liability company, joint venture, corporation, government, utility, or other entity able to engage in the activities described in this ordinance, whether for profit or not for profit. The term does not include the town or the town's officials, employees, representatives or agents acting pursuant to their official duties on behalf of the town.

Public sidewalk means any area open to public use as a pedestrian public way, whether paved or otherwise designated or recognized for use of pedestrian traffic and which is owned or maintained by the town.

Public way means any area that is owned or maintained by the town and used or reserved for use as a public street, highway, right-of-way, alley, trail, greenway or other multi-modal path, sidewalk, curb, gutter, bike lane, bridge, round-about, tunnel, causeway, or shoulder. Such areas includes, without limitation, drainage areas and dedicated areas without surface improvements that are adjacent to improved areas, and areas where no roads or other improvements have been constructed but which are dedicated for one or more of the above uses. The public way encompasses the surface of the ground, and the area above and below the ground.

Repeat violator means a person who (i) violates this chapter two or more times in any 12 month period; or (ii) violates this chapter two or more times in a period greater than 12 months but in such circumstances that an intentional violation can be inferred.

Responsible person means a person who has intentionally or negligently caused or authorized the action which violates the prohibitions of this chapter and the owner of the property from or upon which a violation extends, derives or originates.

Unreasonable period of time means the time that a reasonable person prevented or delayed in his or her attempt to use a sidewalk for pedestrian use would consider as unreasonable.

User means a person that proposes to place facilities in the public way, places such facilities, or owns or maintains such facilities. The term includes but is not limited to encroachment permittees and franchisees.

§ 96.02 OBSTRUCTIONS PROHIBITED.

(A) ~~(1)~~ Except as otherwise authorized by statute, ordinance (including this chapter), and/or in writing by the Town Council, ~~and except to the extent 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 ~~sidewalk~~ 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, parks or parking lots adjacent to or accessed by public ~~sidewalks~~ way within the town. Also, no person may intentionally obstruct a public ~~sidewalk or obstruct or impede travel in a public street~~ way within the town by placing or leaving any object(s) within the traveled portion of the public ~~street right-of-way or public sidewalk~~ 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 section 96.10 herein

~~(2) For purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:~~

~~**CAUSE TO BE OBSTRUCTED.** An action(s) or omission(s) which, whether or not intended to obstruct the pedestrian use of public sidewalks, nevertheless interferes with a person's pedestrian use of a public sidewalk to a degree that passage is prevented or delayed for an unreasonable period of time after it is brought to the attention of the person causing the obstruction that passage is being prevented or delayed for an unreasonable period of time.~~

~~**INTENTIONALLY OBSTRUCT.** Any action or omission that has as its purpose the interference with a person's pedestrian use of a public sidewalk to a degree that passage is prevented or delayed.~~

~~**PUBLIC SIDEWALK.** Any area open to public use as a pedestrian public way, whether paved or otherwise designated or recognized for use of pedestrian traffic and which is owned or maintained by the town.~~

~~**RESPONSIBLE PERSON.** The person who has intentionally or negligently caused or authorized the action which violates the prohibitions of this chapter or the owner of the property from or upon which a violation extends, derives or originates.~~

~~**UNREASONABLE PERIOD OF TIME.** The time that a reasonable person prevented or delayed in his or her attempt to use a sidewalk for pedestrian use would consider as unreasonable.~~

~~(B) Except as provided in this subsection (B), subsection (A) above applies, but is not limited to, goods, wares or merchandise displayed for sale. Partial obstruction of a public sidewalk for a sidewalk sale is permissible in accordance with a permit issued by the Administrator upon finding that:~~

~~(1) The sale will not extend for more than three consecutive days;~~

~~(2) The obstruction will take place only during daylight hours;~~

~~(3) The permit, together with any other permits issued to the same applicant or to other applicants for sale at the same location, will not authorize an obstruction for more than ten days during any 365-day period; and~~

~~(4) The sidewalk will only be partially obstructed in a manner that does not seriously inconvenience the public or threaten the public safety.~~

~~(C) Division (A) above (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 § 96.0405.

~~(Prior Code, § 98.01) (Ord. passed 3-18-2004; Ord. passed 1-18-2011) Penalty, see § 96.99~~

(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 (4)-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.

§ 96.03

~~§ 96.02~~ **OVERHANGING OR PROTRUDING TREES, SHRUBS, FENCES, CANOPIES, AWNINGS, SIGNS AND THE LIKE.**

(A) No person may cause or allow ~~(from property under his or her control)~~ any tree limb, bush, shrub or other growth or similar obstruction to overhang a public street at a distance of less than 12 feet above the traveled portion of the street or to overhang ~~any other~~ public ~~sidewalk~~ way at a distance of less than eight feet above the ~~sidewalk~~ travelled surface.

(B) Except as authorized in writing under this chapter and permitted by the Unified Development Ordinance and all other pertinent laws, regulations and ordinances~~1~~, no person may cause, authorize or allow ~~(from property under his or her control)~~ any canopy, awning, sign or similar obstruction to overhang a public ~~street or public sidewalk~~ way.

(C) No person may cause or allow grass, vines, weeds or other vegetation to grow from property under his or her control over, onto or across any public ~~street or sidewalk~~ way.

(D) No person may leave any animal unattended on any ~~sidewalk~~ public way or on any town property.

~~(E) Any~~ A situation maintained in violation of this section is hereby declared to be a public nuisance and, ~~if it is not corrected by any responsible person within three days after being notified~~ subject to the provisions of the violation by the Administrator, the town may summarily abate the nuisance.

~~(Prior Code, § 98.02) (Ord. passed 1-18-2011) Penalty, see § section 96.9910 herein~~

~~§ 96.0304~~ **DRAINAGE-RELATED INTERFERENCE WITH SIDEWALKS** PUBLIC WAYS.

(A) No person may cause or permit gutters, ditches, ducts or ~~drain pipes~~ drainpipes to be constructed, maintained, or placed on property under his or her control in a manner that the water from the gutters, ditches, ducts or drain pipes empties onto or runs across a public ~~sidewalk or street~~ way.

~~(B) Subject to the next sentence, All owners of property abutting concrete, brick or other permanently improved public sidewalks shall grade the property or construct a retaining wall in a manner as to~~ ways shall prevent the washing of dirt, grass, gravel or other material upon the ~~town sidewalks. If the town constructs a sidewalk, it shall be responsible initially for taking the necessary steps to prevent the washing~~ public ways.

(C) A situation maintained in violation of the materials upon the sidewalk this section is hereby declared to be a public nuisance and is subject to the provisions of section 96.10 herein.

~~(Prior Code, § 98.03) Penalty, see § 96.99~~

~~§ 96.0405~~ **WARNINGS REQUIRED FOR OBSTRUCTIONS.**

(A) All persons engaged in doing work that creates any dangerous condition or obstruction in the public

right-of-way of any street or sidewalk shall take whatever action is necessary, including the placement of barricades and warning signs or devices, to warn the traveling public of the condition or obstruction.

(B) No person may remove, destroy, injure or tamper with any barricade, sign, lantern, torch or other device placed in any street or sidewalk to warn or give notice to the traveling public of any dangerous condition or obstruction.

~~(Prior Code, § 98.04) Penalty, see § 96.99~~

~~§ 96.05~~ § 96.06 DEPOSITING INJURIOUS MATERIALS ON ~~STREETS~~ PUBLIC WAYS.

