

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
October 15, 2019**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order at 6:02 p.m. on Tuesday, October 15, 2019 at Town Council Chambers located at 1500 Blowing Rock Road in Boone. Mayor Rennie Brantz presided. Council Members present were Lynne Mason, Connie Ulmer, Sam Furgieuele and Marshall Ashcraft. Staff present included Town Manager John Ward, Town Clerk Nicole Harmon, Public Works Director Rick Miller, Deputy Public Works Director Todd Moody, Downtown Boone Development Coordinator Lane Moody, Planning Director Jane Shook, and Police Chief Dana Crawford. Town Attorney Allison Meade was also in attendance.

ANNOUNCEMENTS

Mayor Brantz welcomed all in attendance and asked anyone who wished to speak during the public comment period to please sign up. Mr. Ward gave an update on the upcoming municipal election, with one-stop early voting beginning on October 16th and ending on November 1st. Locations include the Watauga County Administration Building and at the Plemmons Student Union. Mr. Ward announced that Election Day would be on November 5th, with polls open from 6:30 a.m. until 7:30 p.m. He noted that staff was working toward altering Town employee identification cards to make them compliant with voter identification regulations and planned to have them ready for use in the next election.

TENATIVE AGENDA ADOPTION

Upon a motion by Ms. Mason, seconded by Ms. Ulmer, Council voted to approve the agenda as presented.

VOTED: Aye: Mason, Ulmer, Furgieuele, Ashcraft
 Nay: None
 Absent: Clawson

PUBLIC COMMENT

Ms. Linda Rigell of Boone stated that she was thrilled to read the nuisance proposals that were on the agenda for Council 's consideration. She added that her only concern was the section concerning garbage cans, and asked that Council consider requiring larger cans with attached lids.

REQUESTED APPEARANCES

DR. ERIC PLAAG - PRESENTATION OF LOCAL HISTORIC DISTRICT BOUNDARY MAP

Dr. Eric Plaag announced that Historic Preservation Commission members voted at their meeting earlier in the day to recommend approval of the local historic district boundaries as outlined in the attached map. He noted that the Stanley Harris apartment building and the Deal law firm building were left out of the proposed historic district. In response to a question raised by Mr. Ashcraft, Dr. Plaag answered that there were many historically important buildings on Howard Street, including the Moomaw Acupuncture building, and the former HOW Space building which dated back to the 1940's/50's. Ms. Mason asked for clarification on what the historic designation would do for the downtown area and whether it was the same as the previously discussed core district. Dr. Plaag stated that the Historic Preservation Commission had not been in touch with the Community Appearance Commission about the matter in almost a year, so he was not sure how their conversation about the core district had evolved. He believed that the Community Appearance Commission's intention with the core district was to mirror the historic designation, but primarily in the center of downtown. Mr. Ward suggested that a group discussion needed to be held regarding the overlapping projects, and noted that at one time, there was discussion of an interface district that would carry fewer restrictions. He was unsure how this would work with having a certificate of appropriateness process that came along with a historic designation. Mr. Furgieuele did not believe the boundaries had to be the same with both districts, and thought that the Community Appearance Commission was looking at a wider area that would be the "new" downtown with certain degrees of sympathy and conformities. He felt the interface district would allow more flexibility and that the two designations were very different. Dr. Plaag stated that historic designations were meant to be flexible to the Towns needs while at the same time trying to be mindful to the character of the district, and noted that changes would go through both

Planning staff and the Board of Adjustment. When asked why the Rivers House was not included within the historic district, Dr. Plaag indicated that it was his hope that the house would be set as a historic landmark. He indicated that there may be difficulties with the proximity to the apartment building behind Proper and Riverswalk. Dr. Plaag noted that one of the reasons that the Stanley apartment buildings were not included was that they were located on landlocked lots without street frontage, and that he felt more comfortable not including them in the proposed district. Ms. Meade wondered what the reasoning was for not including the Deal law firm, to which Dr. Plaag responded that the State Historic Preservation Offices liked for properties to contribute and that he did not feel that this property did that, though he would not be surprised if they later asked him to include the property in order to include the entire block. Mr. Furgiuele made a motion to adopt the local district boundary map as recommended by the Historic Preservation Commission as the proposed historic district. Ms. Mason expressed hesitation and wished that she had a better idea of what the Community Appearance Commission was working on in terms of an interface district. Mr. Furgiuele felt that it would be easier for the Community Appearance Commission to adjust their designation in the future if necessary. Ms. Mason also expressed concern about properties on Rivers Street and how the proposed historic district would intertwine with the Municipal Service District. Mayor Brantz expressed his support for the motion. Ms. Mason then seconded the motion and stated that she just wanted to make sure that everything was properly integrated. Ms. Ulmer agreed that she wanted to make sure both committees were communicating. Discussion turned to the format in which the public meetings would be held, with Ms. Shook proposing that the meetings begin with public presentations, then sit-down meetings with staff throughout the day. Dr. Plaag added that if there was consensus from the community about the proposed boundary, the next step was for the Historic Preservation Commission to prepare a report to potentially submit to the state for their review. Ms. Shook indicated that the Community Appearance Commission had a meeting next week and hoped to wrap up design guideline discussions then. She believed they would be ready to show in another month, and noted that the commission members were agreeable to meet more frequently if needed to give extra attention to this project. Ms. Shook estimated another two months of preparation, then a presentation for Council, followed by the public meetings in January. It was the consensus of Council to proceed in this manner. Dr. Plaag noted that he had worked with Annie McDonald from SHPO as well as a representative from Hendersonville, and believed that their presence at the public meetings would be pivotal to their success. Mr. Furgiuele felt that February may be a more appropriate time for the meetings, with Mr. Ward noting that if the meetings were held earlier, they may have to be held twice due to incoming Council members.

RESULT: CONSENSUS

APPROVAL OF ITEMS ON CONSENT AGENDA

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

1. Ordinance to Extend the Boundaries of the Town of Boone Municipal Service District
2. An Ordinance Declaring a Road Closure for a Holiday Celebration
3. Budget Amendments:
 - a. Public Works – Community Appearance (\$6,500) Insurance reimbursement for auto accident.
 - b. Capital Outlay – Land (\$200,000) Purchase of Winkler property for addition to Daniel Boone Park.
 - c. Maintenance – Vehicles (\$2,620) Insurance reimbursement to cover repairs to Police department vehicle.

ORDINANCE # _____**AN ORDINANCE TO EXTEND THE BOUNDARIES OF THE TOWN OF
BOONE MUNICIPAL SERVICE DISTRICT**

WHEREAS, there is currently established in the Town of Boone a Municipal Service District to provide for downtown revitalization projects;

WHEREAS, the Boone Town Council is authorized pursuant to N.C.G.S. § 160-538(a) to annex additional territory into the Municipal Service District upon finding that (a) the area to be annexed is contiguous to the district, with at least one-eighth of the area's aggregate external boundary coincident with the existing boundary of the district; and (b) that the area to be annexed requires the services of the district;

WHEREAS, as required per N.C.G.S. § 160-538(a), the Town Council has caused a report to be prepared containing (1) a map of the service district and the adjacent territory, showing the present and proposed boundaries of the district; (2) a statement showing that the area to be annexed is contiguous to the district, with at least one eighth of the area's aggregate external boundary coincident with the existing boundary of the district, and that the area to be annexed requires the services of the district; and (3) a plan for extending services to the area to be annexed; and

WHEREAS, the Town Council finds that the properties proposed for annexation into the Municipal Service District require the additional services provided by the District, including measures addressing public parking, traffic flow, pedestrian access and safety, and beautification by means of additional streetscaping;

NOW THEREFORE, BE IT ORDAINED:

SECTION 1: The Boone Town Council hereby accepts the report demonstrating that the extension of the Municipal Service District complies with the statutory requirements, and finds as follows:

1. The report has been duly posted with the Boone Town Clerk for public review;
2. The Town Council held a public hearing on the proposed expansion of the Municipal Services District on September 17, 2019;
3. The Town Clerk caused a notice of the public hearing to be (a) published in the local newspaper of record, the Watauga Democrat, on two occasions, both more than seven days prior to the public hearing; and (b) mailed, first class and postage pre-paid, to all property owners within the proposed Municipal Services District expansion area no less than four weeks prior to the public hearing on the proposed expansion, notifying the property owners of the public hearing, the availability of the report for review and the proposed boundary expansion; and
4. The proposed expansion of the Municipal Service District meets the requirements of North Carolina statutes for the expansion of municipal service district boundaries.

SECTION 2: The Boone Town Council hereby extends the Municipal Service District boundaries to include all properties described in the report, as shown by the maps attached hereto as Exhibit A, which maps are incorporated herein by reference, to be effective as set forth herein.

SECTION 3: The special ad valorem tax levied against taxable property located wholly or partly within the Municipal Service District to support the services provided therein shall be levied against the additional properties included in the District pursuant to this ordinance effective as of the Town's 2020-2021 fiscal year.

