

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
SEPTEMBER 18, 2012**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Tuesday, September 18, 2012, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Jamie Leigh, Rennie Brantz, Andy Ball, and Allan Scherlen. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Town Clerk Kimberly Brown, Finance Director Amy Davis, Police Captain Jim Wilson, Fire Chief Jimmy Isaacs, Public Utilities Director Rick Miller, Public Works Director Blake Brown, Planning Director Bill Bailey, Human Resources Director Peri Moretz, Cultural Resources Director Pilar Fotta, Urban Design Specialist Brian Johnson, Development Coordinator David Graham, and Intern Matthew Shinner.

ANNOUNCEMENTS

Mayor Clawson called the meeting to order and welcomed all in attendance. She noted that anyone wanting to sign up to speak during the public comment session would need to sign the public comment sign-up sheet.

Mayor Clawson made the following announcement: “In conjunction with the statewide ‘Fall Litter Sweep 2012’ campaign issued by Governor Beverly Perdue for September 15 through September 29, the Town of Boone will hold a ‘Fall Boone Clean-Up Day’ on Saturday, September 22, 2012. Interested participants may come by the Town of Boone Public Works Department located at 321 East King Street between 9 a.m. – 2 p.m. to pick up cleaning supplies. For more information, contact Shannon Isaacs at 268-6230.”

TENTATIVE AGENDA ADOPTION

Town Manager Greg Young presented the following changes to the agenda:

1. Presentation of Central Business District Building Height and Related Appearance Standards.

Upon a motion by Council Member Brantz, seconded by Council Member Scherlen, Council moved to adopt the agenda, as amended.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

CONSENT AGENDA ADOPTION

Minutes: August 6, 2012 – Quarterly Public Hearing
 August 16, 2012 – Special Meeting
 August 21/23, 2012 – Regular Meeting

Confirmation of November Town Council Meeting Dates: November 13/15, 2012

Approval of Special Event Permit – 2012 ASU Homecoming Parade.

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to adopt the consent agenda, as presented.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

PUBLIC COMMENT

Robert Fischer stated he would like to learn more about the proposed amendment to the towing ordinance.

Tyler McKeithan, of Mountaineer Towing, stated that he wishes to address the Council on the proposed amendment to the towing ordinance.

ADOPTION OF RESOLUTION OF INTENT – REQUEST FOR CLOSURE OF A PORTION OF CHEROKEE STREET

Mike Trew, on behalf of property owner Andrew Wade, appeared before Council to request adoption of a resolution for a public hearing on closing a portion of Cherokee Street. He explained that Mr. Wade purchased properties abutting this street and has plans to construct a car wash on that site. He stated that he has talked with Fire Marshal Ronnie Marsh, and the main concern was the ability to navigate fire trucks and emergency vehicles onto Highway 421 without having to reverse the truck onto Perkinsville Drive. In talking with Public Works Director Blake Brown, Mr. Trew stated that cut-through traffic should be discouraged and suggested the use of a table-top speed hump. He stated that he has also discussed the project with Public Utilities Technician Josh Eller and discussed the two existing water and sewer lines which served the properties purchased by Mr. Wade. He stated that those dead-end lines will remain and that a fire hydrant will be relocated. Mr. Trew stated that the NC DOT wants a traffic island installed at the entrance/exit of the business to segregate traffic onto Highway 421. Mr. Wade stated that the business will include two automatic carwash stalls, four self-serve bays, and two equipment rooms. Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to adopt the following ordinance:

RESOLUTION OF INTENT

A Resolution Declaring the Intention of the Town Council to Consider the
Closing of a Portion of Cherokee Street

WHEREAS, G. S. 160A-299 authorizes the Town Council to close public streets and alleys; and

WHEREAS, the Town Council considers it advisable to conduct a public hearing for the purpose of giving consideration to the closing of a portion of Cherokee Street;

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

1. A meeting will be held at 6:30 p.m. on the 16th day of October, 2012 in the Council Chambers, 1500 Blowing Rock Road, to conduct a public hearing on the proposed street closing and to consider a resolution closing a portion of Cherokee Street.
2. The Town Clerk is hereby directed to publish this Resolution of Intent once a week for four successive weeks in the Watauga Democrat or other newspaper of general circulation in the area.
3. The Town Clerk is further directed to transmit by registered or certified mail each owner of property abutting upon that portion of said street a copy of this Resolution of Intent.
4. The Town Clerk is further directed to cause adequate notices of this Resolution of Intent and the scheduled public hearing to be posted as required by G.S. 160A-299.

Upon a motion duly made by Council Member Brantz, and duly seconded by Council Member Ball, in the above resolution was duly adopted by the Town Council at the meeting held on September 18, 2012 in the Town Council Chambers.

VOTE: Aye – All
 Nay – None

ATTEST:

Loretta Clawson, Mayor

Kimberly S. Brown, Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 181)

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

CONSIDERATION OF CODE AMENDMENT –CHAPTER 73. TOWING

Town Attorney Sam Furgiuele presented a draft revision to Chapter 73 of the Code of Ordinances. **(Copy of draft ordinance permanently on file in the September 2012 meeting information file.)** He stated that the Council had asked him previously to revise and clarify this section of the ordinance. In response to an incident in which a car was towed from a parking lot in town by a company located outside the town limits, Mr. Furgiuele revised the ordinance to include a section that sets forth time limits for the releasing of a non-consensually towed vehicle. He explained that the town code does not address this matter and that a disagreement ensued between the owner of the towing company and members of the Boone Police. He also stated that the draft includes a provision requiring towing companies which operate in town limits to acquire a privilege license from the Town of Boone. Upon a motion by Council Member Ball, seconded by Council Member Scherlen, Council moved to hear public comment on the issue.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

Tyler McKeithan, owner of Mountaineer Towing, explained his side of the situation and stated that he disagrees with the recommendations from the town attorney for a revised towing ordinance. Robert Fischer, owner of Fischer's Towing, stated that the safety of his employees is his main concern. Upon a motion by Council Member Ball, seconded by Council Member Scherlen, Council moved to amend the agenda to action on this item at the September 20, 2012 regular meeting.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

**CONDISERATION OF ZONING AMENDMENT – CASE 20120500 TEMPLETON/ASU
GENERAL USE MAP AMENDMENT**

Case 20120500 – Maurice Templeton LLC, Appalachian State University Foundation, Inc., and the State of North Carolina (Appalachian State University) have filed a General Use Zoning Map Amendment Petition to rezone four properties located off University Hall Drive from B-3,