(A) No person may throw or deposit upon any ~~street or public right-of-way~~ any glass bottle, nails, tacks, wire, ~~paper containers, cans or~~ any other substance likely to injure any person, animal ~~or~~, vehicle or the public way itself.

(B) Any person who deliberately or inadvertently causes or allows any of the materials specified in division (A) above to be deposited on any public ~~street or right-of-way~~ shall immediately remove the materials or cause them to be removed. A situation maintained in violation of this section is hereby declared to be a public nuisance and is subject to the provisions of section 96.10 herein

§ 96.07 ~~(Prior Code, § 98.05) Penalty, see § 96.99~~

~~§ 96.06~~ REQUIRED SIGHT DISTANCES AT INTERSECTIONS.

~~—At the intersections described below, no person who owns or is in possession or control of any property may place, locate, maintain or allow any human-made obstruction or any growth of trees, shrubs, plants or foliage that substantially blocks the clear sight distance indicated below:~~

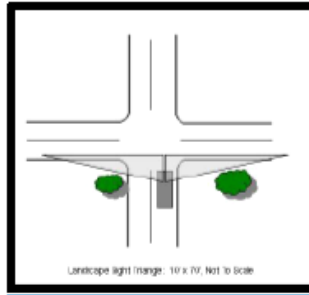
~~—(A) Where a stop sign intersects with a through street on which the speed limit is less than 45 mph, the clear sight distance shall be from a point on the stop street right-of-way located ten feet back of the intersection of the right-of-way lines of the two streets to a point on the right-of-way lines of the through street located 70 feet back of the intersection of the right-of-way lines of the two streets.~~

~~—(B) Where a stop street intersects with a through street on which the speed limit is 45 mph or greater, the clear sight distance shall be from a point on the stop street right-of-way located ten feet back from the intersection of the right-of-way lines of the two streets to a point on the through street right-of-way located 100 feet back from the intersection of the right-of-way lines of the two streets.~~

~~—(C) Where a stop street intersects with another stop street, the clear sight distance shall be from a point on the right-of-way of one street located ten feet back of the intersection of the right-of-way lines of the two streets to a corresponding point of the right-of-way of the other street.~~

~~(Prior Code, § 98.06) Penalty, see § 96.99~~

(A) Clear sight triangle to be maintained. A sight triangle ten feet (10') by seventy feet (70') for the turn in each direction shall be maintained at all intersections of driveways/streets with adjacent streets (see diagram below). No plantings, fence, building, wall or other structure or objects shall be placed or maintained in the sight triangle if such thereby materially obstructs vision between two-and-half feet high and ten feet high above the upper face of the nearest curb, or of the street centerline if no curb exists).



(B) Exceptions.

(1) Subsection (A) may not apply to all objects located within sight distance areas insofar as some objects may not significantly obstruct the required visibility of the driver. The driver may be able to see over, under or around some objects within sight distance areas. Objects that may be required within sight distance areas include fire hydrants, utility poles and traffic control devices which are located to minimize visual obstruction. Other objects 12 inches in diameter and smaller, such as sign-posts, may be allowed within sight distance areas if located individually or in combination so as to not substantially restrict the driver's view.

(2) Trees located in sight distance areas may be removed only if they constitute a clear hazard and there is no reasonable alternative to removal.

(2) It is recognized that in some cases conditions may exist that prevent the reasonably practical attainment of desirable sight distance due to social, economic, topographical or environmental considerations or because of conditions pre-existing this amendment (adopted on September 17, 2019). In such cases, the maximum practical sight distance shall be obtained.

(C) Removal of obstruction. The Administrator shall remove sight distance obstructions located within the right-of-way of town-maintained streets. The Administrator will notify the state department of transportation of sight distance obstructions located within the right-of-way of state-maintained roadways. The Administrator shall provide written notification to the property owner(s) on which a sight distance obstruction exists on private property. The property owner shall be responsible for the prompt removal of the obstruction on their property and shall be solely liable for any and all consequences resulting from their negligence and/or failure to remove the obstruction. A sight-distance obstruction maintained in violation of this subsection is declared to be a public nuisance and is subject to the provisions of section 96.10 herein.

~~§ 96.07 FIRE HYDRANTS.~~

~~—No person or company shall plant shrubs or place any type of obstacle within ten feet either side of a fire hydrant parallel to the road and five feet perpendicular to the road.
(Prior Code, § 98.07) —Penalty, see § 96.99~~

§ 96.08 DRIVEWAYS.

(A) Except as otherwise provided in this chapter, No person may open, construct, alter or relocate any driveway across any public sidewalk or into any street town-owned property or cut any curb for the purpose public way without having obtained a written permit from the Administrator and complied with all requirements of the Town's Unified Development Ordinance, the Town Code, and all current specifications and other requirements of the town's Department of Public Works.

(B) Any person who receives a permit under this section shall be responsible for repairing any damage

to the sidewalk or street (including curb and gutter) any public way caused by the driveway construction.

(C) The Administrator shall review the driveway construction and design plans and shall issue the permit unless ~~he or she~~ the Administrator finds the driveway, if constructed as proposed, will pose a danger to persons using a public way, substantially interfere with or ~~pose a danger to persons using the street or sidewalk intersected by the driveway or risk harm to~~ public facilities (including utility poles, traffic signal standards, water, sewer, or stormwater drainage facilities, and the like), or ~~will~~ fail to comply with any of the provisions of ~~this chapter~~ the Town Code or the Uniform Development Ordinance, or any specifications and other requirements of the Department of Public Works.

(D) No driveway may be constructed closer than three feet to a fire hydrant or catch basin or closer than 30 feet to the right-of-way line of a street that intersects with the street the driveway opens onto.

(E) If the driveway crosses a drainage ditch on a lot that abuts a street without curb or gutter, then piping ~~of~~ of sufficient size and strength (as approved by the Administrator) shall be installed beneath the driveway surface so the drainage capability of the drainage ditch is not ~~materially~~ impaired.

(F) This section shall not apply to driveways that open into state-maintained streets to the extent that the state has approved the driveway. ~~Nor shall a person be required to obtain a permit under this section to the extent that the driveway is being constructed in accordance with plans approved pursuant to a review process authorized by a zoning or subdivision ordinance.~~

~~(Prior Code, § 98.08) Penalty, see § 96.99~~

§ 96.09 TOWN INDEMNIFIED.

Any person obtaining ~~a permit authorized~~ authorization under this chapter to encroach upon or otherwise make use of the public right of way or other public property agrees to all of the following as a condition of the ~~permit or other written~~ authorization:

(A) to indemnify the town for and hold the town harmless from any expense (including, but not limited to, attorneys' fees, litigation costs and judgments) incurred as a result of claims made for damages arising out of operations conducted by that person pursuant to that ~~written~~ authorization. ~~No such permit or other written authorization shall be approved unless the encroaching party:~~

(B) ~~when required, to~~ executes an indemnification agreement ~~which that~~ at a minimum provides that, to the extent permitted by law, the person shall be responsible for all liability associated with the encroachment, ~~and~~ agrees to indemnify and hold harmless the town from and against any claim by any third party based upon any action or omission occurring during construction and maintenance of the encroachment or encroaching facility, as well as from and against any and all claims, demands, suits, causes of action or other assertion of responsibility, however denominated, for personal injury, damage to property, losses and expenses, including court costs and attorney's fees, arising out of or in any way related to the encroachment or encroaching facility ~~and;~~

