

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
September 18, 2018**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order on Tuesday, September 18, 2018 at 6:00 p.m. at the Council Chambers located at 1500 Blowing Rock Road. Mayor Rennie Brantz presided. Council Members present were Mayor Pro-Tem Loretta Clawson, Lynne Mason, Sam Furguele, and Marshall Ashcraft. Staff present included Town Manager John Ward, Town Clerk Nicole Worley, Public Works Director Rick Miller, Public Works Deputy Directors Todd Moody and Josh Eller, Facilities Maintenance Superintendent Justin Stines, Fire Chief Jimmy Isaacs, Planning Director Jane Shook, Police Chief Dana Crawford, Urban Design Specialist Brian Johnson and Downtown Boone Development Coordinator Lane Weiss. Town Attorney Allison Meade was also in attendance.

ANNOUNCEMENTS

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Brantz announced the following board vacancies:

BOARD OF ADJUSTMENT

Two alternate positions

COMMUNITY APPEARANCE COMMISSION

Three positions

CULTURAL RESOURCES ADVISORY BOARD

Two positions

DOWNTOWN BOONE DEVELOPMENT ASSOCIATION

One Council appointed position

HISTORIC PRESERVATION COMMISSION

Two positions

OUTSIDE AGENCY FUNDING REVIEW COMMITTEE

One position

WATER ADVISORY COMMITTEE

Two positions

TENTATIVE AGENDA ADOPTION

Town Manager John Ward stated that he had no additions or deletions to the agenda. Upon a motion by Mayor Pro-Tem Clawson, seconded by Council Member Mason, Council voted to approve the tentative agenda as presented.

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

PUBLIC COMMENT

Klee Liles, owner of Mount Lawn Cemetery in Boone, addressed Council to ask that the Town take over ownership of the cemetery. Mr. Liles stated that for many different reasons, he could no longer encumber the cemetery and that he would like to gift the cemetery to the Town. He added that if accepted, the cemetery would be transferred to the Town debt-free and that he believed there to be a substantial amount of income to be gained in the future due to there being a number of plots that have yet to be sold. In response to a question by Council Member Ashcraft, Mr. Liles stated that there was approximately \$107,000 in a perpetual care fund for the cemetery, but that he would prefer to not transfer that amount to the Town in the event the proposal was accepted by Council. It was the

consensus of Council to explore this matter further and to direct staff to prepare a pro and con analysis for review at the regular October meeting in regards to the Town accepting ownership of the cemetery.

PUBLIC HEARING - USAGE OF BOLICK FARM STRUCTURES FOR FIRE TRAINING

Mayor Brantz opened the public hearing at 6:15 p.m. regarding the usage of structures on the Bolick Farm for fire department training.

A statement by Pam Williamson was distributed to Council prior to the meeting since she was unable to attend the Public Hearing.

"Dear John and Council Members,

I regret that I cannot attend the public hearing scheduled for tonight regarding the burning of the two remaining houses on the Bolick property. I appreciate your consideration of and responses to the questions I bring forward in this email and formally request that this communication be made a part of the permanent record of tonight's hearing and that hard copies be submitted to Council members at the hearing.

It is my understanding from your agenda packet materials for tonight's hearing that Council decided to move forward with burning the two remaining Bolick houses based in part of staff's comment that an arborist did determine that the trees at the previous training exercise at the location (the primary Bolick House) were not permanently damaged." I would note for the record that this determination was (1) made after the fact, (2) that this determination in no way pertains to any trees that will may affected by the burning of the two remaining houses, and (3) that the Town's subjection of any trees to possible injury by the burning of the two remaining houses without a permit is in violation of Ordinance Chapter 97.

On 25 August 2017, I filed a complaint that the town had violated this very tree ordinance by failing to achieve the permit required prior to the training burn of the primary Bolick house. The Town's response was that I "lacked standing" to have my complaint considered even though this property is owned by the citizens of Boone. That would include me. (Since my foiled complaint, I have appeared before Council outlining specific needed changes to this ordinance, but nothing has been addressed to my knowledge.)

Your own ordinance requires that you, a public entity as clearly defined by ordinance Chapter 97, "conform" to the requirement that you submit to the Town Landscape Planner the detailed information required under Section 97.04 "in writing on a form provided by the Department of Public Services" prior to the burning of the two remaining Block houses in order to achieve the required permit.

In short, you cannot burn the two remaining Bolick houses without the permit expressly required of you under your own ordinance.

Perhaps I am missing the fact that you have already completed the requirements and assessments of Ordinance Chapter 97. To this end, I am formally requesting via this email:

- (1) A copy of the Town's written request submitted to the Town Landscape Planner on the Department of Public Services' form required under Ordinance Section 97.04 prior to the burning of the two remaining Bolick houses;*
- (2) A copy of the Town Landscape Planner's assessment and requirements of the Town as stipulated under Ordinance Section 97.04 prior to the burning of the two remaining Bolick houses; and*
- (3) A copy of the Town's tree permit that allows it to burn the two remaining Bolick houses as required under Ordinance Section 97.04.*

I encourage Council members not to authorize burning of the two remaining Bolick houses until the requirements of Ordinance Chapter 97 have been met as required, and I am happy to answer any questions."

Mayor Pro-Tem Clawson stated that if the structures were burned, she hoped that staff would watch out for the trees near the property and do everything they could to ensure the trees weren't damaged. Town Manager John Ward reminded Council that trees would be impacted by the site plan that was approved as part of the last budget. He also noted that the asbestos abatement at the structures had already been completed. Council Member Furgiuele asked

whether staff had reached out to non-profit agencies to see if they would be interested in moving the houses off the property. Mr. Ward stated that staff had not reached out to anyone due to the poor condition of the structures, but that he would reach out to the Northwestern Region Housing Authority to see if they would be interested in the structures. Mr. Furguele added that although there was no public outcry at the public hearing and given the lack of affordable housing in the Town and County, he would like staff to look into donating the structures. The public hearing was closed at 6:25 p.m.

