

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
November 17, 2016**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order at 5:30 p.m. Thursday, Nov. 17, 2016, in the Council Chambers located at 1500 Blowing Rock Road. Mayor Rennie Brantz presided. Council members present were Mayor Pro Tem Lynne Mason, Loretta Clawson, Jeannine Underdown Collins, Charlotte Mizelle and Jennifer Teague. Town Attorney Allison Meade was in attendance. Staff present were Town Manager John Ward, Administrative Support Specialist Nicole Worley, Public Works Director Rick Miller, Police Captain Andy LeBeau, Cultural Resources Director Pilar Fotta, Fire Chief Jimmy Isaacs, Planning Director Bill Bailey and Safety and Risk Manager Terry Story.

ANNOUNCEMENTS

Mayor Rennie Brantz noted anyone who wished to speak during public comment could sign the public comment sign-up sheet. Mayor Brantz also announced the upcoming annual Tree Lighting celebration at the Jones House on Friday, December 2, 2016, as well as the Boone Christmas Parade on Saturday, December 3, 2016.

TENTATIVE AGENDA ADOPTION

Town Manager John Ward noted the following amendments to the agenda:

1. Moved Item G-Approval of Resolution regarding Revenue Bond under Consent Agenda to Item B under Council Matters.

PUBLIC HEARING

Mayor Brantz opened a public hearing at 5:36 p.m. regarding a proposed Re-draft to Town Code Chapter 73: Towing and Booting.

REDRAFT TO TOWN CODE CHAPTER 73: TOWING AND BOOTING

Debbie Stewart of Sugar Grove spoke regarding a recent encounter with LMS Parking. Ms. Stewart stated that she and Ms. Lee Rankin had a meeting on November 7th for which they parked both their vehicles at the former Frogurt building. Neither of the women saw signs prohibiting parking and continued inside for their meeting. When the women returned to their vehicles, both cars were booted. Ms. Stewart provided photographs of the parking lot to prove that signage at this particular location was inadequate.

Harold Tilley of Appalachian Management provided information on the history of parking in the town of Boone. Town Attorney Allison Meade provided clarification to Mr. Tilley as to whether or not single family resident rentals were exempt from the towing and booting ordinance sign requirements. Ms. Tilley also expressed concern with the absence of information in the ordinance pertaining to abandoned vehicles.

Nathan Miller spoke on behalf of his client, LMS and expressed that he was pleased with the proposed ordinance since it was condensed and stated it is now easier to read. He noted issues and concerns he had with certain sections.

Dr. Jerry Butler stated that the Town has used towing and/or some form of wheeling locking since 1976 for parking enforcement. He stated his belief that the Town was overthinking a process that already works well.

Will Buckner of Kuester Real Estate spoke in support of towing and booting stating that parking is a big concern for Kuester Real Estate and their tenants. Mr. Buckner noted that he believed enforcement helped ensure safety for their tenants. Mr. Buckner also read an email from a tenant in the Glen Wilde complex managed by Kuester Real Estate stating that the tenant was in favor of enforcement companies being able to

place multiple boots on vehicles, noting that he believed it would lead to a quicker response time from LMS and others.

Anna Wallace of Boone is a student at ASU and a tenant of the Turtle Creek West apartment complex offered her perspective as a tenant and a student. She stated she was also in favor of allowing multiple boots on vehicles.

Will Hennessy of Bill's Garage thanked Council for their work on the ordinance and stated that Mr. Miller previously mentioned everything that he wanted to. He wondered, however, if it would be possible to allow tow truck drivers to contact the Police Department once the car had already been towed to safety.

Jon Tate of Lot Management Solutions supplied a power point presentation and stated that his main concern with the proposed ordinance were the sign requirements. Mr. Tate explained that LMS has had 14 signs damaged recently, and he believed that the sign requirements in the proposed ordinance would only add to that number. Mr. Tate also expressed issues with magnetic vehicle signs due to the area's weather. After further discussion, Mr. Tate finished by asking Council to re-draft the ordinance and keep towing and booting companies in mind.

With no further comments, Mayor Brantz closed the hearing at 6:13 p.m.

PUBLIC COMMENT

Benjamin Scarborough, on behalf of the Sustainability, Economics and Environment Committee as chairman to the board, stated that the SEEC met recently and would like to ask Council to approve the scheduling of a retreat, as well as the adjustment of their monthly meeting time. Town Manager John Ward informed Council and Mr. Scarborough that he had already taken care of his requests.

Kim Carter and Fred Steele with Frontier Natural Gas presented Council with maps depicting the progress the company has made in installing gas lines within the town. Mr. Steele noted that eventually, gas would be available to businesses and residences throughout Boone, but that they were still working on obtaining property easements.

Virginia Roseman stated that her property was one of the easements that Frontier Gas was working to obtain. Ms. Roseman expressed concern that the road she lives on has failed four times over the past nine years and hopes that Council will keep this in mind when and if Frontier installs gas lines next to this road.