(C) where pertinent, ~~agrees~~ to name the town as an additional insured on its and/or its contractors' general liability insurance policies applicable to the encroachment or encroaching facility ~~and unless the encroaching party waives; and~~

~~(A)(D)~~ (D) to waive all claims of liability or responsibility against the town for any damage that may be caused to the encroachment or encroaching facility as the result of the town carrying out any construction ~~and maintenance operations and unless the encroaching party agrees to be bound by other and additional conditions as the Town Council may impose.~~ or maintenance operation; and

~~(Prior Code, § 98.10) (Ord. passed 1-18-2011)~~

(E) ~~§ to be bound by such other and additional terms and conditions as the town may impose, which shall be set forth in the relevant permit, encroachment agreement, or franchise agreement.~~

~~96.10 STREET CLOSINGS AND RIGHT- ABATEMENT OF WAY VACATIONS.~~
NUISANCES

~~—Any person requesting a permanent street closing or right-of-way vacation, as defined by G.S. § 160A-299, must pay a non-refundable fee of \$500 before a resolution of intent may be adopted by Town Council pursuant to § 160A-299(a).~~

~~(Prior Code, § 98.11)~~

(A) If, in the judgment of the Administrator, a situation declared to be a public nuisance pursuant to this chapter constitutes a danger or is prejudicial to the public health or safety, the town may summarily remove, abate or remedy the condition in question. Should the town summarily remove, abate or remedy the condition, the responsible person(s) shall be liable for the costs thereof and shall pay the costs within 10 days after service of a bill of costs upon the person(s). Service of the bill of costs shall be presumed three days following deposit of the bill in the United States Mail or on the date of actual receipt, whichever is earlier. Should the responsible person fail to pay the bill of costs in full within 10 days, the person shall be in default and upon action by the Town Council, the town may initiate a civil action to recover the costs, court costs and attorney's fees against the person in default. In addition to all other remedies provided under this Code or otherwise allowed by law, if the town has summarily abated, removed or remedied a condition dangerous or prejudicial to the public health or public safety, pursuant to G.S. § 160A-193, the costs shall be recorded as a lien on the land or premises where the condition occurred as well as on any other real property, other than the primary residence, owned by the person in default within the town limits or within one mile of the town limits. The town shall record the lien by instrument filed with the County Register of Deeds and may also refer the costs to the County Tax Administrator to be collected as unpaid ad valorem taxes.

(B) In cases not requiring summary abatement, upon being notified of the violation by the Administrator, the responsible person must correct the violation within ten (10) days or such reasonable additional time as the Administrator may allow if correction requires the services of a contractor or other third party. If the responsible person fails to correct the violation within the allotted time, the town may abate the nuisance. In the event the town takes the action necessary to remove or eliminate the violation, all costs incurred by the town shall be charged to the owner of the parcel of land. The Tax Collector shall mail a statement of the charges to the property owner with instructions that the charges are due and payable within 30 days from the receipt thereof. In addition, the town shall have all remedies permitted under this Code and otherwise allowed by law.

AUTHORIZATION OF ENCROACHMENTS IN THE PUBLIC WAY

§ 96.11 Purpose and Intent

The purposes for, and intentions behind this division, are as follows:

- (A) ~~The public streets, whose primary purpose is movement of vehicular and other traffic,~~ The public ways are valuable public resources that have required, and will continue to require, substantial investment by the town; and
- (B) The town desires to structure and implement a fair and orderly process for the application for, and granting of, ~~permission~~ authorization for private parties to occupy and use ~~the public street or street rights-of-way~~ ways, consistent with applicable law, and which appropriately accounts for the varied reasons that private parties seek such ~~permission~~ authorization.
- (C) The town desires to minimize inconvenience and disruption to the public, provide for the orderly and efficient use of the public ~~streets and street rights-of-way~~ ways now and in the future, and to ~~preserve adequate capacity for existing and future uses of the public streets and street rights-of-way~~ ways.
- (D) The town intends to exercise, to the fullest extent permitted by applicable law, its authority in regulating the occupation and use of public ~~streets and street rights-of-way~~ ways.

- (E) Consistent with the foregoing, the town desires to provide a simplified approval process for minor encroachments into streets, street rights of way by adjoining landowners and into utility and access easement interests of the town by the adjoining landowner where the landowner owns the property that is subject to the town's easement interest, as provided in Section 96.22.

96.12. ~~DEFINITIONS.~~

The following words and terms in this division shall have the meaning given below unless the context indicates otherwise. These meanings shall apply whether a word is capitalized or not or is singular or plural.

~~Abandoned, application, city (town) utility pole, collocation, make-ready work, micro wireless, small wireless facility, utility pole, wireless facility, wireless infrastructure provider, wireless provider, wireless services, and wireless services provider have the meanings provided at Section 160A-400.51 et seq. of the North Carolina General Statutes or in the Federal Communications Commission Order FCC 18-133, which ever is more inclusive or exacting.~~

~~Administrator means the Director of the Department of Public Works or his or her designee.~~

~~Authorization means permission from the town to do work in the public way or to maintain facilities in the public way and includes but is not limited to a franchise, an easement, an encroachment agreement, a permit, or other written approval. Multiple authorizations may be required for certain activities.~~

~~Contractor means and includes any of the following, licensed or unlicensed, performing work on an owner's behalf: contractor, subcontractor, or any employee or agent of a contractor, subcontractor, or owner.~~

~~Department means the Department of Public Works.~~

~~Emergency means a condition that poses a clear and immediate danger to life or health, or a significant loss of property, or requires immediate repair to restore service to a group of users of such service.~~

~~Encroach or encroachment means any excavation in the public way, or the placing therein, thereover or below any pipes, poles, wires, fixtures or other appliances of any kind, either on, above, or below the ground surface. It also includes such digging and placing of pipes, poles, wires, fixtures or other appliances of any kind on, above or below the ground surface in areas in which the town has a utility or access easement, unless such activity is permitted by the applicable easement.~~

~~Excavate or excavation means without limitation any cutting, digging, grading, tunneling, boring, or other alteration of the surface or subsurface material or earth in the public way.~~

~~Facilities means poles, pipes, culverts, conduits, ducts, cables, wires, fiber, amplifiers, pedestals, antennae, transmission or receiving equipment, other electronic equipment, electrical conductors, manholes, appliances, signs, poles, pavement structures, irrigation systems, landscaping, monument signs, monument mailboxes and any other similar equipment, for public or private use.~~

~~Minor Encroachment means an encroachment for irrigation systems, fencing and landscape plants and material provided all of the following requirements are met:~~

- ~~(i) A Minor Encroachment is only available to an adjacent property owner for encroachments into (a) public streets and street rights of way or (b) town utility or access easement areas when the property owner owns the underlying fee;~~
- ~~(ii) There is no disruption, even temporarily, of traffic flow;~~
- ~~(iii) There is no impact to paved or concrete surface;~~

- ~~(iv) There is no impact to the Town's ability to maintain or operate public streets, street rights-of-way or its easement interests.~~

~~Owner means any property owner, company owner, or any entity by which work within the right of way has been ordered, or any entity on behalf of which any work within the right of way is caused to be performed, or any agent thereof.~~

~~Person means an individual, association, firm, partnership, limited liability company, joint venture, corporation, government, utility, or other organized entity able to contract for the activities described in this ordinance, whether for profit or not for profit. The term does not include the town.~~