SECTION 4: All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 5: If any section subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

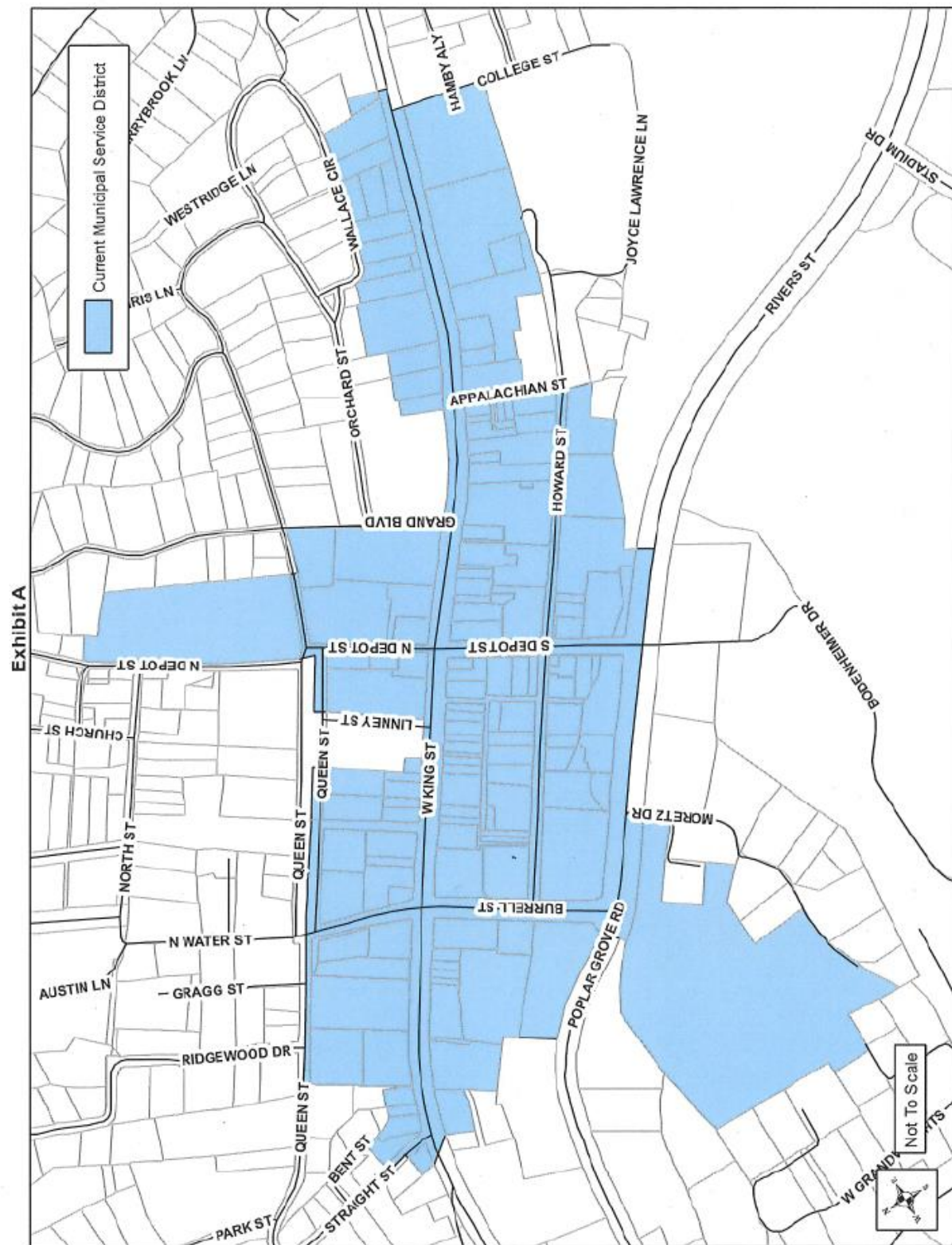
Adopted this ____ day of _____, _____ upon being passed by majority vote at two meetings of the Town Council held on _____ and _____.

Rennie Brantz, Mayor

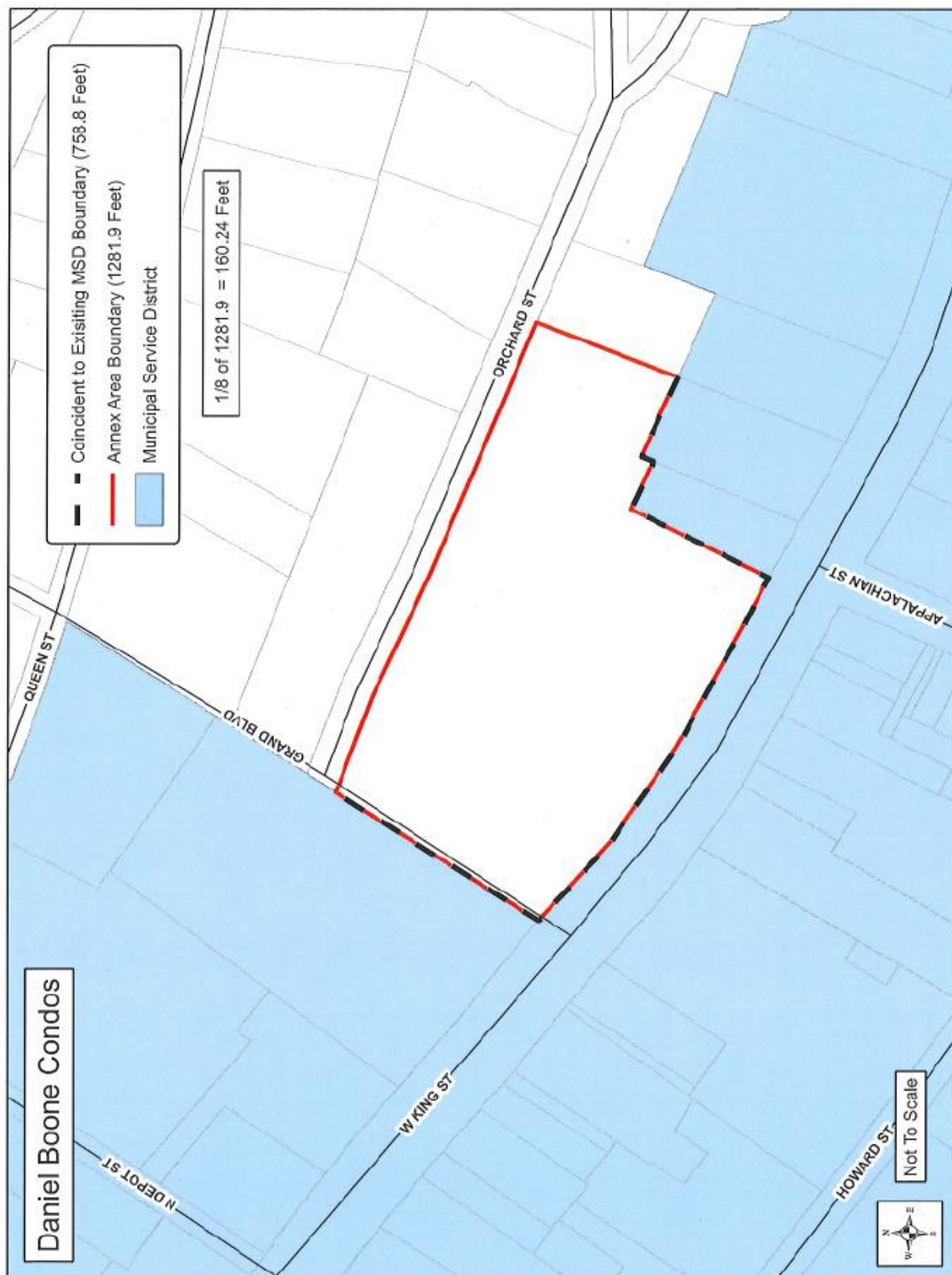
ATTEST: _____
Town Clerk

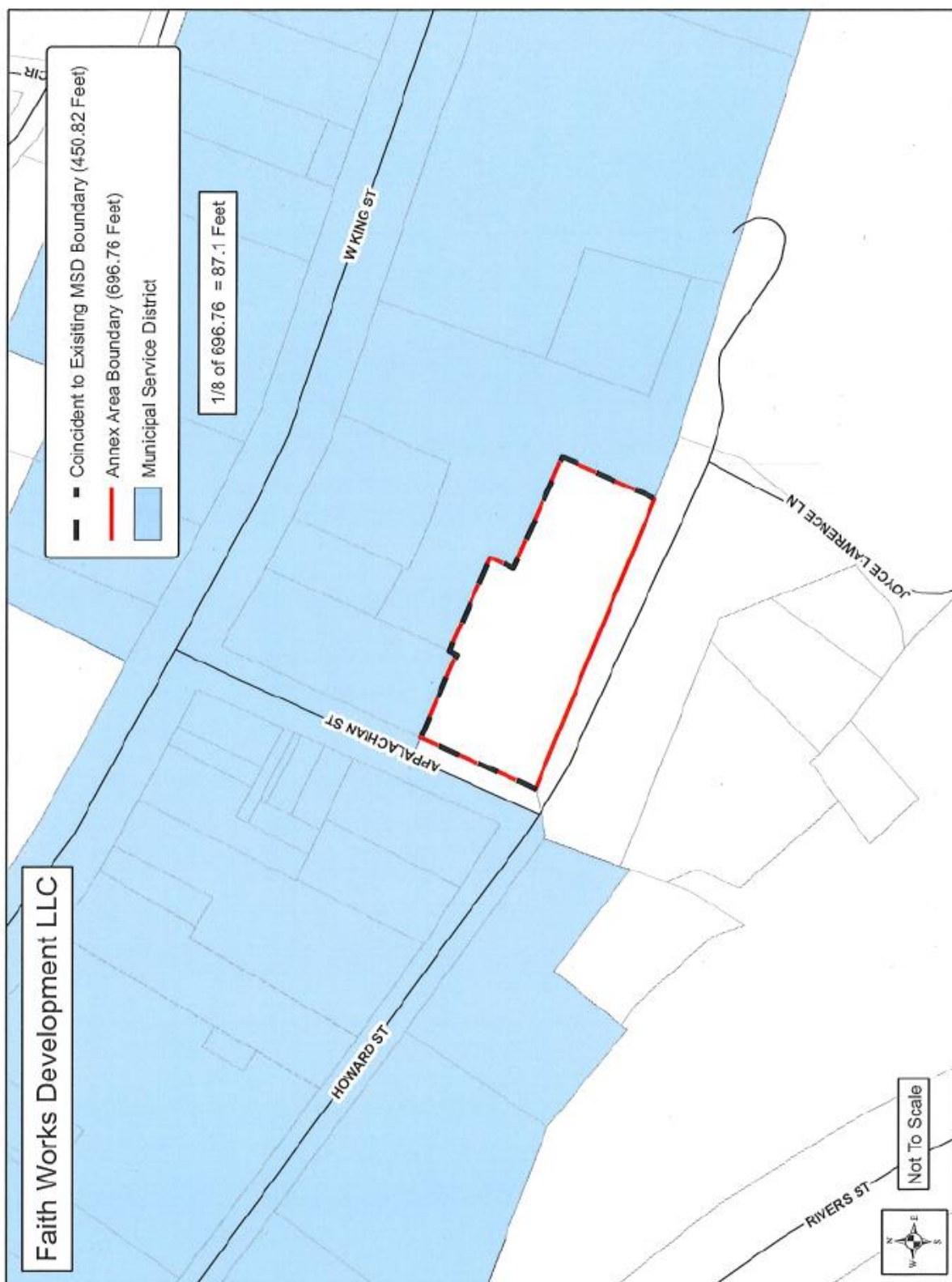
Approved as to form:

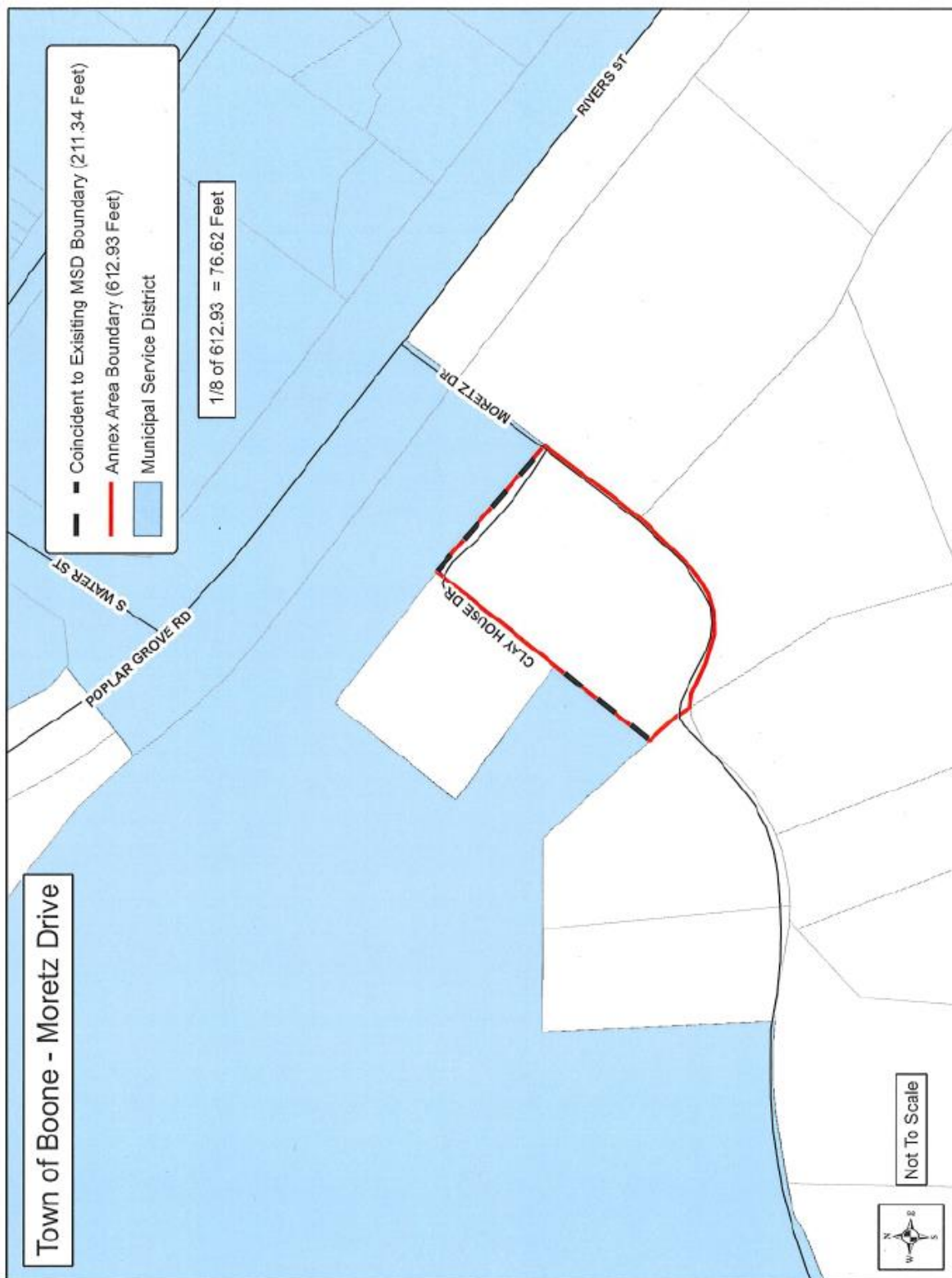
Town Attorney







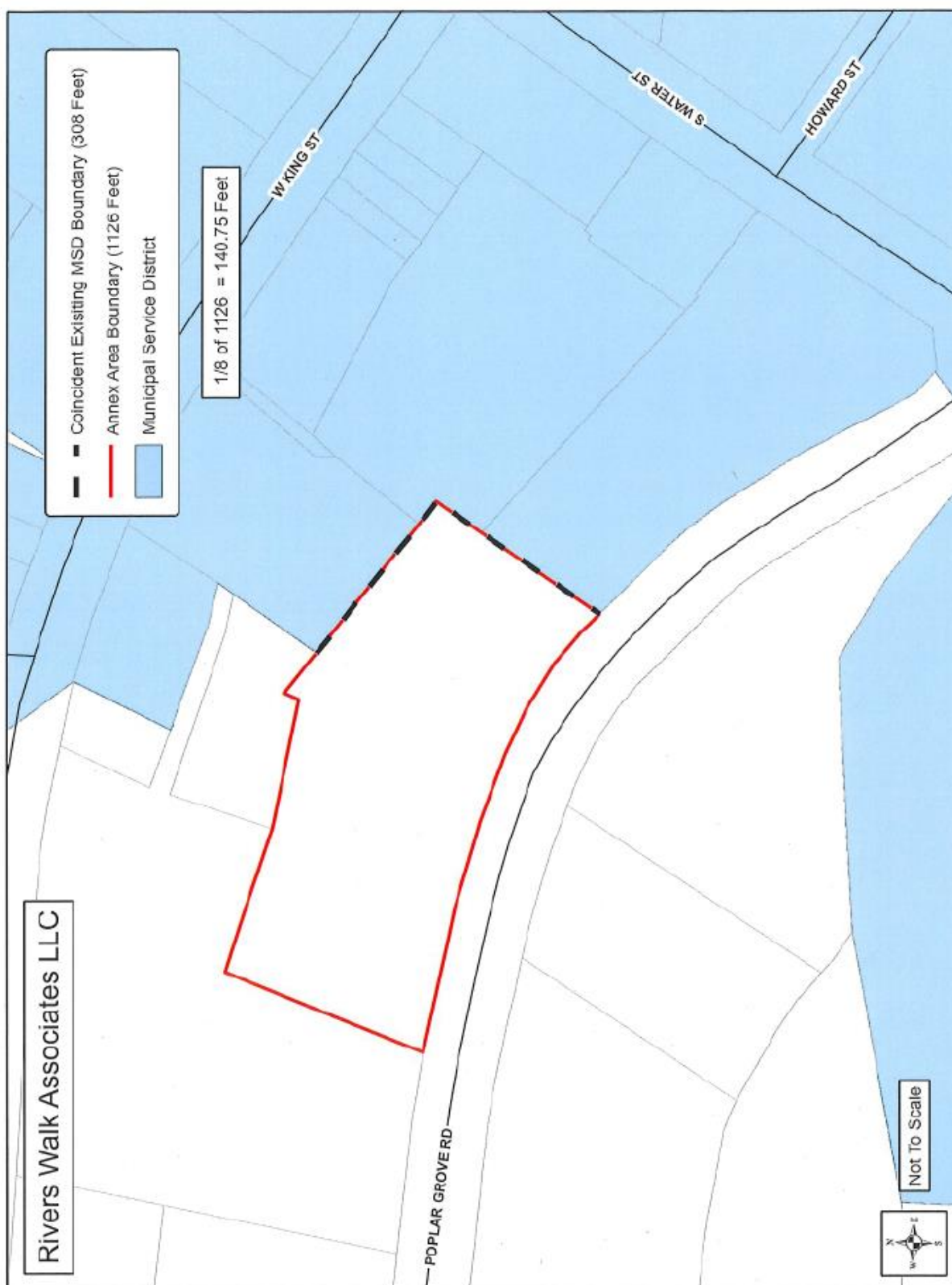


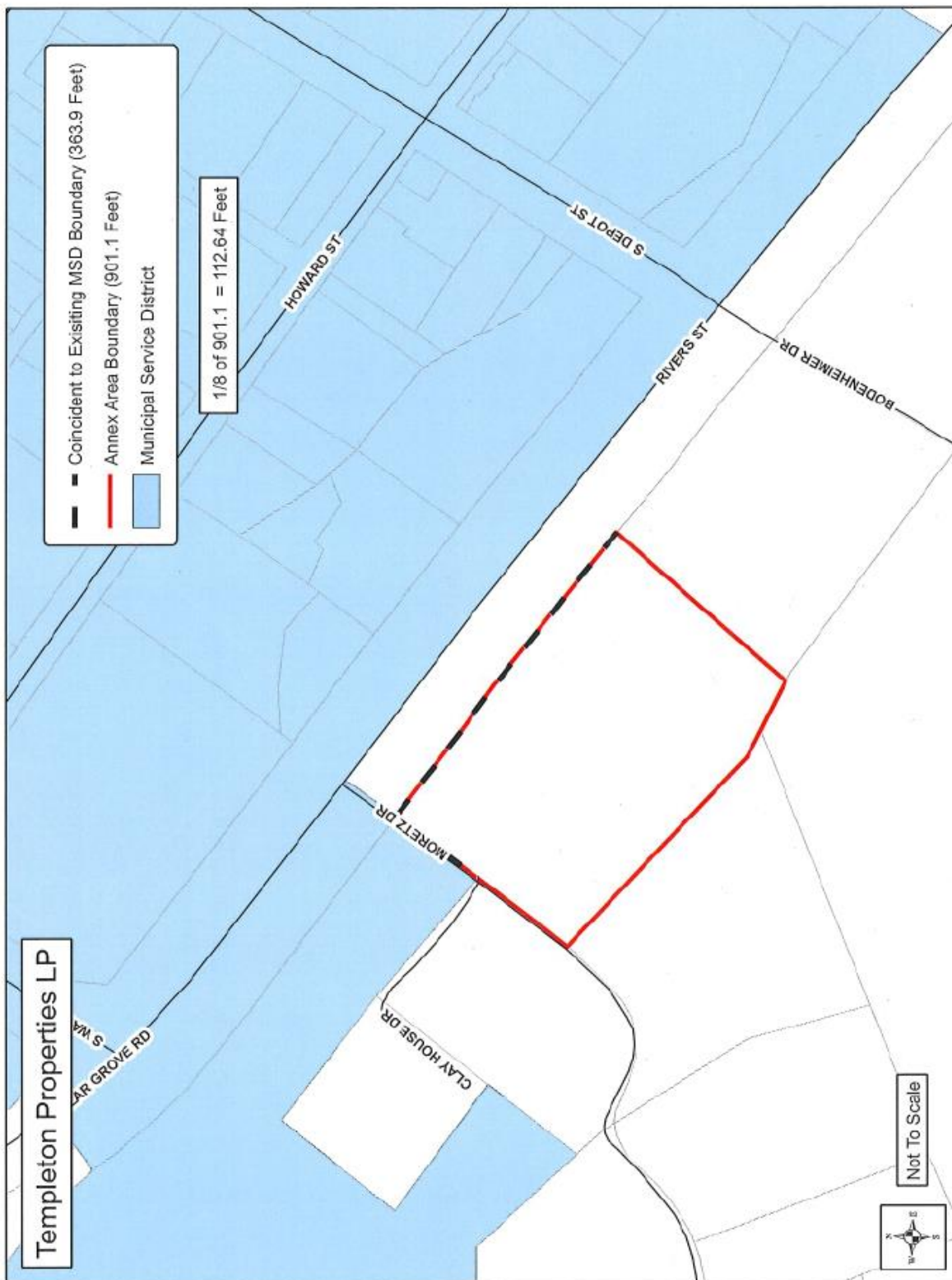


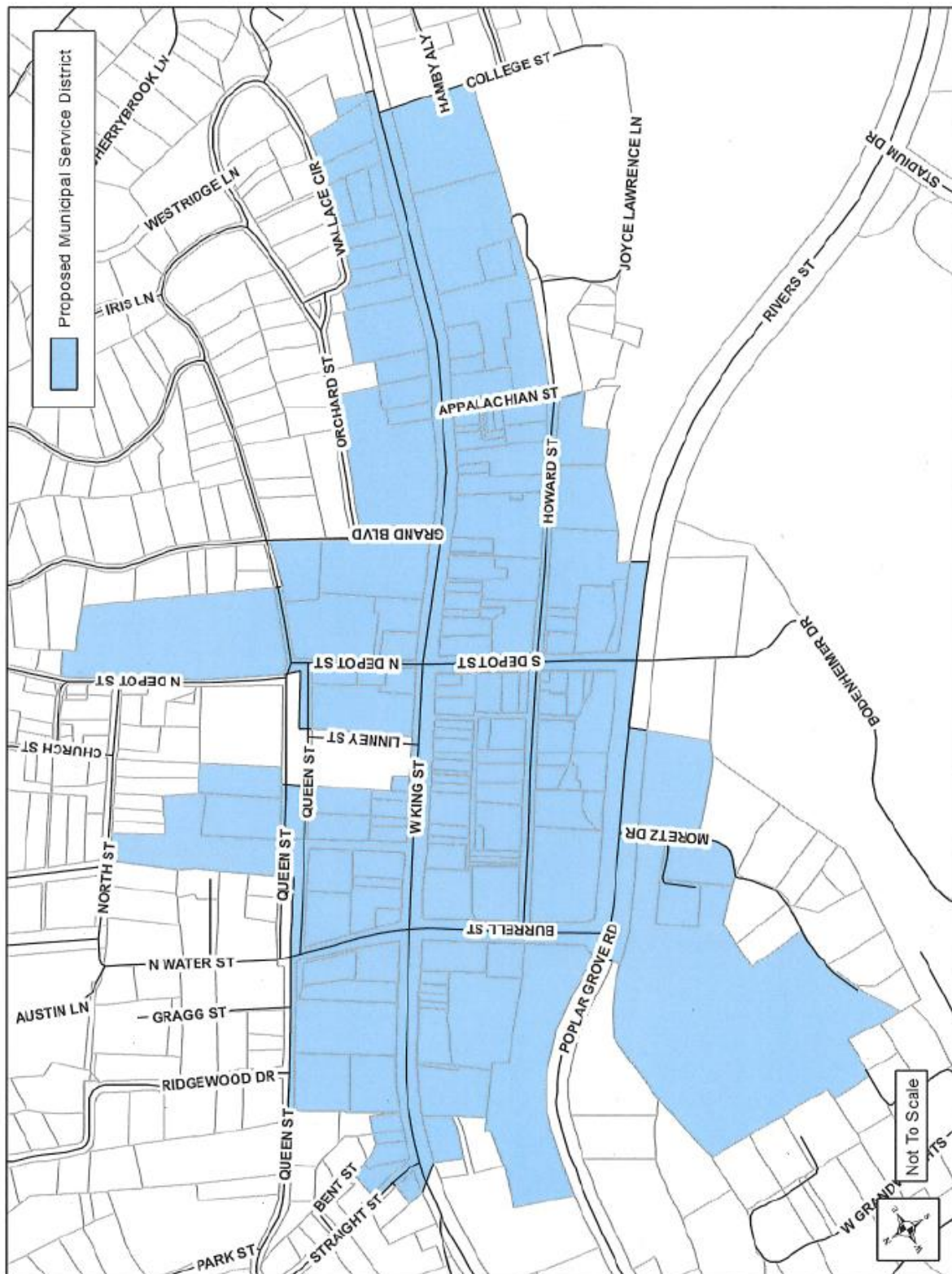












TOWN OF BOONE

Ordinance _____

AN ORDINANCE DECLARING A ROAD CLOSURE FOR A HOLIDAY CELEBRATION

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

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

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

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

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

Date(s): Saturday, December 14, 2019

Times: 10:30 a.m. – 12:30 p.m.

Route Description: King Street (U.S. Route 421) between Hardin Street and Poplar Grove Connector, and SR 1102 (Water St. / North Water St.)

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

Adopted this _____ **day of** _____, 2019.

The Honorable Rennie Brantz, Mayor

Attest:

Nicole Harmon, Town Clerk

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

Absent: Clawson

COUNCIL MATTERS

CONSIDERATION OF BUDGET AMENDMENT - CHRISTMAS DECORATIONS

Downtown Boone Development Coordinator Lane Moody presented Council with a request for consideration of approval of a budget amendment to transfer \$20,000 from the DBDA fund balance to the special projects line to cover the cost of additional Christmas decorations. Ms. Moody noted that the proposed decorations included pre-lit garland for street lights, holiday bows, pre-lit decorations for the lawn of the Jones House and appropriate storage containers and materials for each. Mr. Furguele asked if the lights would be colored or white, with Ms. Moody responding that the lights would be white. Mr. Furguele felt that the lights should be the more traditional colors, though he would still support this request. Upon a motion by Ms. Ulmer, seconded by Ms. Mason, Council voted to approve this request.

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

CONSIDERATION OF APPROVAL OF ADDITIONAL ROAD CLOSURES DURING BOONE BOO!

Upon a motion by Ms. Mason, seconded by Ms. Ulmer, Council voted to approve the request to close Depot Street from King Street to Howard Street, in addition to the usual King Street closure.

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

CONSIDERATION OF CONTRACT FOR HUNTING HILLS BRIDGE REPLACEMENT PROJECT