REQUESTED APPEARANCES

YVONNE ZIEL AND AMBER MORETZ - RIVERSTONE CONDOMINIUM ASSOCIATION

Yvonne Ziel as representative of the Riverstone Condominium Association stated that the association had polled residents about the potential of the Town taking over maintenance of Eli Hartley Road and that 67% of residents were in favor of the Town taking over ownership. After a question posed by Town Attorney Allison Meade, Ms. Ziel stated that the association did not keep track of the votes in opposition, and felt that no one would have objected, but that many owners did not respond to the poll due to a portion of the homeowners living outside of the area. Ms. Meade presented Council with an analysis on the property in question and the property beyond Riverstone and stated that it was her opinion that Riverstone had no authority to grant the Town an unlimited easement. Council Member Furguele expressed concern that the property owner beyond Riverstone would be enjoying the benefits of the Town taking over Eli Hartley Road and that if this road was accepted by the Town, it could facilitate future development on the top of the mountain. Ms. Meade also noted that she found a 2015 road maintenance agreement between Riverstone Townhomes and Riverstone Condos regarding snow removal and landscaping, but the agreement did not address road repair or improvements and was not clearly binding as it had only been signed by the POA presidents. She also noted that the Smith Mountain Townhomes that also used Eli Hartley Road apparently were not contributing to road maintenance. She added that if Council accepted dedication of the road, she would like to do additional research about who would need to sign off on the agreement. Ms. Meade stated that she was unsure if the 67% of residents who voted in favor of donating the road was sufficient, noting that Eli Hartley Drive was a private road and that every single condo owner maintained the right to keep the road private, which would mean every owner would need to sign off on the dedication to the Town. Phil Vignola of the Riverstone Condominium Association expressed frustration that the Town was ready to accept the donation of the road in the past, but for whatever reason the ball was dropped and that Riverstone homeowners were now paying the price. Mr. Furguele stated that he was Town Attorney during the time this matter was initially brought to Council, and that Council felt they could not trust the developer. He added that he was reluctant to accept donation of Eli Hartley Road if there were no steps that could be taken to prevent further development at the top of the mountain. Council Member Mason stated that she felt Riverstone homeowners were in a catch-22 situation due to the matter being dropped in the past. She added that the condos were a more affordable housing option for those who live and work in the community and that because the Town didn't follow through with potentially taking over the road in the past, that there was less opportunity for redress for the current homeowners. Ms. Mason stated that the Town took over other private roads which were built to the same standards and that she felt like the Town had some responsibility for the situation since the matter was dropped years ago. Mr. Furguele asked whether there should be a policy for handling matters similar to this in the future. Ms. Mason stated that she believed the difference in this situation to be that Eli Hartley Road was built to Town specifications. Mr. Furguele noted that the Town has always required people build in accordance with UDO specifications and that there were standards in place for private roads. Mr. Vignola stated that the developer did intend to donate Eli Hartley Road to the Town and that until the Town found out derogatory information about the developer, he believed the Town was ready to accept the donation. Ms. Mason inquired whether the condo association had looked at recourse against the developer, to which Ms. Ziel responded that it had been looked into and that she did not believe the homeowners had any recourse. Public Works Director Rick Miller stated that it would cost approximately \$1,500 in salt a year to maintain the road in the winter and a repair cost of approximately \$35,000 to bring the road up to Town standards. He added that if the road were brought up to current standards, he would have no concerns with taking over ownership of the road. Ms. Mason asked whether the homeowners would be willing to raise the money to cover the cost of repairs. Mr. Miller suggested a cost-share option to

bring the road up to standards, but expressed concern that it would open the flood gates for more homeowners wanting the Town to take over ownership of other private roads. Mr. Vignola stated that he did not believe homeowners would be able to raise the money for a cost-sharing option and noted that the Town inspected the road previously and that it passed inspection at the time, but that over the time, the road had accumulated wear and tear. In response to a question by Mr. Furgiuele, Mr. Miller stated that he would have expected some degradation to the road if it had been built to standards, but not to this degree and that in his opinion, Yosef Drive was in better condition when it was taken over by the Town than Eli Hartley Road is now. Mr. Furgiuele continued by saying that the Town had a large network of private roads and that he was reluctant to take over ownership of Eli Hartley Road and that without a policy regarding matters such as this, he was not prepared to support the donation at this time. Ms. Mason stated that she believed the original intent was that Eli Hartley Road was to be built to Town specifications and then transferred to the Town and that the matter was inadvertently dropped. Mr. Furgiuele reiterated his desire for the Town to create a policy to handle future requests such as this and that he felt it would not be fair for the Town to not consider other requests. Ms. Meade agreed that the Town should have a policy on the acceptance of the donation of private roads. Mr. Ward stated that he had received word from the previous Public Works Director that the agreement was that the repairs were to be made by the condo owners before the street was accepted by the Town. Condo owner Dan Nelson stated that the homeowners were never told that they had to pay for the repairs to the road up front before the Town would accept the donation of the street. Council Member Ashcraft stated that he would be in favor of a cost share mechanism in this situation. Ms. Meade noted that she would need to research the legal aspects of a cost share program. Council Member Ashcraft made a motion to direct the Town Attorney to investigate cost sharing options between Riverstone Condominium Association and the Town for Eli Hartley Road repairs. Council Member Mason seconded the motion. Council Member Furgiuele stated that he was in opposition of the motion and that staff should begin work on a policy that would address these types of issues. After brief discussion, a vote was taken on the motion, with Council Members Ashcraft and Mason voting in favor of the motion. Mayor Pro-Tem Clawson and Council Member Furgiuele voted against the motion. Since Council Member Ulmer was not present, Mayor Brantz was allowed to vote to break the tie and voted in opposition of the motion. Council Member Furgiuele then made a motion to direct staff to bring back recommendations regarding a policy that would address the dedication of private roads as well as water and sewer lines to the Town and to include a cost sharing mechanism. Mayor Pro-Tem Clawson seconded the motion.

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

DAVID BRYAN - ADD AGENDA ITEM FOR OCTOBER BOARD OF ADJUSTMENT MEETING

David Bryan stated that he needed to get plans for a new subdivision approved quickly in order to begin construction on the infrastructure before the winter. Mr. Bryan stated that due to being unfamiliar with the process, he missed the deadline for October's Board of Adjustment meeting by two days and asked Council to allow his case to be heard at the October Board of Adjustment meeting. Planning Director Jane Shook expressed concern with staff not having sufficient time to review Mr. Bryan's application, since he had not yet submitted one and that a special Board of Adjustment meeting may need to be scheduled to accommodate Mr. Bryan's request. Brief discussion ensued regarding the Council's ability or lack of ability to schedule a special meeting of the Board of Adjustment. Council Member Mason stated that Council should have a policy in place for situations like this and that the UDO was unclear on the scheduling of Board of Adjustment meetings. It was the consensus of Council that Mr. Bryan work together with planning staff on scheduling a special Board of Adjustment meeting to consider this matter.