~~Public way means any area that is owned or maintained by the Town and used or reserved for use as a public street, highway, right of way, alley, trail, sidewalk, curb, gutter, bike lane, bridge, round about, tunnel, causeway, or shoulder. Such area includes, without limitation, drainage areas and dedicated areas without surface improvements that are adjacent to improved areas, and areas where no roads or other improvements have been constructed but which are dedicated for one or more of the above uses. The public way encompasses the surface of the ground, and the area above and below the ground.~~

~~User means a person that proposes to place facilities in the public way, places such facilities, or owns or maintains such facilities. The term includes but is not limited to encroachment permittees and franchisees.~~

96.13 WRITTEN PERMISSION AUTHORIZATION TO ENCROACH REQUIRED EXCEPT FOR MINOR ENCROACHMENTS.

- (A) Except for minor encroachments, which do not require written ~~permission~~ authorization, it shall be a violation of this article for any person to encroach upon any public way or town ~~easement-areas~~ property without first receiving written ~~permission~~ authorization to do so from the ~~town~~ Administrator pursuant to this chapter.
- (B) All persons that operate utilities that the town may franchise under the authority of G.S. 160A-319 shall apply for a franchise to be approved by the Town Council in accordance with the Town Charter. ~~Permission~~ Authorization to encroach upon a public way may be granted through the terms of an appropriate franchise agreement.
- (C) In situations not governed by a franchise agreement, ~~permission~~ authorization to encroach shall be granted in appropriate cases through the terms of a non-exclusive, revocable encroachment permit or encroachment agreement, signed by the applicant and the Town Manager, using whatever form the town devises and is approved by the Town Attorney for that purpose. ~~However, if the applicant must also receive a franchise for their intended business or activity from the town,~~
- (D) The ~~Department of Public Works~~ Administrator shall develop standards and requirements for authorizations, including but not limited to franchises, licenses, permits, and other approvals, and may attach conditions to such authorizations. The ~~Department~~ Administrator may also develop standards and requirements for doing work in the public way when an authorization is not required.
- (E) The ~~Department~~ Administrator shall charge such fees as are authorized by the Town Council for ~~authorizations~~; applications for authorizations; review of information and plans; ~~issuance of authorizations~~; inspections and ~~reinspections~~ re-inspections; maintenance of facilities in the public way; and for any other town review, oversight, or administration of proposed, ongoing, or completed activities ~~described in (a). The department~~ within the purview of this chapter. The

Administrator may allow persons to establish and fund escrow accounts or other accounts with the town to which fees may be charged.

96.1413. APPLICATION FOR ~~PERMISSION~~AUTHORIZATION TO ENCROACH.

- (A) Application for ~~permission~~authorization to encroach upon a public way shall be submitted to the Department of Public Works, and shall be submitted Administrator on ~~any~~whatever form ~~the town~~ ~~devises~~is devised for that purpose.
- (B) ~~All persons desiring authorization to encroach upon a public way must~~ The applicant shall provide the ~~town with the~~ following information concerning the proposed encroachment:
1. ~~Identify~~Identification of the ~~relevant~~ public way at issue;
 2. A description of the items the person desires ~~permission~~ to install in the public way, and the ~~purpose~~purposes those items would serve. No authorization shall be granted for new equipment or facilities that are not expressly and individually identified at the time of the application, including the specific location and design characteristics of each facility.
 3. A description of how ~~the person intends to install the item in the public way~~ items shall be installed, including whether any excavation in the public way will be required;
 4. Whether installation of the relevant items will ~~cause any temporary disruption in~~ disrupt traffic flow ~~in or otherwise interfere with the use of~~ any public ~~streetway~~, and if so, what precautions the applicant intends to take to minimize that disruption, and to protect human safety;
 5. A site plan, with sufficient detail to show the proposed ~~location~~ locations of the items the applicant seeks ~~permission~~ to install in the public ~~street or street right-of-way~~, including any manholes or overhead poles, the size, type and proposed depth of any conduit or other enclosures, and the proximity of the applicant's items, if installed, to all existing poles, utilities, sidewalks, pavement, telecommunications or cable systems, and other improvements existing in the relevant public ~~streets or street rights-of-way~~ ways;
 6. A proposed construction schedule, duration, and sequence;
 7. ~~Identify and describe~~ A description of any insurance the person has, or would obtain if granted ~~permission~~ authorization to encroach on the relevant public street or street rights-of-way, that will cover ~~his desired~~ the proposed activities in the public street or street rights-of-way. ~~(Homeowners seeking permission to encroach on a street right-of-way adjoining their residence should check their homeowners' policy in this regard);~~
 8. The name, address and telephone number of the person the town may contact concerning the application; and
 9. Such other information as the ~~town~~ Administrator may determine to be necessary or appropriate to evaluate the application or otherwise in furtherance of the public interest.
- (C) Business and other commercial applicants, ~~in addition, should~~ shall submit the following additional information:

1. A general description of the ~~person's~~applicant's business; and
 2. A description of the services, if any, the ~~person~~applicant proposes to provide to others through the infrastructure ~~he desires permission proposed to install~~be installed in the ~~right-of-public~~ way, identifying also the geographic scope in which such services would be provided, and to whom they would be provided.
- (D) Any person who must also receive a franchise from the town for their intended business or activity may provide the information set forth above in their franchise application.
- (E) The ~~town~~Administrator may reject any application to encroach upon a public way that is incomplete or otherwise fails to comply with the terms of this chapter or other applicable law.

96.1514. PROCEDURE FOR CONSIDERATION OF AND ACTION ON APPLICATIONS.

- (A) The authority to grant a private party ~~permission~~authorization to encroach upon a public way shall be exercised by the ~~Town Manager or designee~~Administrator. In the ~~Manager's~~Administrator's discretion, however, ~~the Town Manager may submit any application for permission~~authorization to encroach may be submitted to the Town Council for review and decision ~~to the Town Council~~, with or without a recommendation from the ~~Town Manager~~Administrator. In such cases, the grant of authority, if given, will be made by adoption of a resolution by the Town Council. In any case, the grant of such authority shall be conditioned upon such terms as shall be specified in the relevant encroachment or franchise agreement.
- (B) The ~~town~~Administrator may make such investigations and take or authorize the taking of such other steps as ~~they deem~~the Administrator deems necessary or appropriate to consider and act upon applications to encroach upon a public way ~~and determine whether such applications should be granted~~.
- (C) ~~If a business or commercial applicant seeks permission to encroach upon a public way, the town may~~The Town Council may set a public hearing to give the public an opportunity to comment on ~~the~~an application to encroach upon a public way.

96.1615. FACTORS FOR REVIEW OF APPLICATION TO ENCROACH.

- (A) In deciding whether to grant any application for ~~permission~~authorization to encroach upon any public way, the ~~town~~Administrator may consider such factors as it deems appropriate and in the public interest, provided such factors are consistent with applicable law, including without limitation:
1. The willingness and ability of the applicant to meet construction and physical requirements and to abide by all lawful conditions, limitations, requirements and policies with respect to the encroachment;
 2. The ability of the applicant to maintain the property of the town in good condition throughout the term of the relevant franchise or encroachment agreement;
 3. Any services or uses of the public ~~streets or street rights-of-way~~ways that may be precluded by the grant of the requested ~~permission~~authorization to encroach, and the adverse impact

of the proposed encroachment on the efficient use of the public streets and street rights-of-way at present and in the future;

4. The adequacy of the terms and conditions of the proposed encroachment or franchise agreement to protect the public interest, consistent with applicable law; and
5. Any other ~~public interest~~ factors or considerations that ~~the town has a lawful right to consider and that are deemed pertinent by the town for safeguarding the interests of the town and the public.~~

(B) Consistent with applicable law, the ~~town~~ Administrator may develop and implement policies and requirements to ensure that the public ways have sufficient capacity reasonably to accommodate existing and future uses in a rational and efficient manner. In evaluating an applicant for the right to encroach upon a public way, the ~~town~~ Administrator may consider an applicant's proposals for addressing capacity needs and compliance with town policies and requirements in that regard.