Public Works Deputy Director Todd Moody presented a contract for Council's consideration for the replacement of the Hunting Hills bridge, and stated that the contract was more than what the Town had set aside due to the fact that the NCDOT's portion of the funds was being included in the contract. Mr. Furguele was concerned that a payment schedule for when services would be completed was not included in the contract. Ms. Meade assumed that this would be addressed as a professional judgment exercised by Mr. Moody, and confirmed that Mr. Moody had a professional understanding of this type of project. Mr. Ward added that a schedule would be established after the contract was in place. Mr. Furguele noted that a point of discussion at the most recent Transportation Committee meeting was that the sidewalks on most of the bridges in Town were too narrow, and asked if it was too late for multimodal paths with separation to be considered for this project, or at least broader sidewalks. Mr. Moody stated that barriers had been brought up in discussions regarding this project, and that he would also bring up multimodal pathways and broader sidewalks in future conversations. Ms. Mason added that since this bridge was a part of the greenway system, a broader sidewalk or multimodal path would make sense. Mr. Miller indicated that since federal monies would be used to partially fund this project, he was unsure how much control the Town would have over the design of the bridge. Mr. Furguele asked that staff consider these safety measures moving forward, and stated that he was more concerned about having wider sidewalks. He then made a motion to approve the request as presented, which was seconded by Mr. Ashcraft.

TOWN OF BOONE CONTRACT FOR GOODS AND SERVICES

THIS CONTRACT is made this ____ day of ____, 2019 by and between the Town of Boone, hereinafter referred to as the "Town"; and, VAUGHN & MELTON CONSULTING ENGINEERS, INC., hereinafter referred to as "Engineer".

NOW THEREFORE FOR AND IN CONSIDERATION of the mutual promises stated in this Agreement, the Town and Engineer agree as follows:

ARTICLE 1- CONTRACT DOCUMENTS:

This contract and the documents listed in Section 1.2 of this Article shall constitute the contract documents. These contract documents shall represent the entire agreement and understanding between the parties. All other statements, discussions and negotiations, whether oral or written, are hereby merged into these contract documents. Any oral or written understanding not incorporated in these contract documents is not binding on any of the parties. The contract documents are presented in descending order of priority with the first document listed being of the highest priority and governing over subsequently listed documents, in case of conflict or ambiguity.

1.2 The Contract Documents consist of:

This Contract;
Scope of Services (attached hereto as Attachment A and incorporated herein by reference); and,
Certificates of Insurance (attached hereto as Attachment B and incorporated herein by reference).

Collectively, these materials shall comprise the CONTRACT DOCUMENTS.

