

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
November 17, 2020**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order electronically at 6:03 p.m. on Tuesday, November 17, 2020. Mayor Rennie Brantz presided. Council members present included Mayor Pro-Tem Loretta Clawson, Sam Furgiuele, Connie Ulmer, Nancy LaPlaca and Dustin Hicks. Staff members present included Town Manager John Ward, Town Clerk Nicole Harmon, Planning Director Jane Shook, Public Works Director Rick Miller, Deputy Public Works Director Todd Moody, Downtown Boone Development Coordinator Lane Moody, Human Resource Director Dale Presnell, Finance Director Amy Davis, Police Chief Andy Le Beau, Fire Chief Jimmy Isaacs, and Cultural Resources Director Mark Freed. Town Attorney Allison Meade was also in attendance.

ANNOUNCEMENTS

Mayor Brantz welcomed all in attendance and asked Mr. Ward for any announcements. Mr. Ward gave an update on the most recent local and state Covid-19 statistics.

TENTATIVE AGENDA ADOPTION

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

REQUESTED APPEARANCES

**CHIEF ANDY STEPHENSON AND DIRECTOR OF EMERGENCY MANAGEMENT
JASON MARSHBURN- CAMPUS COVID-19 UPDATE**

Chief Stephenson stated that ASU Police Department had responded jointly along with the Boone Police Department and the Watauga County Sheriff's Office to several mass gathering events in Town and on campus, and noted that they often had issues with the same locations over the years. Mr. Marshburn thanked Chancellor Everts and the emergency response team at ASU for their work during the pandemic, and noted that the emergency response team had been planning and preparing for the pandemic since January of this year, and continued to actively do so. He indicated that there were currently 42 active cases of Covid-19 on campus, and stated that while ASU had some cluster activity early on, it was still below the state rate. Mr. Marshburn announced that ASU would be offering free testing to students, staff and faculty through the end of the year, along with free masks and meals to those who had been diagnosed or were in quarantine. He noted that over 23,600 tests had been performed since move-in weekend, and that staff were working to finalize plans for the spring semester. Mr. Marshburn indicated that the plans included students to provide negative test results in order to be allowed back on campus. Mr. Furgiuele asked whether University officials were aware of the Town's local Covid-19 mandates, since he had heard comments recently which led him to believe otherwise. Mr. Marshburn answered that officials were aware of the Town's regulations. Mayor Brantz asked whether the University had coordinated with other local entities on their Covid-19 response. Mr. Marshburn replied that ASU had worked with County and State public health officials as well as others as needed. Ms. LaPlaca asked if Mr. Marshburn had any insight as to how the pandemic would play out in the future. Mr. Marshburn answered that the emergency response team was currently looking at different scenarios and how they could impact future plans.

ADOPTION OF ITEMS ON CONSENT AGENDA

Mr. Furgiuele stated that he wished to make a minor change to the resolution for Harvard Ayers, and asked that it be removed from the Consent Agenda. Upon a motion by Mayor Pro-Tem Clawson, seconded by Ms. LaPlaca, Council approved the following items on the consent agenda:

1. Resolution - Q. David
2. Contract - DBDA
3. Budget Amendments

VOTE: Aye: All
 Nay: None

RESOLUTION OF VOLUNTEER APPRECIATION AND RECOGNITION

WHEREAS, Quint David has served this community well in numerous capacities during his time volunteering on the Town of Boone's Sustainability Committee; and,

WHEREAS, Mr. David's service to the Town of Boone shows exemplary dedication to the best interest and betterment of the community; and,

WHEREAS, through the performance of his duties and responsibilities as a member of the Sustainability Committee, he has made excellent and constructive contributions to our Town; and,

WHEREAS, he has earned the admiration and high regard of those with whom he has come into contact and the affection of his fellow public servants.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Boone, North Carolina does hereby express our sincere appreciation and thanks, as well as that of our citizens, to Quint David with sincere best wishes for continued success and many happy years ahead.

Adopted by unanimous vote of the Town Council on the 15th day of October, 2020.

_____ Mayor Rennie Brantz

ATTEST:

_____ Town Clerk Nicole Harmon

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

THIS AGREEMENT ("Agreement") is entered into this 30th day of June, 2020, by and between the TOWN OF BOONE, a North Carolina municipality (hereafter referred to as "the Town") and the DOWNTOWN BOONE DEVELOPMENT ASSOCIATION, INC., a North Carolina non-profit membership corporation (hereafter referred to as "the DBDA"), collectively referred to as "the Parties."

W I T N E S S E T H:

THAT, WHEREAS, the Town is a municipal corporation organized pursuant to the laws of the State of North Carolina and located in Watauga County, North Carolina; and,

WHEREAS, the Town has established a Municipal Service District pursuant to N.C. Gen. Stat. § 160A-535, et seq., (hereafter "the MSD") from which it collects a Municipal Service District tax the authorized purposes of which are identified under State law; and,

WHEREAS, whereas, the Town provides services, facilities, functions, and promotional and developmental activities in the MSD with its own forces pursuant to N.C. Gen. Stat. § 160A-536(d); and,

WHEREAS, the Town is a participant in the North Carolina Main Street Program administered by the North Carolina Department of Commerce (hereafter, "the Main Street Program"); and,

WHEREAS, the DBDA is a North Carolina Non-Profit Corporation, duly organized pursuant to the laws of the State of North Carolina to promote, encourage, and assist in the revitalization and economic health and stability of the Town's Municipal Service District (the "MSD");