General Business, to U-1, University. The properties are located at or near 330 and 400 University Hall Drive, are further identified as Watauga County PINs 2910-34-0660-000, 2910-33-9755-000, 2910-44-1012-000, and 2910-44-1178-000, and together contain approximately 9.03 acres. Planning Director Bill Bailey presented the request and stated that the Planning Commission unanimously recommended approval of the request. He explained that the commission discussed the possibility of considering the request parcel by parcel instead of as a group, but then decided to consider the parcels together. Discussion ensued as to what could be developed on the parcels located in the corridor overlay district in regard to building height. Council Member Leigh stated that she is in support of rezoning the parcel containing the Singing News building due to the fact that the parcel contains less than one acre. She suggested that the Council consider the application from Maurice Templeton individually and to consider the applications from Appalachian State University Foundation, Inc. and Appalachian State University jointly.

Vote #1

Upon a motion by Council Member Leigh, seconded by Council Member Ball, Council moved that the proposed amendment to the town's zoning is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to this application because it is consistent with section 2.1.1. D. of the Comprehensive Plan which allows for economic development which encourages redevelopment and rehabilitation of current unused or underutilized structures, sites, or infrastructure in appropriately located areas and this parcel is not large enough to accommodate large-scale development allowed by right in the U-1 zone.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

Vote #2

Upon a motion by Council Member Leigh, seconded by Council Member Ball, Council moved to approve the proposed amendment to the Town's zoning map and believe the approval is reasonable and in the public interest it encourages redevelopment and rehabilitation of current unused or underutilized properties.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

Vote #1

Upon a motion by Council Member Leigh, seconded by Council Member Ball, Council moved that the proposed amendments are not consistent with the Town's Comprehensive Plan and other applicable plans which relate to this application because 2.1.1.D of the Comprehensive Plan encourages redevelopment and rehabilitation of current unused or underutilized structures, sites, or infrastructure in appropriately located areas and that this area is not appropriate because the parcel is large enough to accommodate potentially inappropriate development allowed by right in the U-1 zone.

VOTE: Aye – 3 (Scherlen, Leigh, Ball)
 Nay – 1 (Brantz)
 Absent – 1 (Mason)

Vote #2

Upon a motion by Council Member Leigh, seconded by Council Member Ball, Council moved to deny the proposed amendments to the Town's zoning map and believe denial is reasonable and in the public interest because the current U-1 zoning designation allows for potentially harmful

and inappropriate development and uses not consistent with university property located away from campus

VOTE: Aye – 3 (Scherlen, Leigh, Ball)
 Nay – 1 (Brantz)
 Absent – 1 (Mason)

PRESENTATION OF P&I MONTHLY REPORT

Planning Director Bill Bailey presented the P & I Monthly report. **(Permanently on file in the September 2012 Town Council packet.)**

UPDATE ON STREET TREES FOR HIGHWAY 421

Brian Johnson, Urban Design Specialist, appeared before the Council to present an update on the possibility of street tree plantings and landscaping along the Highway 421 Project U-4020 area. He stated that he has met with representatives from the NC DOT to determine the amount of right-of-way available along Highway 421 in that area, which is very limited especially along the south side of the roadway. He stated that the DOT is trying to finalize the entire project within the next couple of months and may be able to better identify areas for street trees. Mr. Johnson stated that the NC DOT may have a few parcels where the larger landscaping projects could possibly be located. He also explained that it will depend on how much the council would want to pursue private property for the location of larger trees. Council Member Leigh stated that she wants something done about not having any good street trees as you come into Boone. It was the consensus of Council to make formal contact with the NC DOT as to the potential location of street trees. Council directed the Public Works Director to investigate the options available for a possible waiver regarding the three-inch caliper restriction for the center median. Council directed staff to present the information at the November meeting.

MONTHLY NOISE ORDINANCE REPORT

Police Captain Jim Wilson presented a noise report for the period of August 1, 2012 through August 31, 2012. **(Copy of report permanently on file in the September 2012 Town Council packet.)**

MONTHLY WATER USE STATUS REPORT

Public Utilities Director Rick Miller presented the monthly water status report. **(Copy of report permanently on file in the September 2012 Town Council packet.)**

APPROVAL OF BUDGET AMENDMENTS

Upon a motion by Council Member Brantz, seconded by Council Member Scherlen, Council moved to approve the following budget amendment:

Description	Account#	To:	From:
CONTRACTED SERVICES-ADMINISTRATION	010-401-000-577000	\$21,665	
APPROPRIATED FUND BALANCE	010-000-000-499900		(\$21,665)

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

PRESENTATION OF CENTRAL BUSINESS DISTRICT BUILDING HEIGHT AND RELATED APPEARANCE STANDARDS REPORT

Planning Director Bill Bailey presented a report regarding building height in the central business district. **(Copy of report currently of file in the September 18, 2012 supplemental packet.)** The report detailed various building heights of existing buildings in downtown Boone. Mr. Bailey offered three options for consideration by the Council:

- Amend UDO Section 207[b] for the B-1 zone by eliminating secondary height limitations, limiting the primary height to 40 feet, and amending UDO Section 207[c] by removing the B-1 zone from the text.
- Consider similar regulations used by the Town of Blowing Rock to regulate building height which includes a height limit of 30 feet measured from the average elevation of the existing or proposed sidewalk along the primary street to the highest point of the building or structure.
- Consider similar regulations as used by Buena Vista, Colorado which limits maximum height of 35 feet to cornice for roofs with a parapet or a maximum height of 35 feet to midpoint between eave and roof peak.