RESULT:	CONSENSUS
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ERIC PLAAG - OBSERVANCE OF ARMISTICE DAY

Dr. Eric Plaag presented a request to Council that the Town support area celebrations of the upcoming 100th anniversary of the Armistice of World War I on November 11, 2018. Council Member Mason made a motion to direct staff to collaborate with area churches and with ASU to participate in the ringing of the bells at 11:00 a.m. on November 11th in honor of the Armistice of World War I. Mayor Pro-Tem Clawson seconded the motion.

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

HARVARD AYERS - REQUEST TO SCHEDULE MEETING ON RENEWABLE ENERGY PROJECT

Dr. Harvard Ayers asked Council to consider a joint meeting with the Sustainability, Economics and Environment Committee to discuss potential solar sites in town and a possible electric vehicle purchase plan. After brief discussion regarding the committee's meeting schedule, Council Member Mason made a motion, which was seconded by to schedule a joint special meeting of the Town Council and the Sustainability, Economics and Environment Committee on December 13, 2018 at 5:30 p.m. at Council Chambers.

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

PHYLLIS KLODA - CONSIDERATION OF CHANGES TO UDO

Phyllis Kloda, Dean of the College of Fine and Applied Arts at Appalachian State University presented Council with a request to allow a temporary use in the HOW Space on Howard Street for collaborative University and community arts based programming, adding that the lease between ASU and the owners of the space would be terminated if this text amendment was denied by Council. Council Member Furguele stated that he was concerned that the University had the capacity to devour the Town and that he was disturbed that ASU would enter into this lease without talking to the Town about the concern first. The ASU representatives stated that they were hired after the lease was signed and that they were working to correct the mistake. Planning Director Jane Shook stated that staff was directed by the previous Planning Director to issue permits to the HOW Space on the basis that it was a gallery not operated by ASU. Town Attorney Allison Meade suggested that there may be a way to fix this mistake by creating a separate non-profit organization with the College of Fine and Applied Arts that would allow them to legally use the HOW Space for their programming. Mr. Furguele asked that if the UDO were to be amended that a limitation be included that the design and operation of the organization would be to interact with the Town and not be an isolated University function, and also that there be a limit to how many buildings could exist as such a purpose on each block of the downtown area. He added that the operation should be time limited and only in the B-1 District. Ms. Shook noted that there was a similar issue with the ASU Fermentation Science Program in which staff was directed by Council to not rezone the property, but to allow the use in question as a permissible use. Ms. Meade offered to work with staff to bring language back to Council for their consideration which would allow the temporary use of the HOW Space for the

collaborative University and community arts-based programming. Mr. Furguele made a motion for staff to bring back language that allowed a temporary use for collaborative University and community arts-based programming and that there be a six-year time limit with the option to renew after a public hearing is held. Council Member Mason seconded the motion. Council Member Ashcraft suggested a square footage limit as opposed to a site location so as not to open B-1 properties up to being purchased by non-tax paying entities. Mr. Furguele stated that he was more comfortable with these spaces being spread out and amended his motion (which was accepted by Ms. Mason) to allow for one ASU use in each block of the downtown area. Ms. Shook noted that it would be difficult for renters to find lease space that always met size requirements and that the requirements would be difficult for staff to enforce.

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

BOONE CLIMBERS COALITION - ADDITIONAL RECREATIONAL OPPORTUNITIES ON GREENWAY

Mayor Brantz declared a break at 8:33 p.m. Council reconvened at 8:41 p.m.

The Boone Climbers Coalition presented a request that Council allow them to install a set of anchors on top of the highest boulder in a group of boulders off the Greenway Trail near the Waste Water Treatment Plant that would allow climbers to safely climb. Town Attorney Allison Meade stated that she didn't see an issue with the proposal, since people were climbing the boulders in their current state and noted that there was law that could grant the Town immunity to liability claims, but believed it would be wise to install a warning sign for liability purposes. Upon a motion by Mayor Pro-Tem Clawson, seconded by Council Member Furguele, Council voted to approve the proposal from the Boone Climbers Coalition which would allow them to install a set of anchors on top of the highest boulder in a group off the Greenway Trail near the Waste Water Treatment Plant.

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

APPROVAL OF ITEMS ON CONSENT AGENDA

Council Member Furguele stated that he had not had time to review the August 16 Town Council Regular Meeting minutes and asked that those be tabled until the October meeting. He also asked that part of Consent Agenda Item 10 - Consideration of Budget Amendments (Re-encumbered funds from FY 2017/2018 to FY 2018/2019), Consent Agenda Item 11 - Send Text Amendment Cases to September 24 Public Hearing (Items 2-4) and Consent Agenda Item 12 - Consideration of Changes to Personnel Policy Regarding the Advertisement of Job Vacancies be moved to Council Matters for discussion. Ms. Meade noted that there were issues with text within the August 14 and 16 minutes which should have been updated, but that the amendments did not carry through, and that these should be corrected to the most current versions. Upon a motion by Mayor Pro-Tem Clawson, seconded by Council Member Ashcraft, Council voted to approve the following items on the Consent Agenda:

- August 9, 2018 Town Council Special Meeting Minutes
- August 13, 2018 Town Council Special Meeting Minutes
- August 14, 2018 Town Council Regular Meeting Minutes
- August 24, 2018 Town Council Special Meeting Minutes
- August 27, 2018 Town Council Special Meeting Minutes

- License Agreement - 2018 Haunted Horn at Daniel Boone Park (see below)
- Appropriation of Donation of Funds
- Budget Amendment (Police Department) Replacement of one retired canine and add one additional canine and equipment in the amount of \$17,900
- Budget Amendment (Police Department) Funds needed for purchase of eight light mounts in the amount of \$992
- Case PL01806-082218 Brownfield Disclosure Text Amendment

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

Council Member Furguele made a motion, which was seconded by Council Member Mason to table the re-encumbrances until the October Council meeting so that Finance Director Amy Davis would be able to attend and that the item be placed under Council Matters to allow discussion. Council Member Mason seconded the motion.