WHEREAS, the Town provides assistance to the DBDA with its own forces, and seeks the guidance of the DBDA with respect to the expenditure of funds derived from the MSD tax (hereinafter "MSD funds"); and

WHEREAS, the Town and the DBDA wish to reduce to writing their understanding and agreement as to the governance of the DBDA, its activities relating to the MSD, and related matters;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration passing from each party to the other, the receipt of which is hereby respectively acknowledged by each of the parties hereto, the parties agree and contract as follows:

1. **Term:** The term of this Agreement shall be one year, commencing on July 1, 2020, and ending June 30, 2021.
2. **Governance:** Consistent with its Bylaws, one-half of the members of the Board of Directors of the DBDA shall be elected by the membership of the DBDA and one-half of the members shall be appointed by the Boone Town Council. Service of the new board shall begin at the first meeting of the directors following the annual meeting of the members. Should the Town Council also appoint one or more of its members as liaison to the DBDA, the DBDA board of directors shall include them in their meetings and deliberations, but they shall be considered as *ex officio*, non-voting members of the Board.
3. **Administration:** The parties acknowledge that the executive director of the DBDA is a Town employee, subject to the Town's Personnel Policy and working under the supervision of the Town Manager or his designee.
4. **Expenditure of non-MSD Funds:** The DBDA may expend its own (non-MSD) funds so long as such expenditures are accounted for using methods that satisfactorily assure their proper use and are made in accordance with pertinent law and the DBDA's own by-laws.
5. **Recommendations by DBDA to Town Council as to Expenditure of MSD Funds:** The DBDA will make recommendations to the Town Council as to expenditure of MSD funds, to ensure that:
 - A. To the extent feasible and taking into consideration the limits of the DBDA's ability to know all changes which take place within the MSD, the DBDA's Web site is updated at least quarterly and MSD directory signage is updated at least annually.
 - B. Regular office hours for public and membership access to the DBDA director or his or her designee are maintained in accordance with the hours reflected on the DBDA Web site, subject to the review and approval of the Town Manager (who must oversee the hours of employees and Town's compliance with wage and hour laws, etc.).
 - C. MSD funds are used to benefit only the MSD area and are used to benefit the entire range of stakeholder categories (i.e. service providers and other non-retail establishments) and all MSD locations (e.g. less-traveled streets and outer boundary edges).
 - D. At least 30% of MSD funds are utilized for tangible improvements to the MSD, such as streetscape improvements.
 - E. MSD funds will not be authorized for sign or façade grants until a policy is developed and recommended by the DBDA, and adopted by the Town Council, which ensures comprehensive notice of the availability of such grants and which contains criteria for determining which proposed façade or sign improvements or replacements benefit the MSD as a whole and not simply the individual property owner or business.

- F.** Remaining MSD funds may be utilized, if desirable, to create, coordinate, and administer District revitalization projects which provide for services or functions, such as additional garbage pick-up, which are in addition to or to a greater extent than those provided or maintained by the Town for the entire town; to support any duly-adopted plan by the Town aimed at improving the MSD, which is specifically authorized herein; or, for such other activities which benefit the MSD, work toward its revitalization or preservation, or otherwise enhance the MSD area and help the businesses of the MSD thrive.

The DBDA's recommendations shall address activities such as:

- 1.** Promotional and development activities, such as sponsoring festivals and markets in the MSD, promoting business investment in the MSD, helping to coordinate public and private actions in the MSD, and developing and issuing publications on the MSD designed to improve the economic well-being of the MSD.
- 2.** Administration of any MSD revitalization project specifically requested by the Town.
- 3.** Creation, maintenance and administration of a clearinghouse for information concerning the availability of properties within the MSD for purchase or rent, by creating, maintaining and administering a repository of such information to which MSD property owners may contribute, as they may wish, and which shall be in a format which will make it broadly available to the public and to people potentially interested in investment in the MSD.
- 4.** Coordinating and participating in activities, and maintaining and providing all information requested or required by or of the Town or by the North Carolina Department of Commerce in order for the Town to continue to participate in good standing in the North Carolina Main Street Program and for the Town to derive all available benefits from its continued participation in the Main Street program.

6. Commitments by DBDA: The DBDA agrees that:

- A.** Should the DBDA hire employees with non-MSD funds, it will maintain and provide to the Town Manager a comprehensive personnel policy which addresses and ensures appropriate controls for expenditure of funds and procedures for the supervision and discipline of staff, with personnel actions up to and including dismissal authorized.
- B.** No later than 10 days after its receipt, provide the Town Manager and Town Council a full copy of any audit which it obtains. Should the DBDA obtain an audit, it shall be prepared by an independent auditing firm having no conflicts of interest and selected by the DBDA board of directors after a general solicitation to appropriate accounting firms in the region, including an Audited Income Statement with detailed expense categories, not just one generic "downtown redevelopment" expense item. The audit must disclose itemized expenditures by funding source.
- C.** At least five days before each meeting of the DBDA board of directors, the DBDA will post on its Web site and provide notice, in accordance with its duly adopted by-laws, of the meeting to its membership, Board members, Town Council members and Town Manager, along with an agenda and a copy of the draft minutes from the previous meeting.
- D.** The DBDA will provide the Town Manager with a copy of the organization's Form 990 promptly after it is prepared.