Council Member Leigh stated that she feels the Town should consider this issue rather quickly so that a structure cannot be built that will later be regretted. She stated that she is comfortable with limiting the building height to 35 feet as a stop-gap measure for the time being until the details are worked out. Council Member Ball stated that he does not want to prohibit three-story buildings. Council Member Brantz stated that he is comfortable with limiting the building height to 40 feet. Council Member Leigh moved to limit building height in the B-1 district to 35 feet, to eliminate secondary height limitations, and to measure the height from the average elevation of the existing or proposed sidewalk along the primary street to the highest point of the building or structure, as an interim measure until further details can be addressed. She stated that Council should place this amendment on the next quarterly public hearing agenda. Town Attorney Sam Furguele pointed out that the issue was on the agenda for information and that the Council would have to amend the agenda to take action on the item. Council Member Leigh withdrew her motion. Council Member Ball stated the council should have more time to review the report submitted by the planning staff. Council Member Leigh moved to amend the agenda to place this matter on the Thursday night agenda for discussion and possible action. Council Member Brantz seconded the motion.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

RECESS MEETING

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to recess the meeting at 9:14 p.m., until Thursday, September 20, 2012, at 6:30 p.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

CALL TO RECONVENE

A recessed meeting from September 18, 2012 was called to order at 6:30 p.m., Thursday, September 20, 2012, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta

Clawson presided. Council members present were Mayor Pro-Tem Jamie Leigh, Rennie Brantz, Andy Ball (arrived at 6:35), and Allan Scherlen. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Town Clerk Kimberly Brown, Finance Director Amy Davis, Police Captain Jim Wilson, Fire Chief Jimmy Isaacs, Public Utilities Director Rick Miller, Public Works Director Blake Brown, Planning Director Bill Bailey, Human Resources Director Peri Moretz, Cultural Resources Director Pilar Fotta, Development Coordinator David Graham, Urban Design Specialist Brian Johnson, and Building Inspector Todd Miller.

ANNOUNCEMENTS

Mayor Clawson called the meeting to order and welcomed all in attendance. She noted that anyone wanting to speak during the public comment period would need to sign the public comment sign-up sheet.

TENTATIVE AGENDA ADOPTION

Upon a motion by Council Member Brantz, seconded by Council Member Scherlen, Council moved to adopt the agenda, as presented.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

PUBLIC COMMENT

Tyler McKeithan, owner of Mountaineer Towing, stated that he wants to speak to the issue of the code amendment to the towing ordinance after it is considered by Council.

Eric McKeithan, co-owner of Mountaineer Towing, would also like to address Council regarding the amendment to the towing ordinance. He stated that he feels like this issue has had negative repercussions on the reputation of their business. He further stated that he feels the amendments to the towing ordinance could possibly jeopardize the safety of his employees.

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Clawson announced the following vacancies:

- **Planning Commission** – Brett Scanlin submitted his resignation from this committee. The person must reside within the town limits, and the term will expire June 30, 2015.
- **Affordable Housing Task Force** – A planning commission representative position is open on this committee as Brett Scanlin served as a planning commission representative to this task force.
- **TDA Board** – Two terms expire on this board on September 30, 2012. One position must be affiliated with businesses that collect occupancy taxes, and one position must be currently active in promoting tourism.

BOARD APPOINTMENTS

- **Affordable Housing Task Force**

There were no applications submitted for the vacant positions.

- **Board of Adjustment**

There were no applications submitted for the vacant positions.

- **Bicycle Plan Steering Committee**

Mayor Clawson noted that there are two applications for consideration from Connor Boyle and Greg Simmons. Council Member Leigh nominated Greg Simmons. Council Member Brantz nominated Connor Boyle. With no other nominations, Mayor Clawson called for a vote on the nominations.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

Both appointees will serve for the duration of the committee, which will be 18 months.

- **Community Appearance Commission**

There were no applications submitted for this vacant position.

- **Greenway, Parks and Gardens Committee**

Mayor Clawson noted that there are two applications for consideration from Claudine Lovins and Albert Lindsey. Council Member Scherlen nominated Albert Lindsey. Council Member Brantz nominated Claudine Lovins. With no other nominations, Mayor Clawson called for a vote on the nominations.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

Both terms expire July 31, 2015.

- **Outside Agency Funding Committee**

There were no applications submitted for this vacant position.

- **Planning Commission**

There were no applications submitted for the vacant positions.

- **Tree Board**

There were no applications submitted for the vacant positions.

CULTURAL RESOURCES BOARD RECOMMENDATION – CREATION OF A JONES HOUSE GALLERY EXHIBIT SELECTION COMMITTEE

Cultural Resources Director Pilar Fotta presented a request from the Cultural Resources Board for the creation of a Jones House Gallery Exhibit Selection Committee. She explained that the committee would be composed of residents who represent the art community and would review applications by artists who are interested in exhibiting in the three Jones House galleries. Additionally, she stated the committee would select and schedule the exhibits in consultation with the Jones House staff. Ms. Fotta explained that the committee would be comprised of 10-12 members with one member from the Cultural Resources Board to chair the meeting. She

indicated that Julia Rechenbach-Moomaw volunteered to serve on the committee. It was the consensus of the council members that more information such as terms and composition of members should be determined before this committee is created. Upon a motion by Council Member Brantz, seconded by Council Member Leigh, Council moved to endorse the concept of a Jones House Gallery Exhibit Selection Committee and asked Cultural Resources Director Fotta to develop further information for the committee to bring before council.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

CULTURAL RESOURCES BOARD RECOMMENDATION – CREATION OF A RIVERS PROPERTY SUBCOMMITTEE

Cultural Resources Director Pilar Fotta presented a request from the Cultural Resources Board for the creation of a Rivers Property Subcommittee. She explained that the subcommittee would consider potential uses for the Rivers property including the two houses; develop any policies and fees necessary for the use of the property; and, consider modifications and maintenance necessary for the use of the property. Town Manager Greg Young suggested a time-limit for the duration of this subcommittee. Upon a motion by Council Member Brantz, seconded by Council Member Scherlen, Council moved to approve the creation of a Rivers Property Subcommittee for a six-month period.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

CULTURAL RESOURCES BOARD RECOMMENDATION – CREATION OF A SAHA-LEASED TOWN OF BOONE PROPERTY SUBCOMMITTEE

Cultural Resources Director Pilar Fotta presented a request from the Cultural Resources Board for the creation of a SAHA-Leased Town of Boone Property Subcommittee. She explained that the subcommittee would evaluate the current lease and relationship between the Town of Boone and SAHA, paying particular attention to the condition and required maintenance of the amphitheatre and buildings as well as all sub-leasing agreements. Lengthy discussion ensued as to the purpose and need of the subcommittee. It was the consensus of the Council that SAHA-leased Town properties should be considered by the entire Cultural Resources Board and that the board should review the possible uses for this property, including but not limited to the proposed Daniel Boone Park. Cultural Resources Director Pilar Fotta stated that she will review and prepare a list of the various leases to present to the Cultural Resources Board. Council members agreed that this subcommittee is not necessary at this time.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