1.3. The CONTRACT DOCUMENTS are intended to describe a functionally complete whole contract. Any labor, services, documentation, materials, or equipment that may reasonably be inferred from the CONTRACT DOCUMENTS or from prevailing custom or trade usage as being required to produce the intended result shall be provided by the Engineer whether or not specifically called for without increase in the Contract Price or Contract Period, as described in Articles 3 and 4 below.

1.4. MODIFICATION/CHANGE ORDERS. Any change orders, alteration, amendments or other modifications hereunder shall not be effective unless reduced to writing and signed by authorized representatives of the Town of Boone and Engineer.

ARTICLE 2 – SCOPE OF SERVICES; SUBCONTRACTORS

2.1. Town retains Engineer to provide Professional Engineering and Professional Land Surveying Services in accordance with the pre-approved Scope of Services in Attachment A.

2.2. Engineer is authorized to engage subcontractors to assist in the work included under this contract, subject to advance notice to and approval by the Town. Engineer shall be responsible to Town for the services of Engineer's subcontractors.

ARTICLE 3 – DELETED**ARTICLE 4 – CONTRACT PRICE AND TERMS OF PAYMENT:**

4.1 APPROPRIATION / NON-APPROPRIATION. The Town shall pay for these services out of appropriated funds. It is understood and agreed by the parties that in the event funds are not appropriated in the current fiscal year or any subsequent fiscal years, this contract will become null and void and the Town will only be required to pay for services completed to the satisfaction of the Town.

4.2. CONTRACT PRICE. The Town will pay Engineer a **LUMP SUM FEE of \$257,674.51** (Two Hundred Fifty-Seven Thousand, Six Hundred Seventy-Four Dollars and Fifty-One cents), inclusive of all fees, costs and incidentals. Engineer shall invoice periodically, proportionate to the progress made on the various scope sub-tasks (percent complete). Should the Town and Engineer determine that additional services are needed, a supplemental agreement will need to be requested in compliance with the proper procurement guidelines of the Town of Boone.

4.3. PAYMENT TERMS. Payments shall occur as follows:

Engineer will submit invoices to the Town, which shall include a detailed listing of charges and a final bill upon completion of services. Within twenty (20) business days of receipt of an invoice the Town shall notify Engineer of any dispute with the invoice and Engineer, upon such notice, shall provide to the Town back-up data supporting the invoice. The Town and Engineer will, thereafter, promptly resolve any disputed items. Payment on undisputed invoice amounts is due upon receipt of the invoice by the Town and is past due thirty (30) days from the date the invoice is received. If payment remains past due sixty (60) days from the date an undisputed invoice is received by the Town, then Engineer shall have the right to either suspend all services provided pursuant to this Agreement, without prejudice, or terminate this Agreement in accordance with the provisions of Article 9. No deposit or advance sums shall be paid. Interest on late payments shall accrue at the rate of 0.5% per month.

ARTICLE 5 – INDEMNIFICATION; INSURANCE; DAMAGES

5.1 To the fullest extent permitted by law, Engineer shall indemnify the Town, its officers, directors, partners, employees, and representatives, from and against losses, damages, and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are found to be caused by a negligent act, error, or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or subconsultants in the performance of services under this Agreement. Engineer shall not be responsible for any loss, damage, or liability to the extent arising from acts of the Town, its agents, staff, and other consultants employed by the Town. This section shall survive the termination of this Agreement.

5.2 Engineer agrees that at all such times as this agreement shall be in effect, it will maintain the insurance coverages and amounts thereof set forth at Attachment B hereto, and further agrees that the Town of Boone shall be maintained as an "Additional Insured" with respect thereto. Engineer agrees to provide a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day notification to the Town by the insurer if Engineer receives a non-renewal or cancellation notice from the insurer or notice that coverage no longer complies with the insurance requirements herein. The Certificate Holder address should read: Town of Boone, Post Office Drawer 192, Boone, NC 28607.

5.3 Engineer's liability to the Town for damages will, in aggregate, not exceed the Engineer's liability insurance coverages. This limitation of liability will apply whether Engineer's liability to the Town arises under breach of contract or warranty; tort, including negligence; strict liability; or statutory liability, and shall include Engineer's directors, officers, employees and subcontractors. At additional cost, Town may obtain a higher limit prior to commencement of services.

Both Town and Engineer hereby waive any right to pursue claims for consequential damages against one

another, including any claims for lost profits.

Nothing in this section 5.3 shall be understood to limit or otherwise affect Engineer's indemnification obligations with respect to third-party claims as set forth at section 5.1 herein.

ARTICLE 6 - RIGHTS AND RESPONSIBILITIES OF ENGINEER:

6.1. NON-DISCRIMINATION. During the performance of this Agreement, Engineer agrees that:

It will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of Engineer; that it will post in conspicuous places, available to employees and applicants for employment, notices setting forth non-discrimination practices, and that it will state, in all solicitations or advertisements for employees placed by or on behalf of the Engineer, that it is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement; and

Engineer will include the provisions of the foregoing paragraph in every subcontract or purchase order over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

6.2. COMPLIANCE WITH APPLICABLE LAWS. During and in the course of its performance of this Agreement, Engineer represents and warrants to the Town that it is and will remain at all times in compliance with federal, state and local laws and regulations applicable to its performance hereunder.

6.3. COMPLIANCE WITH CODES AND STANDARDS. Engineer's professional services shall incorporate those federal, state and local laws, regulations, codes and standards that are applicable at the time Engineer rendered its services. Engineer shall not be responsible for any claim or liability for injury or loss allegedly arising from Engineer's failure to abide by federal, state or local laws, regulations, codes and standards that were not in effect or publicly announced at the time Engineer rendered its services.

6.4. AUDIT. The Engineer hereby agrees to retain all books, records, and other documents relative to this engagement for five (5) years after final payment for services. The Town of Boone, its authorized agents, and agents of the State and federal government shall have full access to documents and the right to examine any materials during the said period.

6.5. LITIGATION. Engineer agrees to produce documents, witnesses and/or general assistance to any litigation, arbitration or mediation involving the Town, if the Town requests such documents, witnesses and/or general assistance. The Town shall reimburse Engineer for all direct expenses incurred and time according to Engineer's rate schedule as of the date of the execution of this agreement.

6.6. CONFIDENTIALLY. Engineer will maintain as confidential any documents or information provided by the Town and will not release, distribute or publish same to any third party without prior written permission from the Town, unless compelled by law or order of a court or regulatory body of competent jurisdiction. Engineer shall provide written notice to the Town in sufficient time to allow the Town to intervene as necessary.

6.7. PUBLIC RESPONSIBILITY. The Town has a duty to conform to applicable codes, standards, regulations and ordinances with regard to public health and safety. Engineer will at all times alert

the Town to any matter of which Engineer becomes aware and believes requires the Town to issue a notice or report to certain public officials, or to otherwise conform with applicable codes, standards, regulations or ordinances.

6.8. SUBCONTRACTOR INSURANCE. The Engineer shall agree to cause each subcontractor employed by Engineer to purchase and maintain insurance of the type specified herein, unless the Engineer's insurance provides coverage on behalf of the subcontractor. Evidence of subcontractor insurance shall be made available to the Town upon request of the Town.

ARTICLE 7 - RIGHTS AND RESPONSIBILITIES OF TOWN:

7.1. DEFAULT. In case of default by the Engineer for failure to deliver or perform in accordance with Contract specifications or terms and conditions and Engineer's failure to cure the default within thirty (30) calendar days of Engineer's receipt of notice from the Town of the default, the Town may procure the articles or services from other sources and hold the defaulting Engineer responsible for any resulting additional purchase and administrative costs, in addition to recovery of fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs. If the completion of the contract work results in increased costs to the Town, a letter will be sent to the defaulting Engineer requiring payment for these costs. The Engineer will be removed from future bidding until the payment has occurred. Provided further, that the Town reserves the right to debar Engineer from doing further business with the Town. Failure of an Engineer's source to deliver is not considered to be an unavoidable cause. The burden of proof rests with the Engineer to demonstrate that Engineer should not be debarred. Nothing in the section shall be construed to limit or waive Engineer's ability to avail itself of remedies available under applicable laws.

7.2. RIGHT OF ENTRY. The Town will provide for the right of entry for Engineer, its subcontractors, and all necessary equipment in order to complete the work under this Agreement. Engineer agrees to be responsible for any damage to property that is caused by Engineer, its subcontractors and/or equipment and further agrees to take all necessary corrective action for any damage to property that is caused by Engineer, its subcontractors and/or equipment.

ARTICLE 8-TERMINATION:

8.1. TERMINATION BY TOWN. The Town may terminate this Agreement and project for any reason upon seven (7) calendar days' notice. Anything contained in the Agreement to the contrary notwithstanding a termination under this section shall not waive any right or claim to damages which Town may have with respect to work performed by the Engineer which has been completed prior to the date of termination, and Town may pursue any cause of action which it may have by law or under this Agreement on account of such completed work.

8.2. STOP WORK UPON NOTICE OF TERMINATION. After receipt of a notice of termination, except as otherwise directed, the Engineer shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further order or subcontracts for materials, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendor and subcontracts; and settle all outstanding liabilities and claims.

8.3. COMPENSATION TO ENGINEER IF TERMINATED. In the event of a termination under section 8.1 of this Agreement, Engineer acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of work previously performed. Under no circumstances shall Engineer, or any subcontractor, be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs or consequential or other damages as a result of a termination under this section.

Payment to Engineer of any and all sums already earned by Engineer under the terms of Article 4 constitutes Engineer's exclusive remedy for a termination hereunder.

ARTICLE 9 – GENERAL CONSIDERATIONS:

9.1 The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

9.2 Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

9.3 Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.

9.4 Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own subcontractors, employees, and representatives) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.

9.5 All reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by the Engineer in performance of this Agreement (each an "Instrument of Service") shall become the joint property of the Engineer and Town, upon full payment of fees owed to Engineer for the services performed by Engineer in connection with the preparation or creation of each such Instrument of Service. The Engineer shall jointly share all common law, statutory and other rights, including the copyright thereto with the Town. In the event of termination of this Agreement and upon full payment of fees owed to Engineer, Engineer shall make available to Town copies of all documents prepared for or on behalf of Client, including but not limited to reports, field data, notes, plans and specifications.