- E. The DBDA will maintain a written policy requiring that a fund accounting system is created and maintained that ensures that any non-MSD funds are used only in accordance with State law and this contract, to the extent applicable.
 - F. The DBDA will maintain written policies ensuring that non-MSD funds are properly used in accordance with its own by-laws and in accordance with applicable law.
 - G. The DBDA will report to the Town Council the duly adopted, collective views of its full membership and its Board of Directors as to those actions and policies which the Town may consider within the District to improve the District's economic well-being.
7. **Activities to Serve Entire Municipal Service District:** All activities of the DBDA shall be undertaken in such manner, insofar as possible, as to provide benefits to and throughout the entire District.
8. **Compliance with Laws:** The DBDA shall comply with all pertinent federal, State, county and Town laws, regulations and ordinances, including but not limited to all North Carolina and federal laws relating to the operation of non-profit membership corporations, those laws which govern the conduct of the annual meetings of its membership and the selection of its directors and officers. In addition, and not by way of exclusion, in any and all its actions and activities, the DBDA shall comply with and hereby certifies its compliance with the Americans with Disabilities Act, as amended, and Title VII of the Civil Rights Act of 1964, as amended, and should it hire employees of its own, the Fair Labor Standards Act, as amended, the Occupational and Health Safety Act, as amended, the North Carolina Employment Security Act, as amended, and the North Carolina Worker's Compensation Act, as amended, to the extent each such law applies to the DBDA or any of its activities.
9. **Compliance with its By-Laws and Organizational Reporting to the Town:** The DBDA will operate and act in accordance with its duly adopted by-laws, including but not limited to the provisions which govern the conduct of the annual meetings of its membership, the notice and quorum requirements for meetings of its board of directors, the selection of its directors and officers, and its prohibition against legislative advocacy. The DBDA shall seasonably provide the Town with its current by-laws and a roster of its current board of directors and officers, including their names, addresses, terms and class of membership, and it shall seasonably notify and provide a copy to the Town of any changes in its by-laws or in its board of directors or officers. The DBDA shall invite and include in its membership all property owners in the MSD and it shall provide a mechanism or opportunity for all businesses and residents within the MSD to be represented in the DBDA or have their voices heard as policies are formulated and recommended. Should the DBDA's corporate status be revoked by the North Carolina Secretary of State, or should the DBDA's non-profit status be revoked by the United States Internal Revenue Service or otherwise, the DBDA shall immediately notify the Town, and the Town Council may in its discretion declare this Agreement immediately terminated.
10. **Reporting on its Activities:** At least quarterly during the term of the Agreement, and at such additional times as may be requested by the Town, the DBDA shall report to the Town Council on its activities. Said report shall include at a minimum descriptions of activities of the DBDA which have been undertaken since the prior report and those activities which are planned for the future.
11. **Financial Responsibilities:** The DBDA shall develop and recommend to the Town Council a proposed budget for the expenditure of MSD funds. The proposed budget shall include an amount sufficient to pay, at a minimum, one-half of the salary and fringe benefits of the Town employee who serves as executive director of the DBDA. The proposed budget shall be presented to the Town Council for its consideration by a date designated by the Town Manager, which date gives the Town Finance Director an adequate opportunity to review and evaluate the proposal and the Town Council an adequate opportunity to review the recommendation and propose such changes as it may determine are desirable. Should the Town Council

be unwilling to accept the proposal of the DBDA in any material way, an effort shall be undertaken for the parties to discuss their differences before a final budget is approved by the Town.

The DBDA shall maintain its financial accounts for non-MSD funds and operate in accordance with generally accepted accounting principles. Financial information shall be maintained and provided, if requested, in a form acceptable to the Town and shall include, among other things, a detailed accounting for all funds from all non-MSD sources received or collected by the DBDA during the reporting period. In addition, the DBDA shall provide such records, verification of the expenditure of the funds, and other such information as requested by the Town. Should the DBDA at any time be advised by a funding, taxing or other governmental entity, or by its accountants, of any misappropriation of funds from any source or of any malfeasance or misfeasance, it shall immediately report such advice to the Town. Should the DBDA itself discover or determine any wrongdoing, misappropriation, malfeasance or misfeasance, it shall immediately report such matter to the Town. The DBDA will notify the Town in writing within five days if any member of its staff is charged with or convicted of any crime involving malfeasance or misfeasance, or dishonesty in the use or handling of any DBDA funds, whatever the source, or if the DBDA itself is accused of any wrongdoing. Should the DBDA become aware of or suspicious of any embezzlement, malfeasance or misfeasance by an employee, agent, officer, director or other person connected with DBDA, of any of the DBDA's funds, whether from this grant or elsewhere, whatever the source, it hereby commits that it will promptly report to and notify the appropriate law enforcement agency of such act, omission or suspicion.