CULTURAL RESOURCES BOARD RECOMMENDATION – CREATION OF A STRATEGIC PLANNING SUBCOMMITTEE

Cultural Resources Director Pilar Fotta presented a request from the Cultural Resources Board for the creation of a Strategic Planning Subcommittee. She explained that the function of this subcommittee would be to create a mission/vision statement and list of values of the board. Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved

to approve the creation of a five-member Strategic Planning Subcommittee for a period of one year.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

PRESENTATION OF CODE AMENDMENT – CHAPTER 73. TOWING

The Town Council considered a proposed amendment prepared by the Town Attorney for Chapter 73 Towing of the Town of Boone Code of Ordinances. **(Copy of draft ordinance permanently on file in the September 2012 meeting information file.)** The proposed amendment would set forth time limits for the releasing of a non-consensually towed vehicle and also require towing companies which operate in town limits to acquire a privilege license from the Town of Boone. Town Attorney Sam Furguele noted that the following section highlighted in blue would require an amendment to the UDO: “...*except to the extent signs with certain characteristics or dimensions are expressly required or authorized hereunder, or to the extent particular signs are limited hereunder.*” Council Member Leigh stated that the ordinance should be fair to all parties but that the situation that occurred to trigger this matter is not the way visitors should be treated while in Boone. Council Member Scherlen voiced his concern about the safety of persons left without their car during late hours. Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to approve the following code amendment:

CHAPTER 73: TOWING

Section

73.01 Definitions

73.02 Limitations of chapter

73.03 Towing Authorized

73.034 Towing of vehicles from parking lots

73.045 Towing of vehicles from parking spaces

73.056 Towing charges

73.067 Use of parking control devices or methods in parking lots and spaces

73.08 Time limits for releasing non-consensually towed vehicles

73.99 Penalty

§ 73.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PARKING-CONTROL DEVICE OR METHOD. For purposes of this chapter, a ***PARKING-CONTROL DEVICE OR METHOD*** shall include, but not be limited to, the use of any mechanical device, such as a “boot” or other device or instrument intended to disable a vehicle or prevent a vehicle from being removed from a private parking lot or space, or the imposition of a private charge for the removal of a vehicle from a private parking lot or space, or any other non-consensual means by which a vehicle is prevented from being removed from a parking lot or space.

PARKING LOT. Any privately owned area created, designated or used for the parking of two or more vehicles, ~~but it shall~~ not include ~~being~~ driveways, garages or other parking areas of a single-family residence or a single-family residence with an accessory dwelling unit, unless the parking area or any portion thereof is leased or rented to persons not residing in the residence or accessory dwelling unit.

PARKING SPACE. Any privately owned area created, designated or used for the parking of vehicles, which does not constitute a parking lot, ~~but it shall~~ not include ~~being~~ driveways, garages or other parking areas of a single-family residence or a single-family residence with an accessory dwelling unit, unless the parking area or any portion thereof is leased or rented to persons not residing in the residence or accessory dwelling unit. One or more parking spaces may, if designated in compliance with this chapter, exist within a parking lot.

TOWING COMPANY. Any person, business or other entity engaged in the towing of vehicles for compensation.

VEHICLE. Any motorized contrivance fitted with wheels or runners, whether or not it is required to be registered or licensed or is registered or licensed, by the state, designed for the transportation of one or more persons, as well as any non-motorized contrivance fitted with wheels or runners, designed for the transporting of anything and designed to be pulled by an automobile, truck or other motorized vehicle.
(Prior Code, § 75.01) (Ord. 03-02, passed 4-24-2002; Ord. passed 10-21-2004)

§ 73.02 LIMITATIONS OF CHAPTER.

This chapter shall not limit or, in any way, modify the authority or abrogate the procedures, created by § 70.08, §§ 91.070 ~~et seq.~~, nor of any towing powers or procedures conferred or created by state general statute or the code of ordinances upon Police, Fire Department or other emergency personnel. This chapter does not ~~in any way~~, amend the provisions of § 153.01 which respect to the ~~number~~, posting, placement, permitting, dimensions or other characteristics or requirements of signs within the town. This chapter shall not apply to the towing of vehicles encroaching into areas clearly designated as fire lanes and shall not limit the right to tow vehicles which are blocking clearly designated areas of ingress and/or egress or encroaching into areas clearly designated and marked for access to dumpster(s) so long as signage reasonably calculated to be seen warns that encroachment into dumpster access areas will result in towing of the vehicle.
(Prior Code, § 75.02) (Ord. 03-02, passed 4-24-2003)

§ 73.03 TOWING AUTHORIZED.

Towing by Towing Companies is hereby authorized within the Town of Boone. No Towing Company may tow a vehicle from a parking lot or parking space with the corporate limits of the town unless it first obtains and has in effect a current privilege license issued by the town in accordance with § 122.35.

§ 73.034 TOWING OF VEHICLES FROM PARKING LOTS.

(A) It shall be unlawful for any person to authorize, direct or contract for the non-consensual towing of a vehicle from any parking lot in the town unless and except if the person uses one of two available methods of notification to the operator or owner of the vehicle, described herein:

(1) It is clearly and conspicuously posted on the premises, in a location(s) designed to be easily seen by an authorized person utilizing the parking lot, on a sign or combination of signs

each no smaller than two square feet and no larger than four square feet, the following information:

(a) The parking lot is a private parking lot and unauthorized vehicles will be towed, e.g., “Private Parking Lot – Towing Enforced”; ~~or~~and

(b) The name and telephone number of the towing company and location where any towed vehicle is taken; or

(2) The person authorizing, directing or contracting for the non-consensual towing places a written notice, in a form as is designed to be weather resistant, on the windshield, under a windshield wiper of the vehicle to be towed or other secure place on the vehicle, designed to be easily discovered by the operator or owner of the vehicle, at least four hours prior to the non-consensual towing of the vehicle if the parking lot is located within the Municipal Service District and at least 24 hours prior to the non-consensual towing if the parking lot is located outside the Municipal Service District, which contains the following information:

(a) The parking lot is a private parking lot and unauthorized vehicles will be towed;

(b) The name and telephone number of the towing company and location where any towed vehicle is taken;

(c) The towing charges imposed by the towing company; and

(d) The existence and amount of any storage charges related to the storage by the towing company of the vehicle and the terms and conditions for the imposition of storage charges.