9.6 The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

ARTICLE 10 – MISCELLANEOUS:

10.1. NOTICES. The following persons shall be contact persons for the parties, and notices given them, by certified mail, return receipt requested or by email to the address shown, shall constitute valid notice under the requirements of this Agreement. The parties may amend such addresses by written notice to the opposite party at the given address.

For the Town of Boone (to be effective, a copy of all such notices (whether sent by mail or email) shall be provided simultaneously to):

Mr. John Ward
Town Manager
Town of Boone
567 West King Street
Boone, NC 28607
John.ward@townofboone.net

Mr. Todd Moody
Deputy Public Works Director
Town of Boone
321 East King Street
Boone, NC 28607
todd.moody@townofboone.net

For Vaughn & Melton:

Mr. Hardy L. Willis, PE
Project Manager
Vaughn & Melton Consulting Engineers
324 Hwy. 105 Ext., Suite 9
Boone, NC 28607
hlwillis@vaughnmelton.com

10.2. INVOICE/PAYMENT ADDRESSES. The following persons shall be contact persons for the parties, for the purpose of submitting invoices and payments under this agreement by depositing the same in the United States Mail with postage prepaid, to the addresses shown:

For the Town of Boone: Mr. John Ward
Town Manager
Town of Boone
567 West King Street
Boone, NC 28607

For Vaughn & Melton: Mr. Hardy L. Willis, PE
Project Manager
Vaughn & Melton Consulting Engineers
324 Hwy. 105 Ext., Suite 5
Boone, NC 28607

10.3. DISPUTE RESOLUTION; JURISDICTION & VENUE: Engineer and Town agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement, including any Change Order, or the breach thereof ("Disputes") to mediation by a mutually agreed certified NC Superior Court Mediator. The mediation shall be conducted on a confidential basis and shall be completed within 90 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to another dispute resolution method of their choice (binding or non-binding), or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

THE EXCLUSIVE VENUE FOR LITIGATION OF ANY DISPUTE SHALL BE THE STATE AND FEDERAL COURTS HAVING JURISDICTION IN WATAUGA COUNTY, NORTH CAROLINA. EACH PARTY HEREBY CONSENTS TO THE JURISDICTION OF SAID COURTS, WAIVES ANY OBJECTION TO THE JURISDICTION AND VENUE OF SAID COURTS, AND AGREES THAT ANY DISPUTE MUST BE BROUGHT EXCLUSIVELY IN SAID COURTS.

10.4. SEVERABILITY. In the event that any provision of this Agreement is unenforceable, then the parties agree that all other provisions of this Agreement have full force and effect and shall not be affected thereby.

10.5. WAIVER. Any failure of the Town or Engineer to demand rigid adherence to one or more of the terms and provisions as set forth in this agreement, on one or more occasions, shall not be construed as a waiver nor deprive the Town or Engineer of the right to insist upon compliance with the terms of this agreement. Any waiver of a term of this agreement, in whole or in part, must be in writing and signed by the party granting the waiver to be effective.

10.6. SUCCESSORS AND ASSIGNS. The provisions of this agreement shall be binding upon and shall insure to the benefit of the parties hereto, their successors, transferees and assigns. No party may assign this agreement not the rights and obligations hereunder to any other third party without the prior express written consent of the other parties.

10.7. HEADINGS. Engineer and Town agree that the Article and Paragraph headings are for convenience only and are not part of this agreement.

10.8. NO JOINT VENTURE. Neither this agreement nor any agreements, instruments, documents or transactions completed hereby shall in any respect be interpreted, deemed or construed as making any party a partner or joint venture with any other party or as creating any similar relationship or entity. No party has the authority to act on behalf of or bind any other party concerning the transactions related to this agreement.

10.9. FACSIMILE/SCANNED SIGNATURES. The parties agree that the use of a fax or scanned signature and the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signature, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

10.10. COUNTERPARTS. This agreement (and any amendments or modifications) may be executed in multiple counterparts, each of which shall be an original, and all of which shall be one and the same agreement.

10.11 APPLICABILITY OF NORTH CAROLINA PUBLIC RECORDS LAW: Notwithstanding any other provisions of this Agreement, this Agreement and all materials submitted to Town by Engineer are subject to the public records laws of the State of North Carolina and it is the responsibility of the Engineer to properly designate materials that may be protected from disclosure under North Carolina law as such and in the form required by law prior to the submission of such materials to Town. Engineer understands and agrees that the Town may take any and all actions necessary to comply with federal, state, and local laws and/or judicial orders and such actions will not constitute a breach of the terms of this Agreement. To the extent that any other provisions of this Agreement conflict with this paragraph, the provisions of this section shall control.

WITNESS the following signatures and seals in agreement with the above terms:

OWNER: Town of Boone

ENGINEER: Vaughn & Melton

DocuSigned by:

Reece M. Schuler

By: _____

By: 18634024C7824FC Reece M. Schuler, PE, PLS

Title:

Title: Vice President

Date Signed:

Date Signed: 10/4/2019

License or Certificate No. & State: F-1088 NC

ATTACHMENT "A"

SCOPE OF SERVICES

**Vaughn & Melton**

Consulting Engineers

31840-06

1318-F Patton Avenue
Asheville, North Carolina 28806
828-253-2796 * 828-253-4864 Fax
www.vaughnmelton.com

***B-5979 Watauga County
Municipal Project – Town of Boone
Replacement of Bridge #346 over South Fork New River***

***Vaughn & Melton Consulting Engineers, Inc.
Scope of Services
April 5, 2019***

Vaughn & Melton Consulting Engineers, Inc. (V&M), with assistance from subconsultants, proposes to provide Professional Engineering and Land Surveying services for the referenced bridge replacement project. Following is a list of the individual tasks we propose to provide, comprising the scope of services.

1. Land Surveying services – V&M will provide conventional surveying services, locating the existing bridge, road, stream, utilities and properties to a level necessary to complete the design of the project. This scope does not include SUE services. Utilities will be marked by others prior to our survey.
2. PDEA/Planning/Community involvement – V&M, with assistance from its subconsultant, Interface Environmental Consulting (IEC), will prepare the necessary planning document for the project (assuming Categorical Exclusion at the time of this scope preparation), and will properly notify the local residents and business owners. Also under this category, V&M will conduct one day's worth of pedestrian traffic counting at the bridge site, and report on our findings.
3. Structure Design – V&M will furnish structural design, including final construction plans and documents for the proposed bridge over South Fork New River.
4. Roadway Design – V&M will furnish roadway design for the approach roadway on each end of the bridge.
5. Traffic Management – V&M will furnish traffic management plans for the construction of the project. Included in this task is also Pavement Marking Plans and Signage Plans.
6. Hydraulics – V&M will furnish hydraulic & hydrologic engineering in the analysis of South Fork New River, for both the existing and proposed conditions. This is in a FEMA Detailed Study. As such, V&M will prepare and finalize not only a Bridge Survey Report (BSR) for NCDOT, but also MOA (Memorandum of Agreement) paperwork for FEMA coordination. CLOMR and LOMR work and fees are NOT included in the current scope assumptions. Also, V&M will provide surface drainage design for the roadway and bridge.
7. Erosion Control – V&M will furnish Erosion & Sedimentation Control plans for the project.
8. Geotechnical services – V&M, with assistance from its subconsultant, ECS Southeast, LLP, will provide both geotechnical field subsurface investigation and reporting with foundation recommendations for the bridge and roadway. It is noted that some subsurface information is available from a 2017 NCDOT field investigation. ECS's work will use this data, in addition to data collected by their own investigative efforts.

North Carolina • South Carolina • Tennessee • Kentucky • Georgia

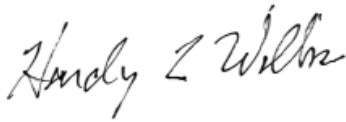
*April 5, 2019
Page 2 of 2*

9. Utility Coordination – V&M will coordinate with all affected utility owners, procuring and preparing Utility by Others plan sheets and UAPR's, as necessary, when temporary or permanent utility movements are needed for construction of the project.
10. Utility Design – V&M will design the necessary relocation of the existing sewer line that is attached under the existing bridge, and which is owned by the Town of Boone. We understand there is a nearby water line. Preliminary information seems to indicate that line will not be affected by construction activities at this project. As such, no design of relocation for this water line is assumed for the sake of this scope.
11. Permitting – V&M will prepare permit application(s) and submit to appropriate agency(s) for the construction activity related to this bridge replacement.

Please refer the Minutes of Scoping Meeting, attached, for additional details of the project, and of Vaughn & Melton's scope of services.

Respectfully submitted,

VAUGHN & MELTON CONSULTING ENGINEERS, INC.



Hardy L. Willis, PE
Project Manager



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B-5979

WBS 47431.1.1

Fed. Aid #STP-1104(020)

Scoping Meeting

Town of Boone Council Chambers
1500 Blowing Rock Road, Boone, NC
March 29th, 2019
10:30am

Attendees in person: see attached sign-in sheet

Attendees by phone conference:

- Andy Jordan, NCDOT
- Marc Shown, NCDOT
- Mohammed Mahjoub, NCDOT
- Ray Lotfi, NCDOT
- Shane Clark, NCDOT
- Chris Martell, V&M
- Carrie Caviness, Interface Environmental Consulting (IEC)

Joe Laws, NCDOT Division 11 Bridge Program Manager, and B-5979 Project Coordinator, called the meeting to order at 10:30 am.

Project Introduction

- Joe Laws-Primary Project Contact for NCDOT
- Hardy Willis- Primary Project Contact for V&M
- An estimated \$1.9 million for all phases of the project.
- There will be an 80/20 Federal/Municipal split. NCDOT does not contribute funds.
- \$1.52 million will be federal funds. (10% of the funds will be set aside but not available for expenditures. If unused by the end of the project this amount will be released). Currently, \$180,000 is set up for PE phase.
- This project must meet all federal guidelines from start to finish and likely to be audited by FHWA.
- There will be 3 overall phases: PE; Right-of-Way; and Construction.
- The Town of Boone (TOB) is to submit invoices and expenses to NCDOT for reimbursement on a quarterly basis. They are to document all expenses.
- All electronic transmittals are to be submitted via SharePoint.
(Include: Joe Laws, Hardy Willis, Mohammed Mahjoub & Todd Moody)

PARK TERRACE CENTER • 1318-F PATTON AVENUE • ASHEVILLE, NC 28806 • [P] 828.253.2796 • [F] 828.253.4864

- Environmental documents and ROW plans are to be finished before the ROW acquisition phase. All documentation and correspondence have to be kept by the Town to adhere to federal guidelines.