12. **Maintenance of Records:** All records of the DBDA shall be available for inspection by the Town Manager or the Town Manager's designee. The DBDA agrees that records of its past use of MSD funds and of all disbursements of any funds will be maintained by it for a period of no less than seven years, and upon request such books and records will be made available to the Town or its representative for inspection. The DBDA shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement, and the accounting methods shall be satisfactory to the Town. Upon request, the DBDA will turn over all financial records governing the use of MSD funds to the Town for storage and eventual destruction.
13. **Indemnity:** The DBDA shall indemnify and reimburse the Town for any misuse by it of funds which results in the assertion of liability against the Town. The DBDA hereby releases, acquits and forever discharges the Town, its agents, officers and employees, from any claims, demands, costs, lost of services, expenses, compensation, liabilities and obligations, suits at law or equity, including claims or suits for contribution and/or indemnity of whatever nature and all consequential damages resulting from or on account of its use of non-MSD funds, and it hereby agrees to indemnify and defend the Town from any claims brought as a result of its use or misuse of said funds.
14. **Insurance:** The DBDA shall maintain sufficient liability insurance coverage to satisfactorily compensate any person for injury to a person or property caused by the operation of DBDA's programs and/or services paid in whole or part with non-MSD funds. The DBDA agrees that should the Town determine, in its sole discretion, that the DBDA does not maintain adequate liability insurance to satisfactorily protect itself and its participants pursuant to this paragraph, the DBDA will promptly increase its coverage to the level determined necessary by the Town.
15. **Lobbying:** The DBDA will use no funds for purposes of local, state, or legislative advocacy or lobbying, or to attempt to influence the legislative process at the local, state or federal level. Likewise, no funds will be used to carry on any religious or political activities, or to attempt to influence the outcome of any public election.
16. **Default:** If the DBDA defaults in the performance of any of its duties under this Agreement, all of which are deemed material, the Town may terminate the Agreement after affording the DBDA prior notice and a reasonable opportunity to cure its default. On the date specified in any such notice of default for the DBDA to cure its default, should the default not be cured, this Agreement shall terminate. In the event of repeated violation of this Agreement, the Town may elect to terminate the Agreement without any further chance to cure the violation.

17. **Modification of Agreement, Merger:** This Agreement contains all of the terms and conditions agreed upon by the Town and the DBDA. All discussions between them have been merged into this Agreement, and there are no oral terms or conditions agreed upon by the parties hereto which are not contained in this written Agreement. There shall be no modification of this Agreement unless the modification is in writing and signed by both parties.
18. **Waiver:** The Town's failure to strictly enforce any of its rights under this Agreement shall not constitute a waiver of such rights, and the parties agree that this provision may itself not be waived by the conduct of the parties, but only by a written instrument executed by each.
19. **Relationship of Parties:** Each party shall be considered an independent contractor in relation to the other, and neither shall be construed to be an agent or representative of the other party except as agreed upon by both parties and approved by the Boone Town Council. Therefore, neither party shall have any liability to a third party for the acts or omissions of the other party. In addition, neither party nor any of its employees, agents, or contractors shall be deemed to be employees or agents of the other party. Neither party nor any of that party's employees, agents or contractors shall be entitled to compensation for services, worker's compensation or employee benefits from the other party by virtue of this Agreement or actions taken in furtherance of the Agreement.
20. **Assignments:** The DBDA shall not assign any of its duties under this Agreement or its right to compensation from the Town to any other person or entity without the written consent of the Town, but the Town shall have no responsibility, express or implied, to approve any proposed assignment.
21. **Force Majeure:** In the event that either party shall be interrupted or delayed in completing performance of its obligations hereunder by an act of God or any other occurrence which is wholly beyond the control of the parties hereto, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.
22. **Partial Invalidity:** If any term, covenant, condition or provision of this Agreement shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law. Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
23. **Headings and Construction of Agreement:** The headings used in this Agreement have been prepared for the convenience of reference only and shall not control, affect the meaning, or be taken as an interpretation or any provisions of this Agreement. This Agreement has been prepared on the basis of mutual understanding of the parties and shall not be construed against either party by reason of such party being the drafter hereof.
24. **Entirety of Agreement:** This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and Agreements between the parties with respect to said matter. Each party to this Agreement acknowledges that no representations, inducements, promises, or Agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, and that no other Agreement, statement, or promise not contained in this Agreement shall be valid or binding.

25. **Governing Law and Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, and venue of any dispute between the parties shall be in Watauga County, North Carolina.
26. **Execution:** Each party represents and warrants to the other that all necessary authorizations and approvals required for execution and performance of this Agreement have been given and obtained, and that the undersigned individual is duly authorized to execute this Agreement and bind the party for which it signs.
27. **Notices:** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, to the following addresses:

If to the Town, to: John Ward
Town Manager
Town of Boone
P.O. Drawer 192
Boone, NC 28607

If to the DBDA, to: President
The Downtown Boone Development Association, Inc.
P.O. Box 362 DTS
Boone, NC 28607

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

Town of Boone, by

Rennie Brantz, Mayor

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

Downtown Boone Development Association, Inc., by

President

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

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Budget Amendments:

Public Works - Contracted Services (Infrastructure Fund) \$376,100
Police Department - Travel & Training (Contributions/Donations) \$2,000

Police Department - Armory \$10,634.50 Uniform Equipment \$2,835 (State of NC Dept. of Public Safety Grant Fund) \$13,469.50

Fire Department - Maintenance & Repair Vehicles (Misc. Revenue) \$4,267.37

Ms. LaPlaca thanked Mr. David for his work in sustainability. Mr. Furgiuele recognized Mr. David for his work on the Sustainability Committee as well as on Town Council. Mayor Pro-Tem thanked Mr. David for serving in his role as Town Council member and on different committees, and also thanked Harvard Ayers for his service. Ms. Ulmer thanked Mr. David for his help on the AppalCART board. Mayor Brantz thanked Mr. David for his help to the community. Ms. Ulmer thanked Dr. Ayers for his service. Mr. Hicks thanked Mr. David and Dr. Ayers for being leaders in sustainability. Ms. LaPlaca stated that she was deeply appreciative to both Mr. David and Dr. Ayers. Mr. Furgiuele added that he was appreciative to Dr. Ayers for his leadership on the steep slope taskforce as well as his leadership on the Sustainability Committee and his advocacy for funds to set aside to help transition away from fossil fuels, and asked that the resolution be changed to refer to Mr. Ayers as Dr. Ayers. Mayor Pro-Tem Clawson seconded the motion.