(B) Once an owner or operator of a vehicle has been notified pursuant to division (A)(2) above, it shall be unnecessary for the person authorizing, directing or contracting for the non-consensual notice to give any further notification should there be any future transgressions with the same vehicle or by the same owner or operator.

(Prior Code, § 75.03) (Ord. 03-02, passed 4-24-2003)

§ 73.045 TOWING OF VEHICLES FROM PARKING SPACES.

(A) It shall be unlawful for any person to authorize, direct or contract for the non-consensual towing of a vehicle from any parking space in the town unless and except if the person uses one of two available methods of notification to the operator or owner of the vehicle, described herein:

(1) The parking space is posted with a conspicuous sign, no smaller than 120 square inches, identifying the space as private property and warning that unauthorized vehicles will be towed, e.g. “Private Parking – Towing Enforced” and listing the name and telephone number of the towing company or a telephone number where the name and location of the towing company can be ascertained; or

(2) The person authorizing, directing or contracting for the non-consensual towing places a written notice, in a form as is designed to be weather resistant, on the windshield under a windshield wiper of the vehicle to be towed or other secure place on the vehicle, designed to be easily discovered by the operator of the vehicle, at least four hours prior to the non-consensual towing of the vehicle if the parking lot is located within the Municipal Service District and 24 hours prior to the non-consensual towing if the parking lot is located outside the Municipal Service District, which informs the owner or operator of the vehicle that the parking space is private property and the vehicle will be towed at the owner’s expense if it is not removed and states the name and address of the towing company to be used. Unless the parking space in question is also located in a parking lot, before having a car towed pursuant to this procedure, the person authorizing, directing or contracting for the non-consensual towing shall first inform the Police Department that he or she is undertaking to have an unauthorized vehicle towed.

(B) Once an owner or operator of a vehicle has been notified pursuant to division (A)(2) above, it shall be unnecessary for the person authorizing, directing or contracting for the non-consensual notice to give any further notification should there be any future transgressions with the same vehicle or by the same owner or operator.
(Prior Code, § 75.04) (Ord. 03-02, passed 4-24-2003)

§ 73.056 TOWING CHARGES.

(A) Limits on towing charges.

(1) No towing company shall charge for the non-consensual towing of a vehicle more than 175% of its normal towing charge for consensual towing of a vehicle. For example, if a normal consensual towing fee is \$35, the maximum non-consensual towing fee is \$61.25. If a normal consensual towing fee is \$45, the maximum non-consensual towing fee is \$78.75.

(2) Whenever a towing company is attempting to non-consensually tow a vehicle and has already connected the vehicle to its tow truck, but the vehicle has not yet been removed from the parking lot or parking space and the owner or driver of the vehicle appears and states a desire that the vehicle not be towed, the towing company shall release the vehicle to the owner or driver upon the payment of 50% of the non-consensual towing charge. If the vehicle has not yet been connected to the tow truck at the time the owner or driver appears, **but the towing company has begun the process of preparing the vehicle for towing,** and **the owner or driver** states a desire that the vehicle not be towed, the towing company shall release the vehicle to the owner or driver so long as the owner or driver immediately removes the vehicle from the premises and pays a fee of 25% of the non-consensual towing charge.

(3) A towing company may charge a daily fee for the storage of a vehicle which has been non-consensually towed to the property of the towing company. No storage **charge fee** may be charged for days when the towing company is not open during the full normal business hours of at least 9:00 a.m. to 4:00 p.m. for the recovery of a non-consensually towed and stored vehicle.

(a) Waiting period before storage fees may be charged. A towing company which is not open for the recovery of a towed vehicle at the time of the non-consensual towing shall not charge a storage fee for the storage of a towed vehicle until at least one full business day (no less than 24 hours) has elapsed from the time the towing company is next open for the recovery of a towed vehicle after the towing. If the towing company is open for recovery of a towed vehicle at the time a vehicle is non-consensually towed, the towing company may begin to charge a daily storage fee 24 hours after the vehicle is detached from the tow truck onto the property where the vehicle will be stored.

(b) Imposition of storage fees if towing company is closed when waiting period elapses. If the 24-hour waiting period for the charging of storage fees elapses at a time when the towing company is not open for the recovery of a vehicle which has been non-consensually towed, a storage fee cannot be charged until at least two hours after the beginning of the next business day thereafter.

(c) Amount of storage fees. Any storage fee charged by the towing company shall be reasonably related to the cost of storing the vehicle. A daily storage charge not exceeding \$10 per day shall be presumed to be reasonably related to the cost of storing a vehicle.

(d) **A towing company which has failed to comply with the provisions of § 73.08 is prohibited from charging any storage fee whatsoever and is subject to such civil and other penalties authorized herein.**

(B) Posting of fees. Each towing company operating within the jurisdictional limits of the town shall post, in a conspicuous location at its place(s) of business, a schedule of fees designed to be easily seen, which states, at a minimum, its consensual towing fee(s), its non-consensual towing fee, its daily storage fee and its hours of operation. The schedule of fees shall at all times

be available for inspection and shall be placed in **thea** location(s) so that a person may obtain the information at times when the towing company is not open for business. Posting of the schedule on the entrance of the towing company, if the entrance of the towing company is approachable without a person having to pass through any barrier when the towing company is closed, shall comply with the requirements of this section with regard to the required place of posting. (Prior Code, § 75.05) (Ord. 03-02, passed 4-24-2003)

§ 73.0**67** USE OF PARKING CONTROL DEVICES OR METHODS IN PARKING LOTS AND SPACES.

(A)(1) It shall be unlawful for any person to authorize, direct, contract for, implement or apply a parking control device or method to a vehicle in any parking lot or space serving or utilized for any non-residential structure(s) or combination of non-residential and residential structures or units in the town, unless and except **if it complies with the following:**

(a) Signs must be displayed on the property in accordance with the following:

(i) All signs must be placed in is clearly and conspicuously posted locations, using print that can easily be read by a person of ordinary vision.