REQUESTED APPEARANCES

ZAK AMMAR/VIXSTER WASTE AND RECYCLING - CONSIDERATION OF AMENDMENTS TO TOWN CODE 91.036

Zak Ammar appeared before Council on behalf of Vixter Waste and Recycling to request that Council consider amending Town Code 91.036. Mr. Ammar stated that currently, the ordinance requires a four-yard solid waste receptacle and he would like for Council to consider revising the code to require a 96-gallon minimum receptacle. Mr. Ammar stated that his company is local and would potentially save customers up to 20% on their monthly solid waste and recycling bills. Council agreed that they would like for staff to look further into this matter and report back.

ANDREW MCKINNEY>IDEX LAB - PRESENTATION

Andrew McKinney provided Council with a presentation on the ASU/IDEX Lab program. He noted that the program is currently working on the building located at 182 Howard Street and plans to assist in the renovation of the Watauga County Farmers Market in the future.

MOTION TO EXCUSE COUNCIL MEMBER MASON

Council Member Mason asked to be excused from the meeting at 6:32 p.m. due to a family obligation.

Upon a motion by Council Member Clawson and seconded by Council Member Underdown Collins, Council moved to excuse Council Member Mason from the remainder of the meeting.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Loretta Clawson, Council Member
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Clawson, Mizelle, Teague, Collins
EXCUSED:	Mason

CONSENT AGENDA ADOPTION

Upon a motion by Council Member Underdown Collins, seconded by Council Member Mizelle, Council moved to adopt the consent agenda as presented.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Jeannine Underdown Collins, Council Member
SECONDER:	Charlotte Mizelle, Council Member
AYES:	Clawson, Mizelle, Teague, Collins
EXCUSED:	Mason

TOWN COUNCIL - SPECIAL MEETING - OCT 11, 2016 5:30 PM

TOWN COUNCIL - REGULAR MEETING - OCT 20, 2016 5:30 PM

TOWN COUNCIL - EMERGENCY MEETING - NOV 7, 2016 5:30 PM

CONSIDERATION OF AMENDMENTS TO UDO ARTICLE 24: PARKING

Article 24 Parking

Parking Spaces Required

- 24.01.01** All developments in all zoning districts shall provide a sufficient number of parking spaces to accommodate the number of vehicles that ordinarily are likely to be attracted to the development in question.
- 24.01.02** The number of off-street vehicle parking spaces included in a development shall comply with the standards in this Article.
- 24.01.03** **Required Parking By Use:**

Residential Land Uses	Minimum Parking Required
A-1 Secondary Suite A-3 Accessory Dwelling Unit T-1 Temporary Care Provider Dwelling T-2 Temporary Construction or Repair Dwelling	1 space

Residential Land Uses	Minimum Parking Required
T-3 Temporary Construction Trailer	
1.01 Single-Family Dwelling 1.02 Manufactured Home "Class A" 1.03 Manufactured Home "Class B" 1.06 Duplex (each unit) 1.07 Duplex (each unit) <u>1.08-1.10 Townhouse (each unit)</u> 2.01 Family Care Home A-21 Caretaker's Residence	2 spaces
1.05 Manufactured Home Park	2 spaces /Manufactured Home plus, 1 visitors parking space/10 Manufactured Homes, plus 2 spaces for Manufactured Home Park Employees
<u>1.11-1.16 Multi-Family</u>	<u>0.7 space per bedroom</u>
3.01 Home for Survivors of Domestic Violence 3.06 Vacation Rental	3 Spaces
2.08-2.09 Retirement Community 2.10-2.12 Residence Hall	1 space/ unit plus 1 visitors parking space/dwelling unit
2.02 Family Care Institutions 2.03-2.04 Halfway House 2.05-2.06 Nursing Care 2.07 Skilled Nursing Facility 2.13 Fraternity or Sorority Dwelling 3.02-3.03 Shelter for Homeless	1 space/4 beds
2.14 Board Housing 3.04-3.05 Bed and Breakfast 3.07 Motel 3.08 Hotel	1.25 space/rentable room, plus 10 per 1000 ft ² of restaurant/lounge, plus 20 per 1000 ft ² per meeting/banquet room

Commercial Land Uses	Maximum Parking Allowed
<u>1.08-1.10 Townhouse</u> <u>1.11-1.13 Multi-Family</u>	<u>2 spaces/unit</u> <u>Visitor parking spaces not to exceed 25% of total parking area</u>
<u>1.14-1.16 Mixed-Use Multi-Family</u>	<u>1 space / 1 bedroom units</u> <u>2 spaces / 2 bedroom units</u> <u>3 spaces / 3 or more bedroom units</u> <u>1 space / unit for multi-family residences limited to the Elderly</u> <u>1 space / unit for affordable rental dwelling units</u> <u>1 space / unit for affordable owner-occupied dwelling units</u>