VOTE: Aye: All
 Nay: None

RESOLUTION OF VOLUNTEER APPRECIATION AND RECOGNITION

WHEREAS, Dr. Harvard Ayers has served this community well in numerous capacities during his time volunteering on the Town of Boone's Sustainability Committee; and,

WHEREAS, Dr. Ayers's service to the Town of Boone shows exemplary dedication to the best interest and betterment of the community; and,

WHEREAS, through the performance of his duties and responsibilities as a member of the Sustainability Committee, he has made excellent and constructive contributions to our Town; and,

WHEREAS, he has earned the admiration and high regard of those with whom he has come into contact and the affection of his fellow public servants.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Boone, North Carolina does hereby express our sincere appreciation and thanks, as well as that of our citizens, to Dr. Harvard Ayers with sincere best wishes for continued success and many happy years ahead.

Adopted by unanimous vote of the Town Council on the 15th day of October, 2020.

_____ Mayor Rennie Brantz

ATTEST:

_____ Town Clerk Nicole Harmon

APPROVAL OF RESOLUTION - H. AYERS

APPROVAL OF RESOLUTION - Q. DAVID

CONSIDERATION OF CONTRACT - DBDA

CONSIDERATION OF BUDGET AMENDMENTS

COUNCIL MATTERS

CONSIDERATION OF PROPOSED ASU POLICE JURISDICTION AGREEMENT

Ms. Meade presented changes made to the ASU Police Jurisdiction Agreement which was originally presented to Council in October. Referring to clause six of the agreement, Mr. Furgiuele asked who would supervise such an event. Ms. Meade answered that a supervisor would have to be approved for each event. Mr. Furgiuele questioned whether the Town should always supervise. Chief Le Beau added that all parties would work together on an incident action plan in these instances and would designate a supervisor at that time. He stated that, typically, if the event took place within the Town of Boone, Boone Police department would supervise, if in the County, the Watauga County Sheriff's Department would supervise and if on campus, ASU Police Department would supervise. Ms. Meade asked if all events were pre-planned. Chief Le Beau answered that pre-planned events included sporting events, but some, such as weather events could be un-planned, though the same approach would be followed. Mayor Brantz asked whether the liability clause was drawn tightly enough to protect the Town. Ms. Meade responded that she believed it to be drawn both tightly and broadly enough. She turned discussion back to supervisory roles by stating that she believed that leaving it open-ended to be the best option. Mr. Furgiuele stated that he would be more comfortable with including a default provision naming Boone Police Department staff as supervisors unless a specific alternative agreement was reached. He added that he would then support the other changes to the agreement, but only if members chose the second option in paragraph two. He stated that he had a problem with not having control over ASU Police Department personnel. Chief Stephenson stated that he did not believe Town Council to have a clear understanding of the degree of cooperation between the two departments, and noted that ASU Police Department was acting on things included in the agreement now. He added that his officers were never going to ignore crime off-campus and confirmed that there would be no liability to the Town of Boone. Chief Stephenson stated that he believed it to be a safety issue to not have this agreement in place. Mr. Furgiuele asked whether ASU Police Department officers were currently reacting to criminal offenses off-campus, and asked whether that included traffic offenses. Chief Stephenson answered that officers were reacting to certain criminal offenses off-campus, but not to routine traffic offenses. Ms. LaPlaca asked for Chief Le Beau's opinion on the agreement. Chief Le Beau stated that it was his view that the agreement was needed in that it simplified things in the court process. Ms. Ulmer stated that she saw no issues with the agreement. Mayor Pro-Tem Clawson asked whether it met the needs of the Boone Police Department. Chief Le Beau answered that it did, and added that it established limits and protections for the Town of Boone. Mr. Hicks asked whether it was possible to include a clause that if changes were made in leadership within either department, that the agreement come back to Council for review. Ms. Meade answered that was possible, or that Council could require that the agreement be reconsidered regularly after a year. Ms. LaPlaca made a motion to approve the non-highlighted version of the agreement, rejecting the second option in paragraph two of the draft. Ms. Ulmer seconded the motion. Mr. Hicks made a friendly amendment to include a clause that allowed for annual review of the agreement, to which both Ms. LaPlaca and Ms. Ulmer agreed.

TERRITORIAL JURISDICTION AGREEMENT

This Territorial Jurisdiction Agreement (the "Agreement") is made and entered into as of the date of the last signature below by and between the Town of Boone, North Carolina (the "Town") and Appalachian State University ("Appalachian").

WHEREAS, the territorial jurisdiction of the Town of Boone Police Department ("Boone Police Department") includes all property within the corporate limits of the Town, as well as property and rights-of-way owned by the Town outside the corporate limits; and

WHEREAS, pursuant to N.C. Gen. Stat. § 116-40.5(a), Appalachian has established a campus law enforcement agency, the Appalachian Police Department (the "APD"); and

WHEREAS, pursuant to N.C. Gen. Stat. § 116-40.5(a), the territorial jurisdiction of the APD includes all property owned or leased to Appalachian and that portion of any public road or highway passing through such property or immediately adjoining it, wherever located; and

WHEREAS, the Town and Appalachian recognize the benefits of a limited extension of APD's law enforcement authority beyond the territorial jurisdictional boundaries prescribed in N.C. Gen. Stat. § 116-40.5(a); and

WHEREAS, N.C. Gen. Stat. § 116-40.5(b) provides that the Town and Appalachian may enter into a joint agreement to extend the law enforcement authority of campus police officers into any or all of the municipality's jurisdiction and to determine the circumstances in which this extension of authority may be granted;