(ii) ~~on the premises, at distances placed no greater apart than every~~ Signs must be displayed, with no less than one sign for every three parking spaces where the devices or methods are to be applied, centered as to those spaces in groups of three or fewer, in using print that can easily be read by a person of ordinary vision, informing the public that unauthorized vehicles will be subjected to the use of a parking control device or method, and identifying, using arrows or other means, all parking spaces where the devices or methods may be used.

(iii) In addition, Aa at least one sign must be posted at each entrance to each parking lot, which discloses **the fact** all of the following:

(A) That the parking lot is private;

(B) That unauthorized vehicles will be immobilized using a parking control device or method, the type of which must be identified; and

(C) The amount of any charge imposed to remove the parking control device or method from the vehicle.

(iv) If a parking lot is in a location where confusion might arise as to which premises are served by the parking lot, **at least one each** sign positioned at **every an** entrance to the parking lot must disclose **for which the** premises and/or establishments **for which** parking is authorized.

(v) If the practice of a particular parking lot owner is to allow the application of a parking control device or method to a vehicle, when the user of the vehicle utilizes the parking lot to visit both authorized premises and/or establishments and unauthorized premises and/or establishments, the sign must so state.

(2) It shall be unlawful for any person to authorize, direct, contract for, implement or apply a parking control device or method to a vehicle in any parking lot serving or utilized for a wholly residential structure or structures in the town, such as an apartment complex, unless and except it is clearly and conspicuously posted on the premises, in location(s) which can be easily seen by an unauthorized person of ordinary vision entering the parking lot by motor vehicle, on a sign or combination of signs, in print that can easily be read by a person of ordinary vision entering the parking lot by motor vehicle, that the parking lot is a private parking lot, and that unauthorized vehicles will be subjected to the use of a parking control device or method. The sign or combination of signs must disclose the amount of any charge imposed to remove the parking control device from the vehicle. The sign must disclose the specific type of parking

control device or method used, e.g. “Private Parking Lot – Unauthorized Vehicles will be Booted, \$50.00 charge for removal.”

(B) It shall be unlawful for any person to authorize, direct, contract for, implement or apply a parking control device or method to a vehicle in any parking lot or space in the town, unless and except that person ~~has provided~~:

(1) **Has** conspicuously displayed contact information for telephone contact by the owner or operator of the vehicle with a person who has the ability to remove the parking control device or method;

(2) **Has arranged that and** the person to be contacted has the capacity to respond within a time period no greater than ten minutes and in every instance **the contact person** actually makes a reasonable effort to respond within a ten-minute period.

(C) **However, Sshould** the Town Manager receive five or more unrelated and credible complaints within any three-month period **of asserting** the failure of the **contact person for the** person authorizing, directing, contracting for, implementing or applying parking control devices or other methods to vehicles in the town to respond within ten minutes to telephone contact by the owners or operators of vehicles which have been booted or immobilized, it shall be presumptively concluded that the person authorizing, directing, contracting for, implementing or applying a parking control device or method to a vehicle in any parking lot or space in the town does not have the capacity to respond within ten minutes. **and T**hereafter, a duly licensed person must be on duty and present in the parking lot or space at all times when any vehicle is subjected to a parking control device or method, and the person must have the means and ability to remove the parking control device or method upon payment of the posted charges.

(D) No person may implement or apply a parking control device or method to a vehicle and no person may demand or accept payment for the non-application or removal of any parking control device or method to or from a vehicle, unless that person has obtained a privilege license from the town, in accordance with Ch. 112 of this code, defined therein as “parking lot attendant,” and has on display on his or her person the picture identification issued by the town upon the payment of the tax.

(E) No person implementing or applying a parking control device or method to a vehicle in any parking lot or space may, when present on the premises of the parking lot, hide or secret himself or herself, but instead must remain in plain view so that his or her presence will act as a deterrent to unauthorized persons contemplating the use of the parking lot.

(F) Any time a parking control device is applied to a vehicle, when the vehicle operator pays the penalty, the vehicle operator must be provided with a receipt which discloses the correct contact information and appeal process, if any, for challenging the action of the person applying the traffic control device.

(Prior Code, § 75.06) (Ord. passed 10-21-2004; Ord. passed 9-15-2005; Ord. passed 11-17-2005; Ord. passed 6-15-2006; Ord. passed 8-17-2006) Penalty, see § 73.99

§ 73.08 TIME LIMITS FOR RELEASING NON-CONSENSUALLY TOWED VEHICLES.

(A) **Any time a towing company engages in the non-consensual towing of a vehicle, during the next six hours and during the next business day following the towing, an agent or employee of the towing company must respond to a telephone call at the contact number provided by the towing company within one-half hour. During that response, upon the request of the driver or owner of the towed vehicle, the towing company must make arrangements for the release of the vehicle upon the full payment of fees, in accordance with subparagraphs (B) and (C).**

(B) The towing company must arrange for and allow the full payment of fees within one-half hour of the end of the conversation described in subparagraph (A). If the towing company is located more than three miles from the location from which the vehicle was towed, the company must travel to the location of the driver or owner of the towed vehicle to allow the full payment of fees to be made, if the owner or driver has requested the opportunity to pay the fees.

(C) Following full payment of fees, the towing company must arrange for the release of the towed vehicle within one hour of payment. If the vehicle which has been towed is more than three miles from the location from which the vehicle was towed, the company must return the vehicle to the owner or driver at the nearest public street to the location from which the vehicle was towed within one hour of payment.

§ 73.99 PENALTY.

(A) Civil penalties. Whoever violates any provision of this chapter shall be subject to the penalty provisions of § 10.99.

(B) Criminal penalties. Any person who violates §§ 73.03, 73.04, 73.05, 73.06(B), or 73.07(A) shall be guilty of an infraction for each violation, pursuant to G.S. § 14-4(b), punishable by a penalty of up to \$50 per violation.

~~(C) Any person who violates § 73.056(A) by charging more than the fees permitted under this chapter or who violates §§ 73.067(B), (C), (D), (E) or (F), or 73.06(C) 73.08, shall be guilty of a class 3 misdemeanor, pursuant to G.S. § 14-4(a), punishable by a fine of up to \$500. Any person who violates any other provision of § 73.05 shall be guilty of an infraction, pursuant to G.S. § 14-4(b), punishable by a penalty of up to \$50.~~

(D) No person convicted of a misdemeanor as a result of violating this chapter may thereafter engage in towing or in the application of parking control devices or methods in the town.