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

STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

LICENSE

THIS LICENSE is granted this 18th day of September, 2018, 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 areas as to which SAHA has rights pursuant to its license with the Town dated December 15, 2016. 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 on Attachment "A," and shown on Attachment "B" attached hereto 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 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 2018 Haunted Horn: "The Accused Daniel Boo"
 - 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 restrooms on the property, as further 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 are 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 the signed copy of this license agreement.
- 6. **Licensing Fee; Consideration to Licensor; Disclosure Obligations:** For purposes of this License, the license fee has 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. § 55A-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 Licensed 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 and restore the license area to a good and sanitary condition as the result of its use. 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, which should be cleaned after every 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 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 Licensee, its employees, contractors, invitees, or others). Licensee shall make no repairs, and no person will be hired to evaluate, assess or undertake any repairs without first notifying Licensor in writing, at least ten days in advance, of Licensee's intention to evaluate, assess, undertake or make such repairs, or in the event of an emergency, without first notifying 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 Boone 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's 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, 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 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 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 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 North Carolina Corporation.

12. **Keys and Locks:** ~~Licensee must provide duplicate keys to all structures in the License area to Licensors at the inception of this License. Should Licensee change any of the locks or add any locks to any of the doors, windows or other locked feature of the License area, Licensee shall, at its own expense, immediately provide duplicate keys to all such locks to Licensors. At the end of the License, Licensee shall return or turn over all keys which relate to the License area to Licensors. Not applicable.~~
13. **Information Required to be Furnished:** Licensee shall provide Licensors with its current by-laws at any time requested. Within ten days of any change, Licensee shall provide to Licensors any change to its by-laws, shall notify Licensors of any change to its management staff, and at the execution of this license and any time such composition changes, upon request shall advise Licensors of the names and addresses of each member of its board of directors.
14. **Termination or Expiration:** This license is terminable at will by either party. Upon termination or expiration of this license, Licensee shall remove its personal property from the license area and shall surrender the license area to Licensors in good order and repair, reasonable wear and tear excepted.
15. **Abandoned Property:** Following the termination or expiration of this license, any property left by Licensee on the license area shall be considered abandoned and may be retained by or disposed of by Licensors as it sees fit. However, Licensee shall have a ten day period following the termination of this lease to remove any building(s) which it owns. Thereafter, such building(s) will be deemed donated to Licensors. 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 Licensors.
16. **Waiver and Exculpation, Indemnification:** Licensors shall not be liable for, and Licensee hereby waives all claims against Licensors 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 Licensors from and against any and all claims, actions, loss, cost, damage, expense, 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 the Licensors. In the event that the Licensors are 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 Licensors from any and all liability that may result therefrom, including Licensors' costs in defending itself against any claim, action, litigation or other assertion of liability.

17. **Insurance:** Licensee shall provide and maintain event 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 Licensors 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 in paragraph 16, as well as damage which Licensee, its participants, employees, patrons, invitees, agents, or contractors may cause to the real or personal property of Licensors. Licensors 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 Licensors. Licensee shall provide the aforesaid insurance policies to Licensors 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 arises from the event, regardless of whether it may result in a claim of liability against Licensor.

18. **Modification of License:** There shall be no modification of this License by Licensee unless the modification is in writing and signed by both parties; provided, however, that, Licensor retains has the right to modify the License unilaterally as it may determine necessary with notice and cause. 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.
19. **Assignments:** This license may not be assigned.
20. **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.
21. **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.
22. **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.
23. **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.
24. **Waiver:** Licensor's failure to strictly enforce its rights under this license shall not constitute a waiver of such rights.
25. **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.
26. **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.
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 **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

28. **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 **Licensor** and **Licensee** have executed this Lease 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, Licensor

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.