~~96.17. INDEMNITY,~~ 16. INSURANCE AND BONDING REQUIREMENTS, OTHER CONDITIONS.

~~(A) No permission to encroach on any public way shall be granted unless, as a condition to that grant, the applicant is willing to and agrees to indemnify, defend and hold harmless the town, its officers, boards, commissions and employees against any and all claims and liabilities arising from the person's activities or items in the public street or street right of way, including reasonable attorney's fees and court costs.~~

Depending upon the extent of ~~a person's desired~~ an applicant's proposed excavation, construction or other activities in any public way, the ~~town~~ Administrator may ~~exercise its authority to require an~~ the applicant to secure and provide documentation of an appropriate performance bond or letter of credit, and/or insurance, covering such activities, pursuant to terms acceptable to the ~~town~~ Administrator.

~~(B) The other terms and conditions by which the town grants a person authority to encroach upon a public way shall be set forth in the relevant permit, encroachment or franchise agreement.~~

~~96.18~~ 17. RESPONSIBILITIES OF PERSONS GRANTED PERMISSION AUTHORIZATION TO ENCROACH.

It shall be the responsibility of each person granted ~~permission~~ authorization to encroach upon a public way to:

- (A) Ensure that any excavation, construction or other work done by them or on their behalf in the relevant public way is performed consistent with the ~~town's standard~~ town's specifications and ~~details~~ other requirements for construction activities, including ~~the requirements therein regarding those relating to~~ restoration of the affected area.
- (B) Restore land, utility lines, other improvements, ground cover, and landscaping disturbed by excavation and construction in the public way to the standards specified by the town.
 - (1) Where permanent restoration is temporarily impractical because of weather or other circumstances, temporary restoration may be required.

(2) Restoration shall be accomplished within the time approved by the ~~town~~Administrator.

(3) If restoration work proves to be inadequate over time, as determined in the sole, reasonable discretion of the ~~town~~Administrator, the encroacher shall perform such additional restoration work as ~~directed by the town~~Administrator may direct.

(4) Inspection and approval by the ~~town~~Administrator immediately after installation does not constitute a waiver of the town's rights to determine that the restoration work is not adequate over time and must be remedied.

(C) If requested ~~by the town~~ due to a need for the town or its contractors to complete any work in a public way, temporarily or permanently remove or relocate their items located below or above the public ~~street, or within the street right-of-way~~.

(D) Otherwise comply with the terms of their encroachment permit or agreement or the encroachment provisions in their franchise agreement, and all applicable laws, ordinances, resolutions, rules, regulations and other directives of the town and any federal, state or local governmental authority having jurisdiction over the person's activities in or near such public way.

96.1918. AUTHORITY TO ENCROACH IS NONEXCLUSIVE.

Any grant of ~~permission~~authorization to encroach upon a public way given by the ~~town~~Administrator pursuant to this article shall be nonexclusive. The town specifically reserves the right to grant, at any time, such additional rights of access to the public way that it deems appropriate.

96.2019. REMEDIES.

In the event that any person encroaches upon a public way without prior ~~permission~~ ~~from authorization by the town~~Administrator, or violates the conditions by which authority to do so ~~were was~~ granted ~~by the town~~, or otherwise violates any provision of this article, the Administrator ~~or designee~~ may, in addition to any other remedies provided by any other applicable ~~article or other law~~:

- (1) Issue an order to the person commanding them to immediately cease and desist their unpermitted or otherwise wrongful activities in the public way, and to restore the affected area;
- (2) Revoke any ~~permission~~authorization previously granted allowing for the ~~permission to encroach in a public street or street right-of-way~~encroachment;
- (3) Issue a civil penalty of \$500 to each responsible person or \$1,000 to each repeat ~~violate~~violate; or
- (4) Any combination of the above-referenced remedies and any other remedy authorized under G.S. 160A-175.

Civil penalties authorized by this section shall be assessed against each responsible person, including the owner on whose behalf work is being performed and the contractor who is performing such work.

~~Emergency work exemption. Otherwise applicable civil penalties that are specified in this Code section shall not be issued~~ In situations where evidence is submitted to the Administrator's satisfaction that the work performed constitutes emergency work, ~~however, the Administrator may waive the civil penalties.~~ In such emergency situations, the entity performing the emergency work will be must apply for the required to permit as soon as reasonably possible and pay the ~~otherwise applicable permit fee~~however.

96.2120. RIGHTS OF APPEAL.

- (A) In cases where the ~~Town Manager or designee~~ Administrator denies a person's application to encroach upon a public way, or is willing to grant that request but subject to conditions or terms the applicant deems to be unsatisfactory, resulting in an inability to finalize the requisite written authorization, the applicant may seek review of the ~~Town Manager's (or designee's)~~ Administrator's decision before the Town Council. The applicant must request a hearing before the Town Council in writing to the ~~Town Manager, Administrator~~ within ten days of the applicant's notice of the ~~Town Manager's (or designee's)~~ decision at issue. In such submission, the applicant must identify the issues or disagreements ~~he~~ the applicant has with the ~~Town Manager's (or designee's)~~ relevant decision. In such cases, the Town Council shall make the final decision, through adoption of an appropriate resolution.
- (B) Any person subject to ~~any~~ an enforcement action pursuant to ~~section~~ § 96-2019 above may appeal the enforcement action ~~to per §10.98 of the Town Manager Code.~~

96.2221. GENERAL CONDITIONS FOR USE OF THE PUBLIC WAY

The right to perform work or maintain facilities in the public way is allowed subject to the conditions below, as supplemented by those set forth in other sections of this ordinance, standards adopted by the ~~department~~ Administrator, and requirements contained in an encroachment agreement or other written authorization.

- (A) The town does not warrant its legal interest in the public way. Persons doing work in the public way and users may need to obtain approvals from persons with property interests in the public way.
- (B) An authorization does not convey any legal right, title, or interest in the public way, and may be revoked or amended at will by the town.
- (C) The town and its officials, officers, and employees are not liable for any direct, indirect, or consequential damages that may result when to private facilities located in the public way are damaged during as a result of the town's construction, installation, inspection, maintenance, or repair of the public way or of public improvements that have received town funding or that are installed pursuant to a contract within the town public way.
- (D) ~~Users and persons who cause~~ Persons responsible for work to be done in the public way or for items located in the public way shall pay for all damage that results, directly or indirectly, from ~~work performed for their benefit in the public way, and for the installation, repair, maintenance, and operation of their facilities in the public way~~ such work or items.
- (E) Nonenforcement of one or more provisions of an authorization does not waive the town's right to enforce the provisions of ~~an~~ the authorization.
- (F) An authorization creates no third-party rights against the town ~~and is intended only for the benefit of the person receiving the authorization.~~
- (G) An authorization does not limit the town's exercise of its regulatory, police, governmental, legislative, or contracting authority. ~~A subsequent ordinance may regulate users, including its authority to enact and enforce against an authorized encroacher more strictly than is provided in~~

~~prior authorizations received by such users.~~ strict requirements then were previously applicable to the authorized encroachment. If the terms of an authorization ~~conflicts~~ conflict with the terms of another authorization or with an ordinance or other regulation adopted by the town ~~code~~, the stricter of the applicable provisions shall control.