(Prior Code, § 75.99) (Ord. 03-02, passed 4-24-2003; Ord. passed 10-21-2004; Ord. passed 8-17-2006)

VOTE: Aye – 3 (Scherlen, Leigh, Ball)
 Nay – 1 (Brantz)
 Absent – 1 (Mason)

Mayor Clawson declared a break at 8:05 p.m. Council reconvened at 8:20 p.m.

PRESENTATION OF CENTRAL BUSINESS DISTRICT BUILDING HEIGHT AND RELATED APPEARANCE STANDARDS REPORT

Planning Director Bill Bailey presented pictures of various building heights around town. After lengthy discussion in which the council members discussed a compromise for building height in the central business district, Council Member Leigh moved to set an interim limit for primary building height in the central business district of 38 feet, to eliminate secondary height limitations, and to measure the height from the average elevation of the existing or proposed sidewalk along the primary street to the highest point of the building or structure. Furthermore, she moved to send this proposed amendment to a public hearing on Tuesday, October 16, 2012, at 5 p.m. in the Council Chambers, to call a special meeting of the Planning Commission for the same date at 5:30 p.m. and to consider the item on the Town Council agenda that night. Council Member Scherlen seconded the motion.

VOTE: Aye – 1 (Leigh)

Nay – 3 (Scherlen, Ball, Brantz)
Absent – 1 (Mason)

Upon a motion by Council Member Ball, seconded by Council Member Brantz, Council moved set an interim limit for primary building height in the central business district of 40 feet, to eliminate secondary height limitations, and to measure the height from the average elevation of the existing or proposed sidewalk along the primary street to the highest point of the building or structure. Furthermore, he moved to send this proposed amendment to a public hearing on Tuesday, October 16, 2012, at 5 p.m. in the Council Chambers, to call a special meeting of the Planning Commission for the same date at 5:30 p.m. and to consider the item on the Town Council agenda that night.

VOTE: Aye – 3 (Scherlen, Ball, Brantz)
Nay – 1 (Leigh)
Absent – 1 (Mason)

REQUESTED APPEARANCES – RONNIE HOLSTE

Ronnie Holste, chair of the Boone ABC Board, presented the 4th Quarter 2011/2012 Distribution Report. He informed the Council that the board is engaging in a campaign for underage alcohol prevention and education. He stated that \$50,000 was awarded to the Watauga County school system for prevention education, \$10,000 was awarded for local community efforts, and \$25,000 was awarded to local law enforcement.

REQUESTED APPEARANCES – BRIAN LOWE

Brian Lowe appeared before the Council to present information on an initiative to bring a YMCA to Watauga County. He explained that a YMCA Initiative for Watauga County meeting will be held on October 2, 2012, from 5:30 p.m. to 7 p.m. He requested that the Council schedule a special meeting for that date and time to be able to attend the YMCA meeting. Upon a motion by Council Member Ball, seconded by Council Member Scherlen, Council moved to schedule a special meeting for Tuesday, October 2, 2012, from 5:30-7:30 p.m. at the Watauga Medical Center Auditorium.

VOTE: Aye – All
Nay – None
Absent – 1 (Mason)

REQUESTED APPEARANCES – MICHELLE LIGON

Michelle Ligon, chair of the SAHA Board, appeared before the Council to seek sponsorship from the Town in the amount of \$3,500 for the Boone Heritage Festival. Council Member Leigh questioned the increase in funds requested from the Town for this event. Ms. Ligon stated the funds donated by the Town covers the sound engineering and music costs for the festival. Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to sponsor the Boone Heritage Festival on October 13, 2012 in the amount of \$3,500.

VOTE: Aye – 3 (Scherlen, Ball, Brantz)
Nay – 1 (Leigh)
Absent – 1 (Mason)

Before deliberating on the quasi-judicial requests, Town Attorney Sam Furgiuele questioned the members of Council on whether or not they had contact with any of the applicants regarding the

requests. All Council members stated that they had not had any significant contact with any of the applicants for any of the requests.

WATER & SEWER REQUEST – JOHN WINKLER

Town Attorney Sam Furgiuele opened a public hearing at 8:58 p.m., to hear sworn testimony from Jason Gaston on a request for water and sewer service to property located at the intersection of US Highway 321 and Clement Street. Jason Gaston, Valor Engineering, explained the request. He explained that the applicant is still awaiting the adoption of the proposed corridor overlay district options before submitting final plans for this property. With no other testimony offered, Mr. Furgiuele closed the public hearing at 9:04 p.m. Upon a motion by Council Member Brantz, seconded by Council Member Scherlen, Council moved to table this request until the January 2013 regular meeting.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to enter Closed Session at 9:06 p.m. pursuant to NCGS 143-318-11a(3)(5) to hear the following items:

- A. Legal Advice – To consult with the Town Attorney in order to preserve the attorney/client privilege between the attorney and the Town Council to consider and give instruction concerning the handling of legal proceedings against Bank of America.
- B. Legal Advice – To consult with the Town Attorney in order to preserve the attorney/client privilege between the attorney and the Town Council and to instruct Town staff and the Town Attorney concerning the positions to be taken by or on behalf of the Town in negotiating the price and other material terms of a proposed contract for the acquisition of easements in real property related to the proposed raw water intake.
- C. Legal Advice - To meet with the Town Attorney to consider and give instructions concerning the settlement of a claim against Wilco-Hess for penalties for UDO violations.
- D. To instruct staff or agents regarding negotiating position on the price and other material terms of a real property acquisition contract for a portion of the Coffey estate located near Howard Street.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

Upon a motion by Council Member Brantz, seconded by Council Member Scherlen, Council moved to exit Closed Session at 10:58 p.m.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

POSSIBLE ACTION FOLLOWING CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Scherlen, Council moved to adopt the following ordinance:

ORDINANCE # 12-05

WHEREAS, the Town of Boone has adopted a Minimum Housing Code and Regulations of Vacant Buildings, Chapters 151 and 154, respectively, of the Town of Boone Municipal Code, (hereafter, the “Code”); and

WHEREAS, the Town of Boone has condemnation authority over properties located within the Town of Boone and its planning jurisdiction pursuant to N.C. Gen. Stat. §160-426, *et seq.*; and