BY: _____

Clyde Burleson, Chair, Board of Directors

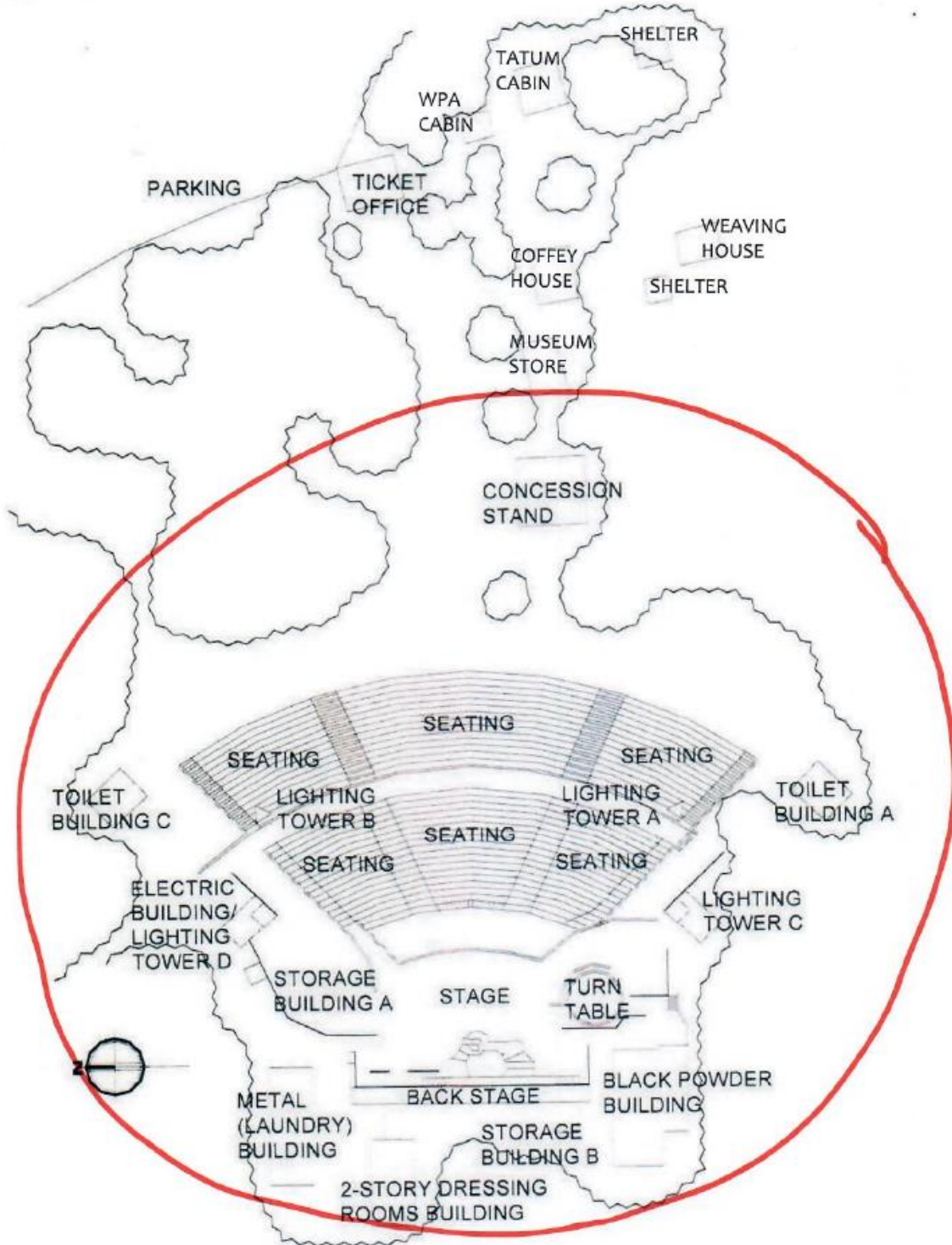
Attest: _____ (Seal)
Secretary

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 12, Saturday, October 13, Friday, October 19th, Saturday, October 20, Friday, October 26, and Saturday, October 27, 2018 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 September 22, 23, 28, 29 and 30, October 3-11, 2018. Dates for clean-up November 3-4, 2018. Additional clean up may 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 to the recycling facilities 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 the 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.

"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?

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)

COUNCIL MATTERS

SEND TEXT AMENDMENT CASES TO SEPTEMBER 24 PUBLIC HEARING

Council Member Furgiuele stated that he had concerns in the existing language pertaining to the Board of Adjustment. Mr. Furgiuele stated that he was unaware that the chairman could be reappointed as chairman for an unlimited period of time and that this language should be modified to allow for rotation of the leadership of the board. He also suggested that the chairman of the Planning Commission should not have unlimited reappointment, suggesting a four-year limit, and added that once a term had expired, if the member took a

break, they could reapply at a later date. Mr. Furgiuele asked that the following amendments be made:

1. UDO Section 2.02.05 Planning Commission officers (b) be amended to read *"If neither the Chair nor the Vice-Chair are present, the presiding officer shall be elected by majority vote of members present."*

2. UDO Section 2.02.05 Planning Commission officers (a)(1) to be made to read *"The Planning Commission shall designate the Chair and Vice-Chair of any subcommittee approved by Town Council unless the Town Council has designated a Chair or Vice-Chair."*

Upon a motion by Council Member Furgiuele, seconded by Mayor Pro-Tem Clawson, Council voted to approve the changes to Section 2.02.05 Planning Commission officers as amended and to send the text to the September 24 Public Hearing.

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

Council Member Furgiuele made a motion to modify the amendments made to UDO Section 2.01 Board of Adjustment the phrase "set forth" should be replaced with "adopted" throughout the section, to approve the changes as amended and to send the text to the September 24 Public Hearing. Council Member Mason seconded the motion.

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

Council Member Furgiuele stated that he had concerns with the new criteria presented for the appeal of civil penalties and asked that Section 6.04.08 Decision (b) be amended to read *"When hearing an appeal regarding the amount of a civil penalty..."*. Mr. Furgiuele also suggested that UDO Section 6.04.08 Decision be amended to replace the word "shall" with the word "**may**". Brief discussion ensued regarding Section 6.04.08 Decision (b)(1) the gravity of a violation and who would determine the same. Town Attorney Allison Meade offered clarification on this amendment, stating that the proposed amendments went beyond the scope of Council's prior mandate, but that as she looked at other codes, she found some that provided zero guidance on penalties and others that provided extensive guidance, and that she took Council's prior guidance to indicate a possible desire for more guidance on penalties. She stated that in her view in the current code, the board could have already considered arguments with respect to the delay of time and had done so in the past, but that she took Council's direction to mean that it should be made explicit within the code. Mr. Furgiuele added that he was concerned about the added standard relating to the gravity of violations since there were no standards in place currently for determining the gravity of a situation. Ms. Meade stated that it would be difficult to make determinations on gradations of the gravity of violations in advance and suggested that it be left up to the board to exercise common sense and a sense of balance. Mr. Furgiuele continued to suggest that Section 6.04.08 Decision (b)(2) be amended to read *"The timing and effectiveness of any action taken by the appellant to remedy the situation."* Mr. Furgiuele asked that Section 6.04.08 Decision (b)(4) be amended to include provisions for time that had elapsed between violations, as well as the similarity between the violation for which the current penalty was being assessed. He suggested the following language *"Any previous violation that has been committed by the appellant and the time frame within which the previous violation occurred and the similarities to the violation for which the current penalty is assessed."* Council Member Furgiuele made a motion, which was seconded by Mayor Pro-Tem Clawson, to send the text as amended to the September 24 Public Hearing and that at the Public Hearing consideration could be given to further specifying what is meant by the phrase in Section 6.04.08 Decision "gravity of the situation".

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

CONSIDERATION OF CHANGES TO PERSONNEL POLICY REGARDING THE ADVERTISEMENT OF JOB VACANCIES

Council Member Furguele suggested the following revisions to Article IV of the Personnel Policy in addition to the revisions presented by the Town Attorney:

1. In Section 1 Advertising strike the following "*When appropriate, as determined by the Town Manager,*".
2. Add a provision to require that applications of applicants who were not chosen for a job should be saved for three years after the hiring decision is made.
3. In Section 3 Recruitment, Selection and Appointment, subsection (e) Selection - un-strike "*in writing*".

Upon a motion by Council Member Furguele, seconded by Council Member Mason, Council voted to approve the changes to the Personnel Policy as amended.

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

TOWN MANAGER UPDATE

Town Manager John Ward updated Council on the following topics:

-The Facilities Maintenance Department is currently installing new sidewalk on Highway 105 Extension from Quail Street to Hwy 421. This project is listed as priority #4 on the Sidewalk Priorities List and will be completed this fall.