Commercial Land Uses	Maximum Parking Allowed
16.01 Mini-Storage A-10 Produce Stand	1 space/1000 ft ² GFA
4.06 Post Office, Distribution 14.0 Manufacturing 16.02 Outdoor Storage 16.03 Warehouse 16.04 Fuel Storage Facility 17.02 & 17.03 Trucking or Freight Terminal A-24 Chemical Storage Facility	2 spaces/1000 ft ² GFA
10.0 Daycare 11.32 Gas Station	3 spaces/1000 ft ² GFA
11.01 Kennel 11.02-11.03 Veterinary Office/Hospital 11.04 & 11.05 Financial Institution 11.11 ABC Store 11.12 - 11.13 Personal Service Establishment 11.14-11.16 Retail Store 11.17 Shopping Center/Mall 11.18 - 11.19 Business or Professional Office 11.20-11.23 Medical Office 11.16 Specialty Medical Facility 11.26 Open Air Market 11.33 Car Wash 12.0 Recreation 18.0 Waste Related Uses 19.0 Particular Activities which Pose Particular..	5 spaces/1000 ft ² GFA or outdoor area used for principal use
11.06 - 11.10 Restaurant	12 spaces/1000 ft ² GFA
4.03 Funeral Home Establishment	12 spaces/1000 ft ² of visitation area, plus one space per every two seats in the chapel.
4.05 Post Office	1 space per employee plus 5 spaces/1000 ft ² GFA
6.0 Non-Government Utility Facility	3 spaces per facility
7.0 Telecommunication	1 space per service provider
8.0 Assembly	1 space for every two seats in sanctuaries/chapels plus 3 spaces per 1000 ft ² for daycares
9.0 Education	5 spaces per classroom
11.27 Vehicle Sales and Service 11.28 Equipment Sales and Service	3 spaces/1000 ft ² GFA, plus 2 spaces/1000 ft ² of outdoor display, plus 2 per service bay

Commercial Land Uses	Maximum Parking Allowed
11.29 Moped Sales and Service 11.30 Boat or Marine Craft Sales and Service	
1.05 Manufactured Home Park 4.01 Airport/Land Strip 4.02 Heliport 4.04 Cemetery 4.07 Animal Sanctuary 5.0 Government Uses 13.0 Agricultural Uses 17.01 Passenger Terminals A-19 Helistop T-8 Temporary Non-Fixed Site Event Venue	As determined by the Administrator

- 24.01.04** Uses which have parking requirements which are to be “as determined by the Administrator” as listed in Subsection 24.01.03 are required to submit a parking demand analysis prepared by a qualified engineer if requested to do so by the Administrator.
- A.** The Administrator shall make the determination based upon the expected parking needs of the development, recognizing the Town’s goal of preventing excess parking.
- 24.01.05** The number of parking spaces provided at the time of approval of the development may not be subsequently reduced or increased without the written approval of the permit issuing authority upon proper written application.
- A.** All spaces must otherwise be maintained for the life of the development.
- B.** Minimums and maximums may be adjusted by the permit issuing authority when the applicant provides reliable and persuasive evidence (which may include but is not necessarily limited to a parking demand analysis prepared by a qualified engineer) ~~which supports a conclusion that demonstrates~~ that application of the minimums established by Subsection 24.01.03 would result in excess and unnecessary parking for the development or that the maximums established by Subsection 24.01.03 are inadequate to meet the parking needed for the development.
- C.** Without limiting the generality of the foregoing, the permit issuing authority may allow deviations from the parking requirements set forth in Subsection 25.01.03 when it finds that:
1. A residential development is irrevocably oriented toward the elderly;
 2. A business is primarily oriented to walk-in trade.
- D.** Whenever the permit issuing authority allows or requires a deviation from the presumptive parking requirements set forth in Subsection 24.01.03, it shall enter on the face of the permit the parking requirement that it imposes and the reasons for allowing or requiring the deviation.
- 24.01.06** If the permit issuing authority concludes, based upon information it receives in the consideration of a specific development proposal, that the presumption established by 19.01.03 for a particular use classification is erroneous, it shall initiate a request for an amendment in accordance with the procedures set forth in Article 9.
- 24.01.07** When a use is proposed which is not listed in Subsection 24.01.03, the permit issuing authority shall determine the number of spaces required or permitted, as relevant, by referencing the most

similar use listed in Subsection 24.01.03, and such other factors as are deemed relevant, including the particular parking demand and trip generation characteristics of the proposed use.

- A. If the permit issuing authority concludes that no reasonably similar use is listed, it may require the applicant to submit a evidence, such as a parking demand analysis prepared by a qualified engineer, to determine the number of needed or permitted spaces for the proposed use, or the permit issuing authority may procure its own parking demand analysis.