96.2322 EXEMPTIONS

The ~~Department of Public Works~~ Administrator may exempt ~~its~~ the town's contractors or the North Carolina Department of Transportation (NCDOT) from particular requirements of this chapter when substantial compliance has been assured ~~through the town's contracting system~~, or, in the case of NC DOT, where the need for state infrastructure on town roads, or a joint undertaking by the town and NC DOT, or the use of state-controlled areas of the public way makes the application of such requirements unreasonable.

96.2423 COLLOCATION OF SMALL WIRELESS FACILITIES IN PUBLIC WAYS.

- (A) Collocation of small wireless facilities meeting the height requirements of G.S. 160A-400.55(b) ~~require an encroachment agreement or other~~ are subject to all requirements of the town's Uniform Development Ordinance. In addition, small wireless collocations require written authorization in a form approved by the town and are subject to all the foregoing provisions of this chapter except where clarified or altered by the terms of this section ~~96.24~~. For other small wireless facilities, see subsection (B) below.

(1) *General.*

- a. Wireless providers may occupy and use the public way to collocate small wireless facilities to provide wireless services upon, along, over and under the public way in the town such that such collocations do not inhibit other utility installations within the public way.
- b. The town retains its right to impose fees and charges to the extent not prohibited by federal and state law.
- c. Wireless services providers shall pay taxes for telecommunications services that are subject to taxation.
- d. Small wireless providers shall obtain approvals legally necessary to use the public way from owners, other than the town, of property interests in the public way or adjacent to the roadway system located within the town.
- e. Nothing in this section shall be deemed or construed to stop or limit the town from exercising any regulatory, police, governmental, or legislative function pursuant to applicable law, which powers include, but are not limited to, the authority to enact regulations, ordinances, rules, and orders not prohibited by state or federal law that affect the public way or a wireless provider's use of the public way.
- f. The terms of this section do not permit the wireless services provider to operate a cable system or to provide cable service, as those terms are defined by Section 602 of the Cable Communications Policy Act of 1984, as amended (47 U.S.C. Section 522), and the wireless services provider agrees that it will not operate a cable system or provide cable service in the town unless it obtains authorization from the town.
- g. This section only permits the wireless provider, upon obtaining required approvals and permits, to place small wireless facilities in those portions of the public way specifically approved by the ~~town~~ Administrator.

- h. Collocation of small wireless facilities shall commence within six months of permit issuance and shall be activated for use no later than one year from the permit issuance date. Failure to commence collocation within six months of permit issuance shall void said permit. A small wireless facility not activated within one year of permit issuance shall be considered abandoned and shall be removed from the public way at the wireless provider's sole expense.
- i. No more than 25 small wireless facilities may be included in a single permit application.
- j. For general public safety and design purposes, documentation of compliance with the structural, operational, and insurance requirements for wireless communication facilities as found in the Unified Development Ordinance shall be required for all small wireless facility installations, unless superseded by this section.
- k. Historic preservation requirements of the Unified Development Ordinance shall apply to all permit applications, as applicable.

~~(2) Design standards for installations on existing poles.~~

- ~~a. Small wireless facilities installed on existing utility, street light, or traffic signal poles shall comply with the following design and concealment standards:~~
 - ~~1. For areas zoned single family residential where existing utilities are installed underground, the maximum pole height shall be 40 feet. For all other areas, the maximum height shall be 50 feet.~~
 - ~~2. Facilities shall be designed to match the design and color of the existing pole.~~
 - ~~3. To the extent practicable, all accessory cables and equipment shall be installed underground.~~
 - ~~a. If any equipment cannot be installed underground, then it shall be installed at the base of the pole and concealed with skirting compatible in design and color to the pole.~~
 - ~~b. If any equipment cannot be installed at the base of the pole and concealed with skirting, then it shall be flush mounted to the pole.~~
- ~~b. All installations shall comply with all Town Code and Unified Development Ordinance undergrounding requirements.~~
- ~~c. Antenna shall be installed within the pole and not visible. If any antenna cannot be installed within the pole and made not visible, then it shall extend vertically from the pole or be flush-mounted to the side of the pole, and shall be designed to be an architecturally compatible extension of the pole. The diameter of the antenna shall be consistent with the diameter of the pole, not including other appurtenances or extensions from the pole, or the base to which the pole is mounted. The antenna shall not extend more than ten feet above the top of the pole.~~

~~(3) Requirements for new poles.~~

- ~~a. Unless a new pole replaces an existing pole in substantially the same location, to the extent practicable, poles shall be installed at least 300 feet from any existing or proposed pole. Any wireless services providers desiring to install poles less than 300 feet apart or desiring to install a new pole within 300 feet of an existing pole shall demonstrate to the town's satisfaction why such placement is necessary.~~
- ba. If possible, poles shall be designed to accommodate small wireless facilities for multiple wireless services providers.

~~e.b.~~ Poles shall be located a minimum of 15 feet from any tree, measured to the tree-trunk center. Additionally, 80 percent of the root protection zone shall remain undisturbed. The root protection zone shall either be a six-foot radius around the tree or a one-foot radius for every inch of tree diameter at breast height, whichever is greater. This minimum separation shall not apply for a new pole that replaces an existing pole, where the new pole is installed in the same place as, or immediate vicinity of, the existing pole.

~~d.~~ Poles shall be designed pursuant to town standards or the applicable utility's standard, and function as street light poles, utility poles, or traffic signal poles in consultation with the town or the applicable utility, and shall be incorporated into the applicable utility or signaling system.

~~e.~~ Poles shall not exceed 40 feet in height from ground level in areas zoned single-family residential. In all other areas, the maximum height shall be 50 feet.

~~f.~~ Antennae shall not extend beyond ten feet above the top of the pole.

~~g.c.~~ Poles shall be designed and installed with materials and appearance consistent with existing poles in the adjacent public way, unless materials and appearance are prescribed by other ordinance, law, or town requirements.

~~h.d.~~ To the extent practicable, all accessory cables and equipment shall be installed within the pole and/or placed underground per Town Code and Unified Development Ordinance undergrounding requirements. If any equipment cannot be installed underground, then it shall be installed on or at the base of the pole and concealed with skirting compatible with, and integrated into, the design of the pole.

(4) *Pedestrian and vehicular movement requirements.*

a. No small wireless facility, structure, or associated equipment shall impede or interfere with pedestrian or vehicular movement, circulation, or visibility. Specifically, no small wireless facility, structure, or associated equipment shall:

1. Extend into an existing or proposed sidewalk or walkway, trail, bicycle parking area unless such extension provides at least 8.0 feet vertical clearance;
2. Extend into an existing or proposed driveway, or vehicular parking area unless such extension provides at least 15 feet vertical clearance.
3. Extend into any motor vehicle travel lane.

b. No new installation shall be installed within sight distance triangles pursuant to the requirements of this chapter and the Unified Development Ordinance.

c. Installations that replace existing poles or collocate onto existing facilities already located within sight distance triangles shall not locate or install equipment that diminishes visibility relative to existing conditions. This requirement can be waived pursuant to Unified Development Ordinance standards for alternative dimensions.