-New River restoration update at the Bolick Property: Brushy Fork Environmental has been stockpiling materials for the stream restoration project over the past couple of weeks. Stream construction will begin in full force once the flood waters recede, with construction beginning on the upstream side of the project near the Highway 421 bridge.

-In conjunction with the statewide "Fall Litter Sweep 2018" campaign issued by Governor Roy Cooper for September 15th through September 29th, the Town of Boone will hold a "Fall Boone Clean-Up Day" on Saturday, September 22, 2018. Interested participants may come by the Town of Boone Public Works Department located at 321 East King Street between 8:00 am - 1:00 pm to pick up cleaning supplies. In addition, Town residents will receive an additional free curbside pickup of collected debris, (household junk/bulk items, yard debris or brush) through September 29th. For more information, citizens should contact Shannon Isaacs at (828)268-6230.

-In the first week of September, Republic Service, Inc. delivered approximately 2500 - 96 gallon carts to single family residence throughout the Town of Boone. From both the door to door delivery operations and Public Works office standpoint, the process went very smoothly. The majority of residents contacted during the delivery process shared positive remarks regarding the cart's additional capacity as well as the ease of rolling it to the curb.

-Website updates

-McLaurin Parking will have new signs up by the end of the week

-Possible partnership with New River Light and Power and NTE Energy for a solar farm on ASU property

-Letter was sent to New River Light and Power and ASU regarding the state of the old Power House ruins of the Greenway Trail

-Boone Fire Department's swift water rescue team was sent to Pender County to assist with hurricane clean-up efforts. This was made possible through a state-wide mutual aid agreement and reimbursement will be awarded to the Town.

-Spectrum Internet Assist Program information will be listed on the Town website

-Staff has received several calls from residents inquiring about an urban archery program to allow deer hunting inside Town limits. Mayor Pro-Tem and Council Member Furguele spoke out against this program.

- Touchdown Boone event on September 21st
- Jimmy Smith Maranon rescheduled to October 19th
- Greenway Skate Park Fundraiser September 20th
- County Manager Deron Geouque has advised that a letter would be sent to Council agreeing to a meeting to discuss sales tax and other items

REQUEST FOR PERMISSION TO PROCEED WITH USE OF BOLICK FARM STRUCTURES FOR FIRE TRAINING

Fire Chief Jimmy Isaacs informed Council that a timeframe was needed in order to move ahead with the process of burning the two remaining structures on the Bolick Property and that a separate permit would be obtained from the state for each structure. Mr. Furgiuele stated that he preferred that either or both houses be saved and moved for habitation if such was possible. Town Manager John Ward responded that the house previously moved to the site was in unreclaimable condition, but that staff could reach out to Ned Fowler at Northwestern Regional Housing Authority to see if there was any interest in relocating the brick structure for a non-profit or affordable housing option. Town Attorney Allison Meade stated that in her opinion, Chapter 97 of the Town Code did not require the Town to get permits from itself as some have mentioned, but that it was written to prohibit other people from cutting down Town trees without the Town agreeing to it. She noted that there was never a permit process for the Town to cut down its own trees and that the Town was not required to get a permit. She stated that she had not had time to review Chapter 97 but would try to work on proposed changes and bring them back to Council in October. Mr. Ward reminded Council that the approved site plan would impact trees when site preparations began. In response to a question raised by Ms. Meade, Chief Isaacs stated that he did not anticipate any damage to trees on the property since there were none in close proximity to the structures, but that he could not guarantee that there would be no damage. Public Works Director Rick Miller noted that trees on the property had already been trimmed by Blue Ridge Electric Membership Corporation. Council Member Mason stated that she believed a plan should be put into place to protect trees on the property and that if a tree needed to be removed, it would be relocated or replaced with another tree and that in the short-term, historic trees should be protected. Mr. Ward suggested that Council consider allowing the Fire Department to move forward with the process to burn the blue house on the condition that staff first look into relocating the brick house. Ms. Mason stated that it was her understanding that both structures were in poor condition and wondered whether the brick house could be moved. Council Member Ashcraft made a motion to approve the request with the understanding that staff would investigate moving the brick structure for another use and that measures would be taken to protect surrounding trees. Council Member Mason seconded the motion.

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

WAIVER OF BIDDING REQUIREMENTS FOR FIRE TRUCK PURCHASE

Upon a motion by Council Member Furgiuele, seconded by Mayor Pro-Tem Clawson, Council voted to approve the waiver of bidding requirements for the purchase of a fire truck.

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

CONSIDERATION OF APPROVAL OF CHANGE ORDER #4 - GARNEY COMPANIES

Deputy Public Works Director Josh Eller presented Changer Order #4 with the Garney Company for Council's consideration, noting that crews are still working daily, but repairs that were needed were more significant than originally anticipated. Mr. Eller noted that the contract time extension was requested due to delays outside Garney Company's control which were associated with project components within the Harper Corporation's scope of work at the Water Treatment Plant. He stated that as far as staff could tell, the coffer dam at the intake site had held up in the recent storm, but that flood waters had not receded enough to be certain. Upon a motion by Council Member Mason, seconded by Council Member Ashcraft, Council voted to approve Change Order #4 with the Garney Company which would extend the contract by 33 calendar days.

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

CONSIDERATION OF COST ESTIMATE FROM BREMCO FOR INSTALLATION OF UNDERGROUND POWER SERVICE AT INTAKE

Upon a motion by Council Member Furgiuele, seconded by Mayor Pro-Tem Clawson, Council voted to approve the cost estimate from Blue Ridge Electric Membership Corporation in the amount of \$38,997.97 for the installation of underground power service at the water intake site.

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

AWARD OF BID FOR SIDEWALK REPLACEMENT AT 671 WEST KING STREET

Upon a motion by Council Member Furgiuele, seconded by Council Member Mason, Council voted to approve the contract with Greene Construction for the replacement of the sidewalk located at 671 West King Street in the amount of \$40,132.50.