24.01.08 Parking Requirements for Multi-Family Dwellings

- A. The minimum parking required for multi-family dwellings may be reduced by a factor of 10% for each one of the following, with a maximum reduction of 20% based on these factors:
1. The development is located within 1 mile of linear sidewalk distance from any portion of the Appalachian State University library, and public sidewalks or public pedestrian walkways exist or will be constructed in connection with the development which allow safe pedestrian travel between the development and the main campus.
 2. Bus service to the development exists or is arranged by the applicant and a transit shelter or bus pull-off for use by the residents is built or exists within ½ mile linear sidewalk distance from the development boundary.
- B. The number of automobile parking spaces for Uses 1-3001.11-1.16 Multi-Family Residences shall not exceed one-hundred and twenty percent (120%) of the minimum requirement.

[Remainder of Article unchanged]

APPROVAL OF RESOLUTION - INTENT TO ANNEX MUNICIPAL PROPERTY

A RESOLUTION STATING THE INTENT OF THE TOWN OF BOONE, NORTH CAROLINA TO ANNEX PROPERTY OWNED BY THE TOWN OF BOONE WHICH IS CONTIGUOUS TO THE EXISTING MUNICIPAL BOUNDARIES

BE IT RESOLVED by the Town Council of the Town of Boone of Watauga County, North Carolina, that:

Section 1. It is the intent of the Town Council, pursuant to N.C.G.S. 160A-31, to annex the property described in Section 2, which is owned by the Town of Boone of Watauga County, North Carolina.

Section 2. The legal description of the property is as follows:

Being all of that 53.827-acre tract as shown on survey entitled, "Recombination Survey for Town of Boone," prepared by AB Christie Surveyors, PLS, dated May 26, 2016, and recorded in Map Book 25, Page 229, Watauga County, North Carolina, Public Registry, to which plat reference is hereby made for a more complete description of said tract.

Section 3. The property described in Section 3 is contiguous to the current municipal boundaries.

Section 4. A public hearing on the question of annexation of the property will be held at the Boone Town Council Chambers located at 1500 Blowing Rock Road at 5:30 p.m. on Thursday, Dec. 15, 2016.

Section 5. Notice of the public hearing shall be published once in the Watauga Democrat, a newspaper having general circulation in the Town of Boone of Watauga County, North Carolina, at least ten (10) days prior to the date of the public hearing.

This the 17th day of November, 2016.

ATTEST:

Mayor Rennie Brantz

Town Clerk Christine Pope

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 275)

**APPROVAL OF RESOLUTION DIRECTING CLERK TO INVESTIGATE AN
ANNEXATION PETITION - BROWN OF BOONE III, LLC**

RESOLUTION DIRECTING THE CLERK TO INVESTIGATE A PETITION RECEIVED UNDER G.S.
160A-58.2
(Brown of Boone, Satellite Annexation)

WHEREAS, a petition requesting annexation of an area described in said petition was received on November 17, 2016 by the Town Council; and

WHEREAS, G.S. 160A-58.2 provides that the sufficiency of the petition shall be investigated by the Town Clerk before further annexation proceedings may take place; and

WHEREAS, the Town Council of the Town of Boone deems it advisable to proceed in response to this request for annexation;

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

The Town Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the Town Council the result of her investigation.

ATTEST:

Mayor

Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 276)

ADOPTION OF ORDINANCE - STREET CLOSURE FOR CHRISTMAS PARADE

AN ORDINANCE DECLARING A ROAD CLOSURE FOR AN ANNUAL 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 3, 2016

Time(s): 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 _____, 2016

The Honorable Rennie Brantz, Mayor

Attest:

Christine Pope, Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 4, PAGE 93)

APPROVAL OF AMENDMENT TO RECORDS RETENTION SCHEDULE

Proposed amendments to the retention schedule on file in November 2016 meeting packet. Full retention schedule permanently on file in town clerk's office.

APPROVAL OF ENCROACHMENT AGREEMENT - HIGH LIFE SMOKE SHOP

STATE OF NORTH CAROLINA

ENCROACHMENT AGREEMENT

COUNTY OF WATAUGA

THIS ENCROACHMENT AGREEMENT is made and entered into this the 25th day of October, 2016, by and between the TOWN OF BOONE, party of the first part, and Raaisha Enterprises, party of the second part.