(5) *Information required.* Prior to applying for authorization to install any portion of its small wireless facilities, a wireless provider shall provide the following information to the ~~town~~ [Administrator](#) in addition to what is normally required for approval of an encroachment:

- a. The identity and corporate form of the wireless provider and affiliates who will perform work in the town's public way;
- b. The name and contact information for the officer, agent, or employee of the wireless provider responsible for communications with the town;

- c. A statement as to whether the services provided are telecommunications services taxed under G.S. 105-164.4(a)(4c) or are video programming taxed under G.S. 105-164.4(a)(6); and
- d. Attestation that small wireless facilities will be collocated on the utility pole, town utility pole, or wireless support structure, and that the small wireless facilities shall be activated for use by a wireless provider to provide service no later than one year from the permit issuance date.

(6) *Relocation of facilities.*

- a. Wireless providers shall, at no cost to the town, relocate or remove portions of its small wireless facilities located in the public way in the event the public way is closed, or if the ~~town~~Administrator, in ~~its~~the Administrator's sole discretion, determines that the location of a small wireless facility interferes with the efficient provision of utility services to town residents, or interferes with public safety and welfare, or conflicts with any highway, sidewalk, trail, or utility project, or that the public way can be better or more efficiently utilized by the removal and relocation or consolidation of certain existing facilities. The ~~town~~Administrator shall provide the wireless provider 180 days' written notice prior to the required relocation or removal of small wireless facilities.
- b. Except in the case of emergency repairs, before the wireless provider constructs, installs, upgrades, repairs or removes small wireless facilities along a portion of the public way, wireless providers shall provide notice to the ~~Public Works Department~~Administrator per section 96.14.

(7) *Construction, inspection, restoration, and removal.*

- a. —At the ~~town's~~Administrator's request, as built maps in such further detail as the ~~town~~Administrator may require shall be provided no more than 60 days following the conclusion of construction, ~~or at any other time as the town may require.~~
- b. —Wireless providers will advise the ~~town~~Administrator of any significant discrepancy between construction plans and actual construction.
- c. —Wireless providers shall advise the ~~town~~Administrator if, during construction of small wireless facilities, such construction is within six feet of any water or sewer facilities.
- d. Engineering, construction and as-built documents shall be provided in hard copy [paper] and/or electronic copy as requested by the ~~town~~Administrator.
- e. In addition to design maps and as-built maps, wireless providers shall provide such other information regarding existing facilities in the public way ~~as the town may require~~, in such detail, as the ~~town~~Administrator may require.
- f. The wireless provider shall comply with all applicable federal, state and local regulations, such as the National Electrical Code, National Electrical Safety Code, fiber optic cable installation specifications, 1987 telecommunication industry committee standards, traffic safety/lane closure rules and construction requirements promulgated by the town and the North Carolina Department of Transportation as amended.
- g. —The ~~town~~Administrator may inspect the small wireless facilities and restoration work performed by the wireless provider.
- h. The wireless provider shall notify the ~~town~~Administrator when it has completed each permitted portion of its small wireless facilities; or at such other time the ~~town~~Administrator

requests. Following inspection, the wireless provider shall make any corrections necessary to bring the permitted installation into conformance with town requirements.

- i. —The ~~town~~Administrator may approve the performance of repair or emergency work without issuance of a permit. When it is impossible for wireless provider to give the ~~town~~Administrator notice of repair work because of the unexpected, emergency nature of such work, wireless provider may perform such work provided notice is given to the ~~town~~Administrator as promptly as possible after the commencement of such work and a permit request is submitted retroactively or within two working days.

(8) *Processing of applications*

- a. A small wireless permit application shall be deemed complete unless the ~~town~~Administrator provides notice otherwise in writing to the applicant within 30 days of submission or within some other mutually agreed upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.
- b. The application shall be deemed approved if the ~~town~~Administrator fails to approve or deny the application within 45 days from the time the application is deemed complete or within some other mutually agreed upon time frame between the ~~town~~Administrator and the applicant.
- c. The ~~town~~Administrator may deny an application only on the basis that it does not meet one or more of the following: (i) the town's applicable codes; (ii) local code provisions or regulations that concern public safety, objective design standards for decorative utility poles, city utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including screening or landscaping for ground-mounted equipment; (iii) public safety and reasonable spacing requirements concerning the location of ground-mounted equipment in a right-of-way; or (iv) historic preservation requirements. The ~~town~~Administrator must document the basis for a denial and send the documentation to the applicant on or before the day the ~~town~~Administrator denies an application. The applicant may seek to cure the deficiencies identified by the ~~town~~Administrator and resubmit the application within 30 days of the denial without paying an additional application fee. The ~~town~~Administrator shall approve or deny the revised application within 30 days of the date on which the application was resubmitted. Any subsequent review shall be limited to the deficiencies cited in the prior denial.
- d. In the event of a consolidated application for multiple facility collocations, the ~~town~~Administrator may remove and treat separately any facility collocations (i) for which incomplete information has been provided or (ii) that are denied.

(9) *Collocation of small wireless facilities on town utility poles.*

- a. *Request to collocate on town utility pole.* The ~~town~~Administrator shall grant non-exclusive authorizations for collocations of small wireless facilities on town utility poles consistent with such terms, fees and conditions as Town Council may adopt consistent with G.S. §160A-400.56. A request to collocate on a town utility pole may be denied if there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, and those limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the facilities at the reasonable and actual cost of the town to be reimbursed by the wireless provider. An applicant permitted to collocate on a town utility pole under this section must demonstrate compliance with applicable safety requirements, including the

National Electrical Safety Code and the applicable rules and regulations issued by the Occupational Safety and Health Administration

- b. *Make-ready work.* The ~~town~~Town Administrator shall provide a good-faith estimate for any make-ready work necessary to enable a town utility pole to support a requested collocation, including pole replacement if necessary, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, shall be completed within 60 days of written agreement on the cost of the work.
- (10) *Abandonment.* Wireless providers shall remove all abandoned small wireless facilities within 180 days of abandonment. Should the wireless provider fail to timely remove the abandoned wireless facility, the ~~town~~Town Administrator may cause such small wireless facility to be removed and the town may recover the actual cost of such removal, including legal fees, if any, from the wireless provider. A small wireless facility shall be deemed abandoned at the earlier of the date that the wireless provider indicates that it is abandoning such facility or the date that is 180 days after the date that such small wireless facility ceases to transmit a signal, unless the wireless provider gives the ~~town~~Town Administrator reasonable evidence that it is diligently working to place such small wireless facility back in service.
- (11) *Exceptions to application and permitting requirements.* No application or written authorization is required for (i) routine maintenance; (ii) the replacement of small wireless facilities with small wireless facilities that are the same size or smaller; or (iii) installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles or city utility poles in compliance with applicable codes by or for a communications service provider authorized to occupy the city rights-of-way and who is remitting taxes under G.S. 105-164.4(a)(4c) or G.S. 105-164.4(a)(6); *provided, however,* that written authorization is required for excavations or other work otherwise required to be permitted under this chapter.
- (B) All other small wireless facilities shall be subject to all applicable provisions of this chapter and the Unified Development Ordinance.

ACCEPTANCE OF INFRASTRUCTURE FOR MAINTENANCE BY THE TOWN; REQUEST FOR CLOSURE OF A PUBLIC WAY

96.2524 - APPLICATION FOR ACCEPTANCE OF INFRASTRUCTURE; WARRANTY

Any person requesting acceptance by Town Council of street ~~and/or~~ sidewalk infrastructure shall submit a request to ~~public works~~the Administrator on a form prepared ~~by the Public Works Department~~for that purpose, accompanied by a fully executed one-year infrastructure warranty and repair security on a form acceptable to the town.