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

PERMEABLE PAVEMENTS PRELIMINARY REPORT

Planning Director Jane Shook and Deputy Public Works Director Todd Moody presented Council with a report prepared on the use of permeable pavements. Ms. Shook stressed the need for a Town-wide green infrastructure plan and noted that permeable materials would cost more to buy and to maintain, so the sidewalk budget would not go as far as it currently does. She added that the use of permeable materials could be isolated or could be integrated with other elements, such as using only in parking spaces in parking lots to help with stormwater control. Mayor Brantz suggested staff look into a pilot project with permeable materials. Mr. Moody noted that NCDOT would not currently allow permeable materials within their right-of-ways due to concerns with saturation and freeze/thaw of the material, but that they would help monitor a test section on Town-owned property. Council Member Furgiuele made a motion to direct staff to proceed with the recommendations outlined in the Permeable Pavements Preliminary Report on their own timeline. Mayor Pro-Tem Clawson seconded the motion.

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

REQUEST FOR DIRECTION ON PERMIT REQUIREMENTS FOR SKATE PARK

Town Manager John Ward asked Council for direction on the permit requirements for the recently approved skate park. Council Member Furgiuele expressed concern that the engineering requirement would be beyond staff expertise. Planning Director Jane Shook stated that current guidelines required any construction over 25,000 sq. ft. to have a design professional to approve the site plan. She continued to note that in the past, the Town had voluntarily chosen to follow ordinance requirements, but that they were not legally required to follow the same ordinance requirements in situations such as this. Public Works Director Rick Miller stated that if Council decided to issue itself a permit, that a budget amendment would be needed in the amount of \$12,5000 to cover the required engineering services, since the original plan was to allow Public Works staff to construct the concrete pad in-house and that the full \$25,000 previously allocated would fund required materials. Mr. Miller suggested that staff could perform the work, but that the plans had to be sealed by an engineer to meet permit requirements, and noted that recent changes in legislation would not allow staff to question an engineer's opinion. Upon a motion by Council Member Mason, seconded by Mayor Pro-Tem Clawson, Council voted to fund up to \$12,500 to cover engineering services and other design services that staff cannot perform. Mr. Furgiuele suggested a friendly amendment to the motion to add the term "as determined by staff" at the end of the motion. Council Member Mason and Mayor Pro-Tem Clawson accepted this amendment.

RESULT:	APPROVED [3 TO 1]
MOVER:	Lynne Mason, Council Member
SECONDER:	Loretta Clawson, Mayor Pro-Tem
AYES:	Mason, Clawson, Furgiuele
NAYS:	Ashcraft
ABSENT:	Ulmer

REQUEST TO ALLOW SIGN, CANOPY AND AWNING ENCROACHMENT AGREEMENTS TO BE HANDLED ADMINISTRATIVELY

Upon a motion by Council Member Furgiuele, seconded by Council Member Ashcraft, Council voted to allow sign, canopy and awning encroachment agreements to be handled administratively.

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

CONSIDERATION OF AMENDMENTS TO TOWN CODE CHAPTER 155

Town Attorney Allison Meade presented proposed revisions to the Town Code which would add a section to regulate building permits. Council Member Furgiuele suggested that he would prefer if the statute was reproduced as opposed to giving a short reference. Ms. Meade stated that one of the reasons she referenced the statute rather than reproducing the whole thing was due to the fact that statutes were subject to change and that just referencing a number would at least be a flag for the reader to review the current statute. Mr. Furgiuele asked that the reference to the "inspections department" "Planning and Inspections". When asked by Planning Director Jane Shook if language should be added to make the regulations retroactive, Ms. Meade stated that these changes would be effective as of the date of adoption. Council Member Furgiuele made a motion, which was seconded by Mayor Pro-Tem Clawson, to adopt the modifications to Town Code Chapter 155 as amended.

Boone, NC Code of Ordinances

TITLE XV: LAND USAGE; BUILDINGS AND BUILDING REGULATIONS

Chapter

- 150. ~~BUILDING REGULATIONS~~ HOUSE NUMBERING
- 151. MINIMUM HOUSING CODE
- 152. RENTAL PROPERTY REQUIREMENTS
- 153. UNIFIED DEVELOPMENT ORDINANCE
- 154. REGULATION OF VACANT BUILDINGS
- 155. BUILDING PERMITS

CHAPTER 150: ~~BUILDING REGULATIONS~~ HOUSE NUMBERING

Section

House Numbering

- 150.01 Numbers to be posted; standards
- 150.02 Maintenance of numbers

- 150.99 Penalty

HOUSE NUMBERING

§ 150.01 NUMBERS TO BE POSTED; STANDARDS.

Within 90 days after written notice by the Town Council, its agent or authorized contractor, of the assignment of or change of a number for any house, building, mobile home park or condominium complex, the owner or occupant of the property shall be required to post the number (including any letters) so assigned in an approved area on the property in accordance with the requirements of this section no later than 90 days after adoption.

~~§ 150.99—PENALTY.~~

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

~~—(B)— Violation of any provision of §§ 150.01 and 150.02 shall subject the offender to a civil penalty of \$100 to be recovered by the town. Each day the violation continues after the offending owner or occupant has been notified of the violation shall constitute a separate violation of §§ 150.01 and 150.02. The town shall also have the right to obtain equitable enforcement of §§ 150.01 and 150.02 by a court with jurisdiction.~~

CHAPTER 155: BUILDING PERMITS

- 155.01 Building permits required
- 155.02 Application; Time limits as to application
- 155.03 Plans and Specifications
- 155.04 Limitations; Zoning Compliance
- 155.05 Permit fees
- 155.06 Time Limitations on Validity
- 155.07 Changes in Work
- 155.08 Inspection of work in progress
- 155.09 Stop Orders

155.10 Revocation

State law references: G.S. 160A-417 to 423

155.01 – Building Permits required

Consistent with the requirements of G.S. 160A-417 (as such may be amended from time to time) and subject to the exceptions set forth therein, no person shall commence or proceed with the construction, reconstruction, alteration, repair, removal, or demolition of any building or other structure, or any part thereof, unless they have obtained a written permit therefor from the building inspector. The issuance, enforcement, and revocation of such permits shall be as provided at G.S. A-418 through 423.