W-I-T-N-E-S-S-E-T-H

THAT WHEREAS, the party of the second part desire to encroach on public land designated as (CHOOSE ONE) a public sidewalk/public street/public park/public land (hereinafter referred to as the "public land") located at 221 Howard Street with the following: projecting sign (hereinafter referred to as "the encroaching facility"); and,

WHEREAS, it is to the material advantage of the party of the second part to effect this encroachment, and the party of the first part, in the exercise of authority conferred upon it by statute and ordinance, is willing to permit the encroachment on public land, subject to the conditions of this agreement;

NOW, THEREFORE, IT IS AGREED that the party of the first part hereby grants to the party of the second part the right and privilege to make this encroachment upon the following conditions, to wit:

That the party of the second part complies with all pertinent provisions of the North Carolina State Building Code, the Town of Boone Unified Development Ordinance and the Town of Boone Municipal Code, and such other laws, regulations and ordinances which might apply;

That the said party of the second part binds and obligates itself, its successors and assigns, to install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said public land, nor obstruct nor interfere with the proper maintenance thereof, to reimburse the party of the first part for the costs incurred for any repairs or maintenance to its roadways, sidewalks and other structures resulting from the installation and existence of the encroaching facility of the party of the second part, and if at any time the party of the first part shall require the removal of or changes in the location of the encroaching facility, that the said party of the second part binds itself, its successors or assigns, to promptly remove or alter the said encroaching facility in order to conform to the said requirements of the party of the first part, without any cost to the party of the first part.

That the party of the second part agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and/or other warning devices, as necessary or as requested by the party of the first part's Director of Public Works or his designee, for the protection of the public and in the case of encroachment into a street right of way, in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and amendments or supplements thereto. Information as to the above rules and regulations may be obtained from the party of the first part.

That to the extent permitted by law, the party of the second part shall be responsible for all liability associated with the encroaching facility. In furtherance of such responsibility, the party of the second part agrees to indemnify and hold harmless the party of the first part from and against any claim by any third party based upon any action or omission occurring during construction or maintenance of the encroaching facility, as well as from and against any and all claims, demands, suits, causes of action, or other assertion of responsibility, however denominated, for personal injury, damage to property, losses and expenses, including court costs and attorney's fees, arising out of or in any way related to the encroachment or encroaching facility;

That where pertinent and requested by the party of the first part, the party of the second part agrees to name the party of the first part as an additional insured on its and/or its contractor's general liability insurance policies applicable to the encroachment or encroaching facility.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such encroaching facility as the party of the first part carries out its construction and maintenance operations, and the party of the second part expressly waives all claims of liability or responsibility against the party of the first part for any damage that may be caused to the encroaching facility as the result of the Town carrying out any construction and maintenance operations. The party of the second part acknowledges that with regard to canopies, awnings, signs and similar encroachments, even where same fully comply with the Town of Boone Unified Development Ordinance, when placed less than ten feet above the surface of a public sidewalk, such obstructions are at great risk of damage by the equipment of the party of the first part during snow removal and general sidewalk construction and maintenance, and the party of the second part understands that by placing the encroaching facility less than ten feet above the surface of a public sidewalk, the party of the second part is knowingly and intentionally assuming that heightened risk of damage.

That the party of the second part agrees to be bound by such other and additional conditions as the Town Council may impose in connection with the encroaching facility.

That the party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; silting or pollution to the rivers, streams, lakes, reservoirs, other water impoundments; ground surfaces or other property; or pollution of the air. The party of the second part shall comply with all applicable rules and regulations of the North Carolina Sedimentation Control Commission, the Town of Boone Unified Development Ordinance and all other

applicable laws and regulations relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover, the party of the second part agrees to remove and replace the sod or otherwise re-establish the grass cover to meet the satisfaction of the party of the first part. The party of the second part shall comply with all pertinent ordinances, rules, regulations and laws, and failure to do so shall be a basis for revocation of this encroachment agreement by the party of the first part.

That the party of the second part agrees to assume the actual cost of any inspection of the work considered to be necessary by the party of the first part.

That the party of the second part agrees to have available at the encroaching site, at all times during construction, a copy of this agreement showing evidence of approval by the party of the first part. The party of the first part reserves the right to stop all work unless evidence of approval can be shown.

Provided the work referred to in this agreement is being performed on a completed public street open to traffic, the party of the second part agrees to give written notice of when work will begin to the party of the first part.

That in the case of noncompliance with the terms of this agreement by the party of the second part, the party of the first part reserves the right to stop all work until the encroaching facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

That it is agreed by both parties that this agreement shall become void if actual construction of the work contemplated herein is not begun and completed within ____ year(s) from the date of this agreement unless written waiver is secured by the party of the second part from the party of the first part.

The party of the first part expressly reserves the unrestricted right to require the party of the second part to change the location of the encroaching facility described herein at no expense to the party of the first part.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed as of the day and year first above written.

TOWN OF BOONE

By: _____
Mayor

ATTEST:

Town Clerk

By: _____
President/Member-Manager/Owner

Printed Name: Party of the Second Part

ATTEST:

Secretary/Witness

APPROVAL OF ENCROACHMENT AGREEMENT - TERRACON CONSULTANTS, INC.

STATE OF NORTH CAROLINA

ENCROACHMENT AGREEMENT

COUNTY OF WATAUGA

THIS ENCROACHMENT AGREEMENT is made and entered into this the 6th day of October, 2016, by and between the TOWN OF BOONE, party of the first part, and Terracon Consultants, Inc., party of the second part.