~~An infrastructure acceptance~~Any such request ~~includes~~shall be deemed to include a request ~~to Town Council to accept~~for acceptance of any water, sanitary sewer, or storm drainage systems located ~~within the area subject to the acceptance request, which~~under or adjoining such street or sidewalk infrastructure, and such water, sanitary sewer, or storm drainage systems likewise shall be accompanied by a fully executed one-year infrastructure warranty and repair security on a form acceptable to the town.

96.2625. - FINAL ACCEPTANCE.

When an infrastructure acceptance request form has been submitted ~~as required by the foregoing section, and when~~ and all applicable ~~other~~ requirements of this division ~~have been met, the infrastructure, or portions thereof, shall be recommended for acceptance by the~~ Administrator ~~through~~ shall refer the Town Manager ~~request~~ to the Town Council for consideration. Only Town Council has the authority to accept infrastructure for maintenance by the town.

96.27-26- PREREQUISITES TO ACCEPTANCE.

Streets and the sidewalks, water, sanitary sewer, or storm drainage systems located within or adjoining them shall be considered for acceptance for maintenance by the town when the proper width street is dedicated for public use and a map is recorded in the office of the register of deeds of the county, and the infrastructure is improved in accordance with all applicable town requirements.

§ 96.27 STREET CLOSINGS AND RIGHT-OF-WAY VACATIONS.

- (A) Any person petitioning the Town Council for permanent closing of a public street or alley must pay a non-refundable fee of \$500.
- (B) If Town Council determines to consider the proposed street or alley closure, it shall first adopt a resolution declaring its intent to close the street or alley and calling a public hearing on the question. The resolution shall be published once a week for four successive weeks prior to the hearing, a copy thereof shall be sent by registered or certified mail to all owners of property adjoining the street or alley as shown on the county tax records, and a notice of the closing and public hearing shall be prominently posted in at least two places along the street or alley. If the street or alley is under the authority and control of the Department of Transportation, a copy of the resolution shall be mailed to the Department of Transportation.
- (C) At the public hearing, any person may be heard on the possible street or alley closure. If it appears to the satisfaction of Town Council after the hearing that closing the street or alley is not contrary to the public interest, and that no person owning property in the vicinity of the street or alley or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to that person's property, the Council may adopt an order closing the street or alley. A certified copy of the order shall be filed in the office of the Watauga County Register of Deeds.
- (D) Upon the closing of a street or alley in accordance with this section, subject to the provisions of subsections (G) and (H) of this section, all right, title, and interest in the right-of-way shall be conclusively presumed to be vested in those persons owning lots or parcels of land adjacent to the street or alley, and the title of such adjoining landowners, for the width of the abutting land owned by them, shall extend to the centerline of the street or alley. However, the provisions of this subsection may be altered as to a particular street or alley closing by the assent of all such adjoining landowners taking title to a closed street or alley by the filing of a plat which shows the street or alley closing and the portion of the closed street or alley to be taken by each owner. The plat shall be signed by all adjoining landowners who, under the first sentence of this section, has an ownership right in the closed street or alley.
- (E) This section shall apply to any street or public alley within the town that has been irrevocably dedicated to the public, without regard to whether it has actually been opened. This section also applies to unopened streets or public alleys that are shown on plats but that have not been accepted or maintained by the town, provided that this section shall not abrogate the rights of a dedicatory, or those claiming under a dedicatory, pursuant to G.S. 136-96.
- (F) No street or alley under the control of the Department of Transportation may be closed unless the Department of Transportation consents thereto.
- (G) The town may reserve a right, title, and interest in any improvements or easements within a street closed pursuant to this section. An easement under this subsection shall include utility, drainage,

pedestrian, landscaping, conservation, or other easements considered by the town to be in the public interest. The reservation of an easement under this subsection shall be stated in the order of closing. The reservation also extends to utility improvements or easements owned by private utilities which at the time of the street closing have a utility agreement or franchise with the town.
(H) The town may retain utility easements, both public and private, in cases of streets withdrawn under G.S. 136-96. To retain such easements, the Town Council shall, after public hearing, approve a "declaration of retention of utility easements" specifically describing such easements. Notice by certified or registered mail shall be provided to the party withdrawing the street from dedication under G.S. 136-96 at least five days prior to the hearing. The declaration must be passed prior to filing of any plat or map or declaration of withdrawal with the register of deeds. Any property owner filing such plats, maps, or declarations shall include the town's declaration with the declaration of withdrawal and shall show the utilities retained on any map or plat showing the withdrawal.

§ 96.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99.

SECTION 2: This Ordinance shall be effective upon the date it is adopted.

Adopted this ____th day of _____, _____.

Rennie Brantz, Mayor

ATTEST: _____
Town Clerk

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

CONSIDERATION OF USING THE LANDSCAPE MEDIAN CONCEPT ON OTHER SECTIONS OF NEW MARKET BLVD.

Mr. Miller spoke in regards to Ms. Mason's request to use the median landscape concept on other sections of New Market Boulevard and stated that what crews installed across from Hardin Park School was due to a safety issue and did not adversely effect any driveway entrances. He added if Council wished to continue with this concept, they would need to hire an engineer and he believed it may need to be set up similar to highway 421 to make only right turns. Mr. Miller also expressed concern about sight distance for road travelers as the trees planted along the medians grow larger and due to elevation. Mr. Furguele asked about the cost of an engineer as well as the undeveloped areas near the offices of attorney Stephen Berndt. Mr. Miller responded that the area near Mr. Berndt's offices was very steep grade and that a retaining wall would have to be built if anything was constructed on the property. Mr. Ward noted that Council would soon see a rezoning request for the former Toyota site. Mr. Miller added that developers were proposing a connector between Chestnut Drive and New Market Boulevard and that improvements would not be done in that area. Ms. Mason stated that she had noticed a change in safety in the New Market area since the new median had been installed, and believed that even small, intermittent medians would help with traffic calming. Mr. Miller suggested that Council allow staff to gather information on the topic to present at the retreat. Mr. Ward warned Council to prepare for issues with offloading vehicles near the car dealership. Mr. Miller stated that he would meet with one of the on-call engineers to get an estimate on the project and would bring that back to Council at a later date.

WATER USE COMMITTEE RECOMMENDATION

Mr. Miller presented recommendations from the Water committee regarding fully automated meter reading systems, and clarified that staff would have to investigate additional funds to pay for commercial meters at a later time. Ms. Meade clarified that the current recommendation was only regarding residential meters and that all other types of meters would be address at a future date. Mr. Furguele added that the \$10 surcharge noted in the recommendation was specific to residential meters only. Mr. Furguele made a motion to approve the request with the expectation that Council would be receiving recommendations regarding commercial meters in the future. Ms. Mason seconded the motion.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sam Furguele, Council Member
SECONDER:	Lynne Mason, Council Member
AYES:	Mason, Clawson, Furguele, Ulmer, Ashcraft

ADJOURNMENT

Upon a motion by Ms. Mason, seconded by Mayor Pro-Tem Clawson, Council voted to adjourn the meeting at 11:23 p.m.

VOTE:	Aye:	All
	Nay:	None

Nicole Harmon, Town Clerk

Rennie Brantz, Mayor