155.02 – Application:

Written application shall be made for all permits required by this article and shall be made on forms provided by the Planning and Inspections Department. Such application shall be made by the owner of the building or structure affected or by his authorized agent or representative, and, in addition to such other information as may be required by the appropriate inspector to enable the inspector to determine whether the permit applied for should be issued, shall show the following:

- (1) Name, residence, and business address of the property owner(s).
- (2) Name, residence and business address of authorized representative or agent, if any.
- (3) Name and business address of the contractor, if any, together with evidence that the contractor has obtained a certificate from the appropriate state licensing board for such contractors, if such be required for the work involved in the permit for which application is made.

155.03. – Time limits on applications

An application for a building permit shall be considered abandoned and void, and the plan review fee will not be refunded, if:

(A) 180 days has passed since the date that the applicant was notified that the permit was ready for pickup and the permit has not been picked up;

(B) 180 days has passed since the permit application was submitted and the applicant has not responded to the building inspector's request(s) for modifications or additional information so as to allow final processing and issuance of the permit.

155.04 Permit fees.

All building permit application reviews require payment of review and permitting fees at the time of application submittal. Fees shall be as established by the current Town ordinance.

155.05. - Time limitations on validity.

All permits issued under this chapter shall expire by limitation six months after the date of issuance if the work authorized by the permit has not been commenced. If after commencement the work is discontinued for a period of 12 months, the permit shall immediately expire. No work authorized by any permit which has expired shall thereafter be performed until a new permit has been secured.

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

RECOMMENDATIONS CONCERNING THE PRESERVATION OF LARGE TREES IN LOW DENSITY ZONING DISTRICTS

Council Member Furgiuele presented a request that Council direct the Community Appearance Commission to look into ways to preserve the large and historic trees in Town in residential neighborhoods. Discussion ensued about the exceptions for the Town's authority and previous discussion that has taken place regarding the protection of trees in residential areas. Urban Design Specialist Brian Johnson stated that the concern in the past was that it would be difficult for staff to track violations and that previous Council members were reluctant to enforce regulations such as this in residential areas. Mr. Johnson suggested that Council consider a Town-wide permitting process for the cutting of trees. Council Member Furgiuele made a motion, which was seconded by Council Member Mason to send a request to the Community Appearance Commission to work with staff for input to undertake a discussion as to measures that could be taken to protect the Town's larger trees. Council Member Mason asked that the motion include both commercial and residential properties. Mr. Furgiuele accepted this amendment.

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

EASEMENT AGREEMENT DISCUSSION - WATER ALLOCATIONS

Upon a recommendation by Town Attorney Allison Meade, Council Member Mason made a motion to consider the discussion of Council Matters Item 14 - Easement Agreement Discussions - Water Allocations until after closed session. Mayor Pro-Tem Clawson seconded the motion.

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

APPOINTMENT TO DOWNTOWN BOONE DEVELOPMENT ASSOCIATION

Council Member Furgiuele nominated both Jodie Feimster and Wayne Miller for positions on the Downtown Boone Development Association. Mr. Furgiuele noted that he had spoken to Ms. Feimster and that she would recuse herself in the event of any discussions involving the Appalachian Theatre and stated that if appointed, Ms. Feimster would represent a property owner who was not conducting a business, which was a position not currently represented on the DBDA. He continued to add that he had hoped that a representative of a start-up business could be recruited but that there were no applications from the same.

With no further nominations, Mayor Brantz called for a vote on the nomination of Jodie Feimster to the DBDA.

VOTE:	Aye:	Furgiuele, Clawson
	Nay:	Ashcraft, Mason

Absent: Ulmer

In order to break the tie, Mayor Brantz was asked to vote. The final vote was recorded as follows:

VOTE: Aye: Furguele, Clawson
 Nay: Ashcraft, Mason, Brantz
 Absent: Ulmer

Mayor Brantz then called for a vote on the nomination of Wayne Miller to the DBDA.

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

Mr. Miller's term will expire on September 30, 2021.

Mr. Furguele added that it was unfortunate the Ms. Feimster was not appointed.

APPOINTMENT TO HISTORIC PRESERVATION COMMISSION

Council Member Mason nominated Chuck Watkins to serve on the Historic Preservation Commission. With no further nominations, Mayor Brantz called for a vote.

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

Mr. Watkins' term will expire on September 30, 2021.

APPOINTMENT TO BOARD OF ADJUSTMENT

Council Member Mason nominated Robert Southwick to serve as an alternate on the Board of Adjustment. With no further nominations, Mayor Brantz called for a vote.

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

Mr. Southwick's term will expire on June 30, 2020.

CLOSED SESSION

Upon a motion by Mayor Pro-Tem Clawson, seconded by Council Member Mason, Council voted to enter into closed session at 11:12 p.m. pursuant to:

-Pursuant to N.C. Gen. Stat. § 143-318.11 (a)(1), to review, approve and seal closed session minutes from Council's prior closed session(s).

-Pursuant to N.C. Gen. Stat. § 143-318.11 (a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and obtain legal advice, consider and/or give instructions to the attorney concerning one or more potential legal claims.

-Pursuant to N.C. Gen. Stat. § 143-318.11 (a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and obtain legal advice, consider and/or give instructions to the attorney concerning the claim involving Harrod/AP LLC, Wilcox & Wright, LLC, and Poteat Hospitality Associations, LLC.

Council Member Mason made a motion, which was seconded by Mayor Pro-Tem Clawson, to exit closed session at 12:27 a.m.

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

POSSIBLE ACTION FOLLOWING CLOSED SESSION

Upon a motion by Council Member Furguele, seconded by Council Member Ashcraft, Council voted to table the following Closed Session agenda items until the regular October meeting:

1. Pursuant to N.C.Gen.Stat. §143-318.11 (a)(1), to review, approve and seal closed session minutes from Council's prior closed session(s).
2. Pursuant to N.C.Gen.Stat. § 143.318.11 (a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and obtain legal advice, consider and/or give instructions to the attorney concerning one or more potential legal claims.
3. Pursuant to N.C.Gen.Stat. § 143-318.11 (a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and obtain legal advice, consider and/or give instructions to the attorney concerning the claim involving Harrod/AP LLC, Wilcox & Wright, LLC, and Poteat Hospitality Associations, LLC.

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

ADJOURNMENT

Upon a motion by Mayor Pro-Tem Clawson, seconded by Council Member Mason, Council voted to adjourn the meeting at 12:30 a.m.

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

Nicole Worley, Town Clerk

Rennie Brantz, Mayor