W-I-T-N-E-S-S-E-T-H

THAT WHEREAS, the party of the second part desire to encroach on public land designated as (CHOOSE ONE) a public sidewalk/public street/public park/public land (hereinafter referred to as the “public land”) located at THE RIGHT-OF-WAY OF GREENWAY ROAD AND MEADOWVIEW DRIVE (SEE ATTACHED DIAGRAM) with the following: temporary groundwater monitoring wells (hereinafter referred to as “the encroaching facility”); and,

WHEREAS, it is to the material advantage of the party of the second part to effect this encroachment, and the party of the first part, in the exercise of authority conferred upon it by statute and ordinance, is willing to permit the encroachment on public land, subject to the conditions of this agreement;

NOW, THEREFORE, IT IS AGREED that the party of the first part hereby grants to the party of the second part the right and privilege to make this encroachment upon the following conditions, to wit:

That the party of the second part complies with all pertinent provisions of the North Carolina State Building Code, the Town of Boone Unified Development Ordinance and the Town of Boone Municipal Code, and such other laws, regulations and ordinances which might apply;

That the said party of the second part binds and obligates itself, its successors and assigns, to install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said public land, nor obstruct nor interfere with the proper maintenance thereof, to reimburse the party of the first part for the costs incurred for any repairs or maintenance to its roadways, sidewalks and other structures resulting from the installation and existence of the encroaching facility of the party of the second part, and if at any time the party of the first part shall require the removal of or changes in the location of the encroaching facility, that the said party of the second part binds itself, its successors or assigns, to promptly remove or alter the said encroaching facility in order to conform to the said requirements of the party of the first part, without any cost to the party of the first part.

That the party of the second part agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and/or other warning devices, as necessary or as requested by the party of the first part’s Director of Public Works or his designee, for the protection of the public and in the case of encroachment into a street right of way, in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and amendments or supplements thereto. Information as to the above rules and regulations may be obtained from the party of the first part.

That to the extent permitted by law, the party of the second part shall be responsible for all liability associated with the encroaching facility. In furtherance of such responsibility, the party of the second part agrees to indemnify and hold harmless the party of the first part from and against any claim by any third party based upon any action or omission occurring during construction or maintenance of the encroaching facility, as well as from and against any and all claims, demands, suits, causes of action, or other assertion of

responsibility, however denominated, for personal injury, damage to property, losses and expenses, including court costs and attorney's fees, arising out of or in any way related to the encroachment or encroaching facility;

That where pertinent and requested by the party of the first part, the party of the second part agrees to name the party of the first part as an additional insured on its and/or its contractor's general liability insurance policies applicable to the encroachment or encroaching facility.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such encroaching facility as the party of the first part carries out its construction and maintenance operations, and the party of the second part expressly waives all claims of liability or responsibility against the party of the first part for any damage that may be caused to the encroaching facility as the result of the Town carrying out any construction and maintenance operations. The party of the second part acknowledges that with regard to canopies, awnings, signs and similar encroachments, even where same fully comply with the Town of Boone Unified Development Ordinance, when placed less than ten feet above the surface of a public sidewalk, such obstructions are at great risk of damage by the equipment of the party of the first part during snow removal and general sidewalk construction and maintenance, and the party of the second part understands that by placing the encroaching facility less than ten feet above the surface of a public sidewalk, the party of the second part is knowingly and intentionally assuming that heightened risk of damage.

That the party of the second part agrees to be bound by such other and additional conditions as the Town Council may impose in connection with the encroaching facility.

That the party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; silting or pollution to the rivers, streams, lakes, reservoirs, other water impoundments; ground surfaces or other property; or pollution of the air. The party of the second part shall comply with all applicable rules and regulations of the North Carolina Sedimentation Control Commission, the Town of Boone Unified Development Ordinance and all other applicable laws and regulations relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover, the party of the second part agrees to remove and replace the sod or otherwise re-establish the grass cover to meet the satisfaction of the party of the first part. The party of the second part shall comply with all pertinent ordinances, rules, regulations and laws, and failure to do so shall be a basis for revocation of this encroachment agreement by the party of the first part.

That the party of the second part agrees to assume the actual cost of any inspection of the work considered to be necessary by the party of the first part.

That the party of the second part agrees to have available at the encroaching site, at all times during construction, a copy of this agreement showing evidence of approval by the party of the first part. The party of the first part reserves the right to stop all work unless evidence of approval can be shown.

Provided the work referred to in this agreement is being performed on a completed public street open to traffic, the party of the second part agrees to give written notice of when work will begin to the party of the first part.

That in the case of noncompliance with the terms of this agreement by the party of the second part, the party of the first part reserves the right to stop all work until the encroaching facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

That it is agreed by both parties that this agreement shall become void if actual construction of the work contemplated herein is not begun and completed within one (1) year(s) from the date of this agreement unless written waiver is secured by the party of the second part from the party of the first part.