Project Details

- The Town of Boone owns 3 corners of the bridge site. There is only 1 private property impacted on the Southeast corner.
- This project must be constructed in stages, as there is a closed neighborhood loop north of the bridge that is otherwise inaccessible.
- There is an existing sewer line that runs through abutments under the bridge. This is to be relocated. There are also other utilities along the west side.
- Access to the pump station northeast of the bridge must be maintained.
- The current posted speed limit is 20mph. Design speed is 35mph.
- No design exceptions are anticipated.
- The traffic count for this area is 100 vehicles per day with <1% trucks.
- 60' ROW proposed throughout. Any drainage/utility/construction needs that fall outside of this are to be handled with easements.
- Sidewalk and Bicycles need to be accommodated on one side (west).
 - Raised sidewalk on bridge, extend along approaches with concrete sidewalks.
 - Bike lane next to sidewalk
 - Pedestrian traffic count to be conducted by V&M to determine if pedestrian access must be maintained during construction.
- There is a water line under the stream bed near the bridge. TOB is to get location and proximity to bridge to V&M.
- The Town of Boone owns the water and sewer lines. Power/Phone and other utilities owned by others.
- Don't anticipate any historical or archeological impacts. An environmental survey of the trout & hellbenders needs to be completed. Also discussed were mussel species and long-eared bats. Joe Laws commented that the anticipated tree removal was extremely small.
- Total project length = 550' with 2 lanes on the bridge (10 ft. or 11 ft. lanes).
- Vertical concrete barrier rail on east side (pending hydro) & 3 BMR on the pedestrian (west) side.

NCDOT Comments (Hydro/Roadway/Structural/Geotech)

- Flood analysis might require metal rails on both sides. This is in a FEMA Detailed Study; structures exist upstream in the *floodway* (not flood fringe); overtopping is noted.
- 2 spans with 18" cored slabs most likely required per hydro
- Proposed north abutment will need to be a vertical face; may be able to use sloping abutment on south end, near armory (1.5:1).
- Submittal schedule for roadway: 25-75-90-100. For structures: 30-60-90-100, or basic PGD-Final Review-Final tracings.
- Structure calculations will be required in addition to plans and Geotech reports at final submittal. (30/60/90% submittal schedule)
- There are to be no utilities on the new bridge unless there is no other option.
- There are no stream mitigations that the TOB is aware of to deal with for any easements.
- V&M is to scope hydraulic task as if it's a no rise; Supplement CLOMR if required.
- NCDOT drilled already for this project in 2017, and has some subsurface data. NCDOT will provide what they have, as it will affect ECS scope.
- Are there any public involvement efforts?
 - Property owners have not been contacted
 - Mail letter to all property owners (20+ homes past bridge to north)
- Services to be provide by V&M per NCDOT:
 - Planning & Environmental (assume CE document)
 - Roadway Design
 - Surveys (SUE not required)
 - Structures (TOB will be able to provide waterline information)
 - Hydraulics (If CLOMR is needed V&M will do a supplement)
 - Geotechnical
 - Erosion Control
 - Utility Design
 - Utility Coordination

- Traffic Management
- Pavement Marking & Signing
- Permitting

Important Dates/ follow-up discussion

- 5 years maximum allowed for all phases of project including closeout, with August 2023 being final.
- In meeting, established:
 - **R/W LET: February 2020.**
 - **CONSTRUCTION LET: February 2021.**
- V&M to investigate utility owners.
- V&M scope due 4/5/2019
- One blank estimate with tasks and staff rates/OH/CC
- V&M man-day estimate due 4/19/2019.

Meeting adjourned approximately 11:45 am.

Respectfully submitted,

VAUGHN & MELTON CONSULTING ENGINEERS, INC.

Hardy L. Willis, PE

ATTACHMENT “B”

CERTIFICATE OF INSURANCE

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64VAUGHMEL1

ACORD**CERTIFICATE OF LIABILITY INSURANCE**DATE (MM/DD/YYYY)
9/05/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER McGriff Insurance Services 2600 Eastpoint Parkway Louisville, KY 40223 502 489-5900		CONTACT NAME: PHONE (A/C, No, Ext): 502 489-5900 FAX (A/C, No): 866 881-2185 E-MAIL ADDRESS: CHovekamp@McGriffInsurance.com															
INSURED Vaughn&Melton Consulting Engineers Inc 109 South 24th Street PO Box 1425 Middlesboro, KY 40965		<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Continental Insurance Company</td> <td>35289</td> </tr> <tr> <td>INSURER B : Continental Casualty Company</td> <td>20443</td> </tr> <tr> <td>INSURER C : Transportation Insurance Company</td> <td>20494</td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Continental Insurance Company	35289	INSURER B : Continental Casualty Company	20443	INSURER C : Transportation Insurance Company	20494	INSURER D :		INSURER E :		INSURER F :	
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INSURER E :																	
INSURER F :																	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC ☐ OTHER:		6042786459	06/30/2019	06/30/2020	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$500,000 MED EXP (Any one person) \$15,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMPIOP AGG \$4,000,000 \$
C	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS NON-OWNED AUTOS ONLY		6042920743	06/30/2019	06/30/2020	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ EXCESS LIAB ☐ DED ☒ RETENTION \$10000		6042786476	06/30/2019	06/30/2020	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☒ Y ☐ N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	6042786462	06/30/2019	06/30/2020	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
B	Professional Liability		AEH276200096	11/22/2018	11/22/2019	5,000,000 Per Incident 10,000,000 Aggregate \$350,000 Deductible

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

Town Of Boone 321 East King Street Boone, NC 28607	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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ACORD 25 (2016/03)

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MCH

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

CONSIDERATION OF AWARDING OF CONTRACT - UTILITY SERVICES COMPANY, INC.

Mr. Miller asked for Council's consideration on awarding a contract for repairs in the amount of \$164,600.00 to the Charles and Gladys Street water storage tank to Utility Services Company, Inc. Mr. Miller stated that the tank was built in the 1990's and that with these repairs, the tank should last another ten or twenty years. Mr. Furguele asked whether staff had any experience with this company, to which Mr. Miller responded that staff had utilized their services on the Deck Hill tank, and though they had experienced problems with some of the materials, they had not had issues with the workmanship. Mr. Miller also confirmed that a neutral color would be used on this tank, similar to the other tanks that had been repainted. Ms. Mason made a motion, which was seconded by Mr. Furguele, to approve the request as presented.

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

CONSIDERATION OF RESTRUCTURING OF TOWN CODE TITLES IX AND XIII

Ms. Meade presented Council with a recommendation to restructure Town Code Titles IX and XIII concerning Public Nuisances and Miscellaneous Offenses, and stated that the various affected chapters needed to be drafted and approved before adoption. It was the consensus of Council that Ms. Meade move forward in the matter as presented to restructure Town Code Titles IX and XIII.

RESULT:	CONSENSUS
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CONSIDERATION OF PROPOSED REVISIONS OF CHAPTER 91 AND NEW CHAPTER 81 OF THE TOWN CODE

Ms. Meade presented Council with a recommendation to revise the current Town Code Chapter 91 and to create a new Chapter 81 to address different nuisances. Ms. Mason felt that the new text was more logically structured, but was still concerned about enforceability. Mr. Furguele added that he would like to get a summary from the Town's Community Improvement Officer about how many times someone had been cited over a certain period time for types of nuisances such as failing to keep the lawn mowed. Mr. Furguele expressed some concerns with the effects of nuisance abatement in turn destroying the habitats of birds and bees. He believed that the Town needed to adopt a process that involved the Planning department and should also take an integrated approach with the Community Appearance Commission to revisit the Town's traditional approaches to the community appearance as the need to protect natural habitat is more important than ever in the face of climate change and declining populations of birds and bees. Once Ms. Meade had presented her revisions and additions, Mr. Furguele asked that the term "public street" be replaced with the term "public way" throughout. Ms. Meade disagreed with this suggestion and felt that her usage of both terms was warranted in each respective situation. Discussion turned to garbage receptacles and whether they could be seen from a public way, with Ms. Meade adding that she believed it was important to factor in whether garbage cans were being left by the street for an

extended period of time. Ms. Mason felt that the 45-foot requirement in section 91.038 should be removed. Ms. Meade suggested that unless garbage cans were fully enclosed, they should be required to be moved to the environs of the house within a certain period of time. Mr. Furgiuele suggested that they could even be moved behind the house. Ms. Meade felt that citizens were more concerned about cans being left on the street, and believed that it had been the practice of staff to allow permanent enclosures for cans which were close to the street. Mr. Moody confirmed that staff had not been enforcing enclosures, and stated that staff had seen enclosures with open tops and backs. Ms. Meade indicated that it was not completely clear to her in the current code whether enclosures were allowed at all. Mr. Furgiuele felt that there were certain places in Town where there were no alternatives to enclosures for garbage cans, with Mr. Moody adding that this fact was why staff was not always able to enforce. Mr. Furgiuele felt that the new roll-out recycling containers were an improvement over the old containers, and believed that staff should look into whether these types of containers could be used for solid waste as well. Mr. Ward noted that the Town already provided an opportunity to citizens to rent lidded, roll-out garbage cans. Mr. Furgiuele suggested that the Town could require the usage of these garbage cans and could add a surcharge to citizen's utility bills until the cans were paid in full. Ms. Mason believed that incentives needed to be explored for people who used a low amount of solid waste, with Mr. Furgiuele agreeing and adding that he believed there was no alternative in the future other than for Council to pass on to the citizens the burden that the County has placed on the Town.