NOW THEREFORE, in consideration of their mutual interests, the Town and Appalachian agree that the territorial jurisdictional authority of the APD will be extended beyond the campus jurisdictional boundaries and into non-campus areas within the corporate limits of the Town under the following circumstances:

1. APD officers may exercise all law enforcement powers, including the power of arrest, anywhere within the Town of Boone in the course of and in connection with investigation of a criminal offense alleged to have been committed within the campus territorial jurisdiction as defined by North Carolina General Statute 116-40.5(a). APD officers shall provide notification to the Town Police Department in advance whenever reasonably practicable when exercising this territorial jurisdiction, and where advance notice is not reasonably practicable shall notify the Town Police Department as soon as is reasonably practicable. APD police reports resulting from the exercise of this territorial jurisdiction will be forwarded to the BPD as soon as possible.
2. APD officers, while on duty, may exercise all law enforcement powers, including the power of arrest, relating to criminal offenses that occur in an APD officer's presence, excluding routine traffic offenses but including traffic offenses that represent a serious threat to the public safety, such as driving under the influence (DUI) or careless and reckless driving in violation of G.S. 20-140(f).
3. The Boone Police Department will transfer to the APD non-emergency calls for service to properties located on the Appalachian main campus or to other properties that are recognized by the Boone PD's 911 service as being owned or leased by Appalachian. For these purposes, a "non-emergency" call is a call that does not involve a threat or possible threat to life or personal safety or imminent harm to property. *Provided*, however, that the Boone Police Department will continue to enforce Town of Boone ordinances throughout the town's corporate limits.
4. A current list of properties owned or leased by Appalachian is attached hereto as Schedule A. However, while the Boone Police Department and its 911 call personnel will attempt to transfer calls and/or notify APD as provided in the preceding paragraph, the Town makes no representations or warranties that it will do so in any particular case.
5. APD officers may exercise all law enforcement powers, including the power of arrest, at the premises of the Boone Police Department headquarters and at the offices of the Watauga County Magistrate.
6. APD officers may exercise all law enforcement powers, including the power of arrest, anywhere within the Town while participating in joint operations or training with the Boone Police Department so long as those activities are approved by both the Chief of the Boone Police Department and the Chief of the APD.
7. While exercising extended jurisdictional authority pursuant to this Agreement, APD officers shall have the same powers, rights, privileges, and immunities as they normally possess.
8. Nothing in this Agreement shall be construed to limit the scope or extent of the authority and jurisdiction of the APD as provided by N.C. Gen. Stat. § 116-40.5 or of the Boone Police Department.
9. The Town assumes no liability for actions taken by the APD pursuant to the extended jurisdiction provided by this Agreement.
10. This contract is for the exclusive benefit and convenience of the parties hereto. Nothing contained herein shall be construed as granting, vesting, creating, or conferring any right of action or any other right or benefit upon any third party.
11. This Agreement shall remain in effect until terminated by either party upon written notice to the other party. Such termination shall be effective immediately unless otherwise provided in the notice of termination.
12. Amendments may only be made to this Agreement upon the written concurrence of both the Town and Appalachian.

IN WITNESS WHEREOF, the parties hereunto cause this Agreement for the extension of the territorial jurisdiction of the APD to be executed in their respective names by their authorized representatives.

APPALACHIAN STATE UNIVERSITY

Paul Forte
Vice Chancellor for Business Affairs

TOWN OF BOONE

John Ward

Town Manager

**SCHEDULE A
LIST OF PROPERTIES OWNED OR LEASED
BY APPALACHIAN STATE UNIVERSITY
OFF OF MAIN CAMPUS
AS OF SEPTEMBER 1, 2020**

RESULT:	APPROVED [4 TO 1]
MOVER:	Nancy LaPlaca, Council Member
SECONDER:	Connie Ulmer, Council Member
AYES:	Clawson, Ulmer, LaPlaca, Hicks
NAYS:	Furgieuele

CONSIDERATION OF THE USE OF PLANT-BASED PROPANE TO POWER TOWN VEHICLES

Stuart Weidie and Ed Hoffman of Blossman Services and Mike Phillips with Alliance Autogas answered questions previously sent to them by members of the Council. Mr. Weidie noted that there were over 28 million vehicles running on propane auto gas globally and that it was the third most widely used fuel behind gasoline and diesel as opposed to 6 million electric vehicles. He stated that the first question had to do with how many vehicles Blossman managed today. He answered that nationwide, they operated in 46 states with over 1,000 customers and 10,000 vehicles on the road using their equipment for the vehicle's systems, as well as Blossman's refueling equipment and fuel supply. The second question was how much was the conversion cost and how would it be paid for. Mr. Phillips answered that in regards to question two and three which was how many cars did Alliance/Blossman plan to convert, the Police Department had asked for a quote to convert 20 vehicles. He indicated that the pricing was \$5,800 per car. With a \$400 installation charge, coming in at \$6,200 per car which was in line with state guidelines. In answering the next question, Mr. Powers answered that the Town could expect for the investment pay for itself eventually, based on the mileage that the vehicle was driven, the gear used, and also the gallons used. He stated that customers usually recouped their investment in between 18 and 24 months. Mr. Weidie indicated that gas prices would also make a difference and noted that there was compression coming from the difference between propane and gasoline. Mr. Weidie continued on to answer the next question regarding the limited amount of renewable propane in North Carolina. He agreed that this was an absolutely correct statement, and added that right now, their company had access to the largest renewable propane production facility that took derivatives from plants, oils, other plant products as well as tallow to produce 5 to 6 million gallons of propane on an annual basis. Mr. Weidie stated that the product was moved via rail car from Louisiana to Charlotte, North Carolina, and then trucked up to the Boone area and then delivered into the dispensing equipment that the police department would have. He added that rail was the most sustainable form of transportation in terms of reduced carbon footprint versus trucking and other methods. Mr. Weidie read the next question: Is the renewable propane we'll be using actually an offset for the NC renewable portfolio standard. He answered that it was not, but that it was actual, physical, liquid renewable liquid propane which had the same molecular structure as fossil propane, or organic propane. Ms. LaPlaca stated that the internal combustion engine vehicle being discussed was only 20% efficient, just like any other internal combustion vehicle, and asked him to confirm that 80% of the energy that was used by the car still produced waste and pollution. Mr. Weidie answered that the efficiency rates were actually around 40 and 45% compared to the modern internal combustion engine and noted that today's internal combustion engines produced 99%, fewer emissions than vehicles from 1970. He added that electric vehicles were only 30-32% efficient after power is run through a power plant and transmission lines. Ms. LaPlaca stated that she would like to see details on this conclusions since she had never seen an internal combustion engine that efficient. Mr. Weidie responded that he would be happy to provide the information and that it dealt with direct injection and turbo