The party of the first part expressly reserves the unrestricted right to require the party of the second part to change the location of the encroaching facility described herein at no expense to the party of the first part.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed as of the day and year first above written.

TOWN OF BOONE

By: _____
Mayor

ATTEST:

Town Clerk

By: _____
President/Member-Manager/Owner

Printed Name: Party of the Second Part

ATTEST:

Secretary/Witness

APPROVAL OF BUDGET AMENDMENT - POLICE DEPARTMENT

Description:	Account Number:	To:	From:
Maintenance - Vehicles	010-500-300-525301	\$1,810.00	
Miscellaneous Revenue	010-000-000-489900		(\$1,810.00)

APPROVAL OF BUDGET AMENDMENT - PUBLIC WORKS

Description:	Account Number:	To:	From:
Street/Sidewalk Construction	010-600-405-514303	\$60,000	
Fee In Lieu-Sidewalk Improvements	019-420-000-451401		(\$60,000)

COUNCIL MATTERS

CONSIDERATION OF AMENDMENTS TO CHAPTER 73: TOWING AND BOOTING

Town Attorney Allison Meade addressed comments which were brought up previously in the meeting. Ms. Meade continued by highlighting the changes made to the ordinance. Council Member Underdown Collins suggested an amendment to section 73.03(A)(2) to add office buildings to the list of buildings. Council Member Mizelle offered that she has been in several lots recently and a person would have to pay close attention to see

signs. Council Members Underdown Collins and Teague placed emphasis on the need for LMS employees to have proper identification on their person in the form of shirts, etc. as well as proper identification on their vehicle. Council Member Underdown Collins noted that with parking decks in the future of the Town, consideration will need to be made in the ordinance as to whether or not a tow truck can make it in and out of the decks. Further discussion ensued. Upon a motion by Council Member Clawson and seconded by Council Member Teague Council moved to approve the amendments to Chapter 73 along with the additional changes made at this meeting.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Loretta Clawson, Council Member
SECONDER:	Jennifer Teague, Council Member
AYES:	Clawson, Mizelle, Teague, Collins
EXCUSED:	Mason

APPROVAL OF RESOLUTION REGARDING REVENUE BOND

Council Member Clawson noted that she requested this item be moved from the Consent Agenda to Council Matters. She stated that she did not believe it was appropriate to borrow these funds without taking it back to the people for a vote. Upon a motion by Council Member Mizelle and seconded by Council Member Underdown Collins, Council moved to approve the Resolution regarding the North Carolina Water and Sewer Revenue Bond.

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA, DIRECTING THE APPLICATION TO THE LOCAL GOVERNMENT COMMISSION FOR APPROVAL OF WATER AND SEWER REVENUE BOND ANTICIPATION NOTE AND SUBSEQUENT WATER AND SEWER REVENUE BONDS; MAKING CERTAIN FINDINGS OF FACT; AND REQUESTING LOCAL GOVERNMENT COMMISSION APPROVAL OF THE TOWN'S WATER AND SEWER REVENUE BOND ANTICIPATION NOTE AND SUBSEQUENT WATER REVENUE BONDS

WHEREAS, the Town Council (the "*Town Council*") of the Town of Boone, North Carolina (the "*Town*") hereby determines that it is necessary to improve its water and sewer system (the "*System*"); and

WHEREAS, the Town Council is considering the issuance of up to \$7,456,000 Town of Boone, North Carolina Water and Sewer Revenue Bond Anticipation Note (the "*Note*") to finance, together with other funds, the cost of acquiring, constructing and equipping facilities for the Town's potable water supply facility (the "*Project*") and has received a commitment from the United States Department of Agriculture ("*USDA*") to provide long-term financing for the Project upon completion of construction, at which time the Town will issue Water and Sewer Revenue Bonds (the "*Bonds*") to refund the Note; and

WHEREAS, the Town has retained Parker Poe Adams & Bernstein LLP, as bond counsel; and

WHEREAS, the Town Council desires that the Finance Director of the Town file with the Local Government Commission of North Carolina (the "*Commission*") an application for its approval of the Note and the Bonds, on a form prescribed by the Commission, and (1) request in such application that the Commission approve (A) the sale of the Note through a competitive sale, (B) the sale of the Bonds to USDA upon completion of construction of the Project and (C) the Town's use of Parker Poe Adams & Bernstein LLP, as bond counsel for the Town and (2) state in such application such facts and to attach thereto such exhibits in regard to the Note and the Bonds and to the Town and its financial condition, as may be required by the Commission, and to take all other action necessary to the issuance of the Note and the Bonds; and

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Boone, North Carolina, as follows:

Section 1. That the Note and the Bonds are to be issued by the Town for the purpose of providing funds to finance a portion of the Project and to pay the costs of issuing the Note and the Bonds, all as set out fully in the documents attached to the Town's application to the Commission.