WHEREAS, following a July 23, 2012 inspection by code enforcement personnel from the Planning & Inspections Department of the Town of Boone and by the Town’s building inspector, of certain property located within the extraterritorial jurisdiction known as 448 Howard’s Knob Road, Boone, NC 28607, and further identified by Watauga PIN number 2901-93-6484-000 (hereafter, “the property”), owned by Bank of America, N.A., a national banking association (hereafter, “the owner”), the inspectors determined that a structure existed on the property, which due to its blighted, dilapidated, damaged and dangerous conditions appeared to be especially dangerous to life, and further appeared to be vacant or abandoned, and appeared to contribute to blight, vagrancy, fire and safety hazards, and constituted a public nuisance; and

WHEREAS, by letters dated July 25, 2012 and July 26, 2012, the owner was notified that blighted, dilapidated, damaged and dangerous conditions existed on the property in violation of Chapters 151 and 154 of the Code, and further notified, pursuant to N.C. Gen. Stat. § 160A-424 of the hazards and unlawful conditions observed on the property; and

WHEREAS, in said letter dated July 25, 2012, penalties of \$200 a day, \$100 for the collective violations of Code Chapter 151, and \$100.00 for the collective violations of Chapter 154, were imposed on the owner; and

WHEREAS, in accordance with the Code, a hearing concerning Code violations was conducted on August 10, 2012, which was attended by an attorney for the owner, after which the findings concerning violations of the Code were confirmed, and penalties were ratified beginning July 25, 2012 and continuing until the owner secures the property; and

WHEREAS, in accordance with N.C. Gen. Stat. §160A-426(c), the Town’s building inspector condemned the property by posting it with a Notice of Condemnation; and

WHEREAS, after duly notifying the owner, the Town’s building inspector conducted a hearing on said condemnation on August 6, 2012, in accordance with N.C. Gen. Stat. §160A-428, but no representative of the owner appeared at the hearing; and

WHEREAS, on August 6, 2012, the Town’s building inspector issued an Order to Take Corrective Action pursuant to N.C. Gen. Stat. §160A-429; and said Order was actually received by the owner on August 8, 2012; and

WHEREAS, although the owner was given notice of its right to appeal the Building Inspector’s Order to the Boone Town Council, in accordance with N.C. Gen. Stat. §160A-430, it did not do so, and the time to appeal has now expired; and

WHEREAS, the Order to Take Corrective Action required the owner to secure the structure from unlawful entry within seven days of the date of the Order and to repair or demolish the structure within sixty days of the date of the Order; and

WHEREAS, the owner has ignored the Building Inspector's Order and has taken no sufficient action to either secure the structure from unlawful entry or to repair or demolish the structure, and furthermore, the owner has expressed through its agents its intention not to take action in response to said order; and

WHEREAS, pursuant to N.C. Gen. Stat. §160A-431, it is a Class 1 misdemeanor for a person to ignore the order of a building inspector to take corrective action; and

WHEREAS, the property evidences the continued entry onto the property of unauthorized persons who are thereby exposed to the dangerous conditions which exist on the property; and

WHEREAS, the Town of Boone is authorized pursuant to N.C. Gen. Stat. §§160A-365 and 160-175 to initiate civil action to collect the civil penalties which have been imposed; and

WHEREAS, Code §§151.99 and 154.99 each authorize a civil action to recover civil penalties imposed for violations of Code chapters 151 and 154, including its expenses, including court costs and attorney fees; and

WHEREAS, the Town of Boone has the authority to initiate an action to abate a public health nuisance pursuant to N.C. Gen. Stat. § 160A-193; and

WHEREAS, the Town of Boone has the authority to enforce the building inspector's Order to Take Corrective Action to pursuant to N.C. Gen. Stat. §160-432;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA, AS FOLLOWS:

1. Bank of America, N.A., a national banking association, is the owner of that certain property located within the Town of Boone's extraterritorial jurisdiction known as 448 Howard's Knob Road, Boone, NC 28607, and further identified by Watauga PIN 2901-93-6484-000.
2. Bank of America, N.A., has violated the Town Code by failing to maintain and timely repair its blighted, dilapidated, damaged and dangerous structure located on said property. Said conditions and violations existed as of July 25, 2012 and continue unabated through the present.
3. Bank of America, N.A., is responsible for civil penalties through September 20, 2012 of \$11,600.00, and said penalties continue to increase at the rate of \$200.00 per day. Bank of America, N.A., has failed to pay any accrued civil penalties.
4. Bank of America, N.A., has wrongfully ignored the Order to Take Corrective Action issued on August 6, 2012, and has neither secured the property nor demolished or repaired the property, though its time to demolish or repair extends through and including October 5, 2012. The failure of Bank of America, N.A., to take the ordered corrective action is a Class 1 misdemeanor.
5. The property belonging to Bank of America, N.A., constitutes a public health nuisance.
6. The Town Attorney is ordered to investigate the possibility of initiating criminal charges against those persons directing the actions of Bank of America, N.A., for its failure to comply with the Order to Take Corrective Action issued by the building inspector on August 6, 2012.
7. If Bank of America has not repaired or demolished the structure located on its property by October 6, 2012, the Town Attorney is ordered to initiate a legal action in the General

Court of Justice in Watauga County, North Carolina against Bank of America, N.A., to seek a mandatory injunction requiring Bank of America, N.A., to abate the public health nuisance and to comply with the Order to Take Corrective Action, as well as to collect the unpaid penalties for the violations by Bank of America, N.A., of Chapters 151 and 154 of the Code, and to recover the Town's expenses, including attorney's fees and costs.

8. If Bank of America has properly and completely repaired or demolished the structure on its property by October 6, 2012, but it has still failed to pay accrued penalties, the Town Attorney is ordered to initiate a legal action to collect the unpaid penalties for the violations by Bank of America, N.A., of Chapters 151 and 154 of the Code, and to recover the Town's expenses, including attorney's fees and costs.
9. The Town Clerk shall record this Ordinance in the registry of the Watauga County Register of Deeds under the name Bank of America, N.A.

Adopted this 20th day of September, 2012.

Loretta Clawson, Mayor

ATTEST:

Kimberly S. Brown, Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 4, PAGE(S) 31-33)

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

ADJOURNMENT

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to adjourn the meeting at 10:59 p.m.

VOTE: Aye – All
 Nay – None
 Absent – 1 (Mason)

Kimberly S. Brown, Town Clerk

Loretta Clawson, Mayor