charging. In response to the next question, Mr. Weidie stated that a renewable propane had carbon intensity rating of 22, which was less than half of an electric vehicle, and significantly better than a petrol vehicle at 87. Ms. LaPlaca pointed out that the climate effect of methane, according to the Intergovernmental Panel on Climate Change was 86 times worse than co2, and so when co2 was used as a way to measure the intensity rating, she believed this to be dishonest. Mr. Weidie indicated that their propane had no methane in it once it left the facility and that they made no use of it. Ms. LaPlaca stated that in the United States, according to the US Department of Energy, there were 146,000 propane vehicles and 1.6 million electric vehicles and found that the 28 million number referenced earlier was not very relevant to the situation in the US. Mr. Furgiuele asked for a point of order and stated that it was his understanding that Council was going to hear a presentation. He added that he also understood that Council was going to be operating by Robert's Rules, where instead of just engaging in a dialogue with someone who was before Council, members asked for permission from the chair. Mr. Furgiuele stated that he was having trouble making sense of the presentation and asked if the presenters would be allowed to continue and members be able to ask questions at the end. Mayor Brantz agreed. The next question was Do you recognize electric vehicles are actually zero emissions versus propane vehicles which are marginally better on emissions of co2. Mr. Weidie responded that electric vehicles were zero emissions when considering only tailpipe emissions. The next question was Is the efficiency of the vehicle affected by the equipment? If so, is the vehicle more or less efficient and how much generally there is a 10% per gallon drop in efficiency versus a gasoline vehicle due to a lower in DTU content and a gallon of gas versus a gallon of propane? Mr. Weidie answered that the vehicle lost 10% efficiency but had a higher cetane rating of 108 210 versus 87 or 89, which was common in petrol. Mr. Furgiuele asked whether there were electric police cars available now that were suitable for use by the police department. Mr. Ward answered that he had not identified any. In response to a question by Mr. Furgiuele, Mr. Ward stated that a police department vehicle could be expected to last approximately eight years. Mayor Brantz asked about the cost to maintain these vehicles as well as the life expectancy. Mr. Weidie answered that the only maintenance needed was preventive maintenance typically, such as annual filter changes, which cost about \$75. He indicated that the life should be extended by a couple of years to 8-10. Mayor Brantz asked whether the cold climate would affect the engines. Mr. Phillips answered that they had not noticed anything that led them to believe the system would not work during cold weather. He further noted that they offered free maintenance training to their customers. Mr. Weidie added that their system was certified for use in minus 25 degree temperatures. Ms. LaPlaca asked whether Chief LeBea had spoken with the fleet management department at NC State University since they were experts in sustainable vehicles. He indicated that he had not, but had talked with a fleet manager in Kingsport, Tennessee. Ms. LaPlaca felt that this project would be moving in the wrong direction. Mr. Hicks asked whether the propane used was produced outside of the processing manner for natural gas and what the procedure was. Mr. Weidie answered that the processing of fossil propane in Louisiana, approximately 84% of it came from natural gas processing which called for natural gas liquids coming out of the ground. He explained that the residuals were then converted to butane, propane, propylene and others that were previously mentioned, and made usable, with the other remaining portion coming from petroleum refining. Regarding the renewable propane, Mr. Hicks asked Mr. Weidie to describe the percentages of each of those sources and where they come from. Mr. Weidie answered that it varied depending on the supply. He indicated that plant oils might make up 60 to 70% in any given period but then six months later, it could convert to beef tallow as the primary feedstock for the renewable facility. Mr. Hicks asked whether the plant oils were primarily corn or soy. Mr. Weidie answered that the oils were mostly switchgrass, sunflower and other smaller plant oils. He added that there were no palm oils used, and no corn oils being utilized. Mr. Hicks asked whether the company had third party studies available that had looked into this fuel source and its efficacy and carbon effects. Mr. Weidie answered that often times when they quoted information, it sounded like they were self promoting, but they were actually taking government data from the EIA, and the DLP, UPA, or independent laboratories, National Renewable Energy facility in Colorado, or Argonne laboratory, Oregon laboratories, which was also an independent facility. Mr. Ward added that the Town had approximately 40 vehicles assigned to the police department. As part of the replacement plan, staff was lucky if they were able to make a capital purchase of four police vehicles per year. He explained that