Section 2. That Parker Poe Adams & Bernstein LLP has been retained to serve as bond counsel.

Section 3. That the Finance Director of the Town with advice from the Town Manager and bond counsel, is hereby authorized, directed and designated to file an application with the Commission for its approval of the issuance of the Note and the Bonds.

Section 4. That the Town Council finds and determines, and asks the Commission to find and determine, from the Town's application and supporting documentation the following:

- (a) that the issuance of the Note and, subsequently, the Bonds is necessary or expedient;
- (b) that the stated principal amount of the Note and the Bonds will be sufficient but is not excessive, when added to other moneys available to the System, for the proposed Project;
- (c) that the Project is feasible;
- (d) that the Town's debt management procedure and policies are good; and
- (e) that the Note and the Bonds can be marketed at a reasonable interest cost to the Town.

Section 5. That the Mayor, the Town Manager, the Town Attorney and the Finance Director of the Town are hereby authorized to do any and all other things necessary to complete the steps necessary for the issuance of the Note and the Bonds.

Section 6. That this Resolution is effective on the date of its adoption.

(RESOLUTION TO BE TYPED IN BOOK 3, PAGES 277-278)

RESULT:	ADOPTED [3 TO 1]
MOVER:	Charlotte Mizelle, Council Member
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Mizelle, Teague, Collins
NAYS:	Clawson
EXCUSED:	Mason

TRANSPORTATION COMMITTEE REQUEST - RELOCATING COMMUNITY INPUT MEETING

Public Works Director Rick Miller spoke on behalf of the Transportation Committee to request that the upcoming meeting on December 12, 2016, be relocated to either Hardin Park gym at 6:30 p.m. or to the Boone United Methodist Church at 5:30 p.m. Upon a motion made by Council Member Underdown Collins and seconded by Council Member Clawson, Council moved to relocate the December 12, 2016, Transportation Committee meeting to the Boone United Methodist Church beginning at 5:30 p.m.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jeannine Underdown Collins, Council Member
SECONDER:	Loretta Clawson, Council Member
AYES:	Clawson, Mizelle, Teague, Collins
EXCUSED:	Mason

TOWN MANAGER UPDATE

Town Manager John Ward updated Council on various items including leaf pick-up, upcoming events, winter weather and the implementation of a burning ban for the area which will remain in effect until further notice. Mr. Ward also announced the declaration of Stage 2 water restrictions within the Town as well as the progress being made on the Veteran's Memorial.

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Brantz noted the following resignations and upcoming vacancies on the Sustainability, Economics and Environment Committee in addition to vacancies already being advertised:

1. Andrew May who was recently appointed to this committee notified the Town that he no longer resides in the area and will be able to serve.
2. Quint David's term on this committee expires Jan. 21, 2017 (eligible for reappointment).

Council Member Teague noted that she would like to transfer Board of Adjustment member James Milner from an alternate member to a resident position on the Board. She stated that Mr. Milner has shown a great amount of dedication to the Town. It was decided that Mr. Milner should re-apply to be reconsidered for a resident position on the Board of Adjustment.

RESULT:	CONSENSUS
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APPOINTMENT TO DOWNTOWN BOONE DEVELOPMENT ASSOCIATION

Council Member Clawson nominated David Walker to fill the vacant position on this board.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Loretta Clawson, Council Member
AYES:	Clawson, Mizelle, Teague, Collins
EXCUSED:	Mason

CLOSED SESSION

ENTERING CLOSED SESSION

Upon a motion by Council Member Teague, seconded by Council Member Clawson, Council moved to enter closed session at 7:48 p.m. to hear the following items:

1. Pursuant to N.C.G.S.S. 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 consider and give instructions to the attorney concerning the claims involving the Town of Boone and Mike Budka, et al.
2. Pursuant to N.C.G.S. 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 consider and give instructions to the attorney concerning various potential claims involving the Town of Boone.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jennifer Teague, Council Member
SECONDER:	Loretta Clawson, Council Member
AYES:	Clawson, Mizelle, Teague, Collins
EXCUSED:	Mason

EXITING CLOSED SESSION

Upon a motion by Council Member Underdown Collins, seconded by Council Member Mizelle, Council moved to exit closed session at 8:35 p.m.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jeannine Underdown Collins, Council Member
SECONDER:	Charlotte Mizelle, Council Member
AYES:	Clawson, Mizelle, Teague, Collins
EXCUSED:	Mason

ADJOURNMENT

MOTION TO ADJOURN

Upon a motion by Council Member Underdown Collins, seconded by Council Member Teague, Council moved to adjourn the meeting at 8:36 p.m.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jeannine Underdown Collins, Council Member
SECONDER:	Jennifer Teague, Council Member
AYES:	Clawson, Mizelle, Teague, Collins
EXCUSED:	Mason

Nicole Worley
Administrative Support Specialist

Rennie Brantz, Mayor