Ms. Meade then presented proposed text for a new Chapter 81: Abandoned, Junked and Nuisance Vehicles, and stated that much of the text in the chapter was derived from state law. She noted that State law authorized the designation of "aesthetic nuisance" vehicles, but that was hard to imagine a vehicle that was an "aesthetic nuisance" vehicle but did not also meet the more basic criteria for nuisance vehicles, and that Council might not wish to include the provisions for "aesthetic nuisance" vehicles in the final text. Mr. Furgiuele agreed that he did not feel the text was necessary. Ms. Mason felt that the Town should only intervene if it came to a matter of health or public safety. Mr. Furgiuele stated that he had a classic car that might fit the current definition of a junk vehicle at his home and believed that in big cities they should be addressed, but did not believe junked cars were such a major problem in Boone that they needed to be addressed unless they directly impacted health and safety issues for neighbors. Mr. Ashcraft suggested that language could be crafted to be directed toward vehicles that were in poor condition but were tagged and could still be moved, and further suggested that a vehicle could be required to be covered. Mr. Furgiuele was of the opinion that it was the property owner's business and that the Town should not try and control them if they were not having any measurable impact on others. He further expressed concern with the Town contracting with a private towing company for the removal of nuisance vehicles and not being able to control their fees, and believed any contracts the Town entered should come before Council. Mr. Ward stated that the police standards would be used, with Mr. Furgiuele asking for those standards to be written into the ordinance if that was the case. Mr. Furgiuele asked that it be made clear in section 81.06 who was causing the public or private damage. He reiterated that towing companies collecting fees set by themselves gave him discomfort, and believed that Council should approve those contracts with the amounts so that there was an opportunity for public input. Chief Crawford noted that there had been issues in the past with towing companies price-gouging customers and confirmed that he and staff looked closely at pricing when towing companies were added to the call list. Mr. Furgiuele believed that the Town should control towing fees when the towing was ordered by the Town since some companies had a history of charging exorbitant and predatory amounts. Chief Crawford asked Council to be cautious in that if their fees were restricted too much, towing companies may consider it a waste of their time to respond, therefore leaving the Town with no one to tow vehicles. Mr. Furgiuele understood, but believed that the Town should not facilitate predatory practices. Mr. Furgiuele felt that the first three points listed were poor standards for declaring a vehicle a nuisance, with Mr. Ashcraft suggesting keeping items c through f. Mr. Furgiuele felt that if it was not affecting the neighbors then it should not be any of their business. He added that he would like to see a list of ordinances that Town staff has actually been able to enforce and that he believed there were many parts of the municipal code which were passed with good intentions, but have never been enforced due to staffing limitations. Ms. Meade asked whether staff has had to tow a nuisance vehicle in recent years, with Mr. Ward responding that he has had one vehicle towed that he could think of on Green Street and that was at the property owner's request for fear of children getting hurt in or around them, as well as concern about property value. Ms. Meade noted that she believed this issue could have been addressed as an abandoned vehicle as well. Mr. Miller stated that his department had dealt with several nuisance vehicles which were all complaint driven. After brief

discussion, it was the consensus of Council to strike all reference in the text to aesthetic nuisances, to leave judgment to the Town's Code Enforcement Officer, and to remove 81.06(1)(a)-(c). Mayor Brantz declared a break at 8:38 p.m. Council reconvened at 8:48 p.m.

RESULT: CONSENSUS

CONSIDERATION OF PROPOSED NEW CHAPTER 80 ("PUBLIC NUISANCES")

Ms. Meade presented Council with newly written text for Chapter 80: Public Nuisances. Mr. Furgiuele asked for confirmation as to whether a municipality could take action to abate a nuisance outside its limits under certain circumstances, to which Ms. Meade answered that she would have to research the answer. Mr. Furgiuele was of the opinion that if there was a nuisance issue within a certain distance of town property there may be certain situations that the municipality could take action to abate the nuisance. He further stated that he had expected to see text addressing "party houses". Ms. Meade stated that she viewed the text as presented as a first draft and that the nuisance house text would be introduced in a later version. She added that she viewed the nuisance house matter as more of an enforcement issue, and felt that the Town already had mechanisms in place to enforce the matter. Mr. Furgiuele was concerned that certain portions of the draft text went against bee city regulations in requiring people to destroy natural areas, and added that he felt the term "vegetation" was broad and needed to be narrowed down and clarified. Ms. Mason agreed, and felt that the term should be differentiated as to preference and taste, as well as what crossed the line and what was a threat to public health and safety. Ms. Meade was unsure how weeds could ever impact public health and safety. Mr. Furgiuele noted that mosquitoes were generated in gutters, but that the Town should not spend taxpayer money to mitigate the mosquito population by demanding property owners clean their gutters. Ms. Mason asked how many complaints the Town received in terms of overgrowth, to which Mr. Ward answered that he was unsure of a number but the last one staff brought before Council, it was decided they should not move forward with action. Mr. Miller noted that the Town's Community Improvement Officer kept a log of nuisance complaints and that there were quite a few complaints about high grass. Mr. Furgiuele felt that in order to create bird habitats, the Town might have to begin encouraging or at least tolerating high grass and fallen leaves. Ms. Meade felt that if Council wished to outlaw only nuisances which were a threat to public health and safety that the first five points should be removed. Mr. Furgiuele agreed that the first five should be struck except for 3b. Discussion turned to the storage and accumulation of building material, specifically lumber, on homeowner's property, with Ms. Mason being against it, because it could potentially pose a danger for children and wildlife. Mr. Ashcraft was of the position that if someone wanted to store something on their property where it could not be seen, he did not have a problem with it. Mr. Furgiuele agreed, and felt that if he owned the property and had lumber that was neatly stacked, he did not feel that should be viewed as a nuisance. He expressed concern that the Town code was being used as a weapon by neighbors against other neighbors. Ms. Shook asked if things were regulated in both the UDO and the code in terms of construction, which did Council want staff to use in terms of enforcement. Mr. Furgiuele felt that regulations should only be listed in one place, and Ms. Meade felt that the overlap in text should be kept.

CONSIDERATION OF PROPOSED NEW CHAPTER 89 ("MISCELLANEOUS OFFENSES")

Ms. Meade presented a proposed new Chapter 89 to address miscellaneous offenses, as well as to give authority to cite and fine an offender in addition to or in lieu of using the public nuisance abatement procedures. Mr. Furgiuele suggested that a section be added that outlined when the Town would bring on a civil action to abate a nuisance. Ms. Meade felt that as the draft ordinance was written, civil action would only occur in cases where Council had declared a special nuisance situation, and stated that the whole point of the ordinance in her opinion was to have the Town not go to court. He reiterated a point he had made months earlier that he wanted the ordinance to provide direct guidance as to what factors should inform a decision by the Town to initiate legal action to abate a nuisance, and that his own opinion was that this should be reserved for situations which have a direct impact on the quality of life of other property owners. Mr. Furgiuele stated that he did not want taxpayer money to essentially hire the Town Attorney to fight a dispute between neighbors, and suggested a

misdeemeanor charge for second and any subsequent violations, and proposed a cap on the number of violations. Mr. Ashcraft suggested a limit of \$500 plus the cost of the abatement action as the cap, to which Mr. Furguele agreed, unless the nuisance itself proved to be a danger.

PRESENTATION OF CENTER FOR WATERSHED PROTECTION REPORT

Mr. Ward presented a report by the Center for Watershed Protection regarding the Town's development regulations in terms of stormwater infrastructure. Ms. Mason asked whether the state limited what a municipality could do in terms of riparian buffers, with Ms. Meade confirming. Discussion turned to cul-de-sacs and whether round cul-de-sacs should be outlawed in an effort to decrease the amount of impervious surface used in development. Ms. Shook confirmed that t and y shaped cul-de-sacs worked well in most situations. She also noted that the study missed the fact that the UDO currently allowed for shared parking. Mr. Furguele felt that all the recommendations in the report made sense, but that there were some ongoing projects by the Planning department that needed to be completed before work started on this one. He believed that the Comprehensive Plan was adequate for the time being and that the R3/R4 rezoning project should come before this project. Mr. Furguele suggested that Council review a new priority list during next year's planning retreat and should also think about a tax increase next fiscal year to cover the cost of an increase in Planning department staff, in addition to an increase to Police and Fire department staff, given the failure of Watauga County to restore the sales tax.

REQUEST FOR DIRECTION - SURPLUS PROPERTY SALES

Mr. Ward asked for Council's guidance in terms of negotiation terms on the two surplus properties which the Town recently listed for sale. Mr. Furguele inquired as to whether there were any unexpected results from the surveys, to which Mr. Ward responded that there were not. Mr. Ashcraft expressed that he was concerned that the Town could be charged higher rents in a rent-back situation since a new municipal complex was three or more years away from being built. Mr. Ward did not believe that the new complex was that far away from being built, but felt that until there was a site plan in place, estimates could not begin. He asked whether Council was agreeable to accepting only full-price offers. Mr. Furguele believed that the entire Council wanted the maximum amount possible for the buildings, and felt that staff was aware of the matters at issue and could consider those in negotiations. It was the consensus of Council to move forward in this manner, and for Mr. Ward to keep Council updated on the types of interests without giving away too many details publicly.

RESULT:	CONSENSUS
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DISCUSS THE TOWN'S TOWING/"BOOTING" ORDINANCE REGARDING PREDATORY PRACTICES

RESULT:	TABLED [UNANIMOUS]	Next: 10/17/2019 6:00 PM
MOVER:	Sam Furguele, Council Member	
SECONDER:	Lynne Mason, Council Member	
AYES:	Mason, Furguele, Ulmer, Ashcraft	
ABSENT:	Clawson	

CLOSED SESSION

Upon a motion by Ms. Mason, seconded by Mr. Furguele, Council voted to enter into closed session at 10:39 p.m. pursuant to:

1. 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. 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 or other legal matter(s).

3. N.C.Gen.Stat.§143.318.11 (a)(5), to establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (I) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease (PIN 2900-79-5183-000).

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

Upon a motion by Ms. Mason, seconded by Ms. Ulmer, Council voted to exit closed session at 11:06 p.m.

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

ADJOURNMENT

Upon a motion by Ms. Mason, seconded by Mr. Furgieuele, Council voted to adjourn the meeting at 11:08 p.m.

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

Nicole Harmon, Town Clerk

Rennie Brantz, Mayor