originally, the Town had many more vehicles than that including a fleet of four wheel drive vehicles for winter, and we had a fleet of two wheel drive vehicles that were used primarily during better weather. Mr. Ward continued by stating that as all wheel drive vehicles became available, staff began a surplus program and reduced that fleet significantly, because for a good portion of the year, staff had vehicles sitting around that the Town was paying insurance on that were not being used. He stated that now, staff had picked and chosen the vehicles they would replace for a program like this based on how much longer they felt like that vehicle would be on the road, while still retaining approximately 50% of the fleet. Mr. Ward indicated that this was never intended to be the end all solution, but was seen as an opportunity to present the Town Council with an option to do something on an interim basis while waiting on other technology to become available. Mr. Furgiuele felt that what was being proposed would be an improvement to what the Town currently had, even though it was not perfect. He believed the Town should be taking every step it could to try to reduce the pollution that the Town was creating. Mr. Ward indicated that if Council chose to move forward, it could take two routes: a one time outlay of \$124,000 in one payment that was not budgeted or an interest free lease type arrangement over either 24 or 36 months. He stated that recommended the sustainability fund to make the initial payments, and then the making the quarterly payments as we move forward with cost savings. Ms. LaPlaca encouraged Chief Le Beau to reach out to staff at NC State regarding their sustainability efforts and reiterated that electric vehicles were the way to go. Mr. Hicks stated that he wanted to see more documentation before he could make any kind of decision on the subject. Ms. LaPlaca suggested that the project be postponed. She stated that there were police departments such as Cobb County Georgia who were using Teslas, and that their chief was willing to discuss this with people. She then made a motion to postpone further discussion on the topic until further information could be gathered. Mr. Hicks seconded the motion. Mayor Pro-Tem Clawson agreed that the plant based propane might be an appropriate interim solution for the Town of Boone. Ms. Ulmer agreed with Ms. LaPlaca and Mr. Hicks that she would like to see additional information. Mr. Furgiuele suggested that since the person who supervises the NC State fleet had been cited, that person be invited to participate in the meeting so that all members heard the same information directly. Mr. Ward agreed. Ms. LaPlaca stated that at his last presentation, Mr. Phillips made the comment that this fuel source would not be 100% renewable propane for a number of years, and asked exactly what percent was plant based propane and exactly what percent came from natural gas and oil. Mr. Phillips answered that his comment was that all propane right now was not renewable, but all propane was not fossil fuel. Ms. LaPlaca asked whether if a contract was entered into between the parties that it would be made part of the contract that only 100% renewable propane would be sold to the Town. Mr. Weidie answered that whether it was 30,000 gallons, or 50,000 or 70,000 gallons, whatever the volume associated it would be going to be physically coming up to North Carolina and being put into the refueling sites. Ms. LaPlaca restated her question. Mr. Weidie responded if the Town wanted that specifically put in the contract that they could or honor that component and would be happy to put that into agreement if that was Council's decision. Ms. LaPlaca asked Mr. Weidie to confirm that 99.99% of the propane made in this country was not renewable propane but was fossil fuel based. Mr. Weidie stated that he had confirmed that 99.9% of the propane was gas or petroleum based and that he was thrilled to give Boone the opportunity to have some of the 5 million gallons of plant based propane in the entire country. A vote was then taken on the motion.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Nancy LaPlaca, Council Member
SECONDER:	Dustin Hicks
AYES:	Clawson, Furgiuele, Ulmer, LaPlaca, Hicks

CONSIDERATION OF CHANGE ORDER FOR CONTRACT SFRB2019: BRIDGE BEAM END REPAIRS TO STATE FARM BRIDGE

Upon a motion by Mr. Furgiuele, seconded by Ms. Ulmer, Council voted unanimously to approve the change order as presented.

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

FOLLOW-UP ON REQUEST TO CUT TREES GROWING ON TOWN LAND ADJACENT TO 253 GREENBRIAR ROAD

Ms. Meade presented information pertaining to a request made at last month's meeting by the owner of property located at 253 Greenbriar Lane to cut trees, which they deemed to be dangerous, on adjacent Town-owned property. She stated that staff did not believe the trees complained of threatened the property owner's house, and that they believed it to be unlikely that a falling tree would take down a utility line servicing the property. Ms. Meade also presented three reports from the Town's arborist that stated that the trees were healthy. In keeping in line with the Town's attempt to preserve trees, Ms. Meade suggested not cutting these trees. Mr. Furguele agreed and stated that he believed it was plain that they were healthy and that the Town should preserve every healthy tree it could. It was the consensus of Council to decline the request made by the property owner at 253 Greenbriar Lane to cut trees on the adjacent Town-owned property.

RESULT:	CONSENSUS
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APPROVAL OF FIRMS FOR ON-CALL PROFESSIONAL SERVICES PENDING APPROVAL OF CONTRACT

Upon a motion by Mayor Pro-Tem Clawson, seconded by Mr. Furguele, Council voted unanimously to approve the request as submitted.

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

CONSIDERATION OF PURCHASE AGREEMENT - 1500 BLOWING ROCK ROAD

Mr. Ward stated that an offer in the amount of \$2.8 was received on the surplus property located at 1500 Blowing Rock Road, which was significantly less than the listing price of \$4.5 million and even less than the appraisal value of \$5.2 million. He noted that the purchaser had agreed to similar terms as were included with the public building sale which included the lease back of the property. Mr. Ward noted that potential buyers had issues with the property in that it was very narrow, and that the UDO required that the front of whatever was placed there, the front door would have to face Blowing Rock Road. Mr. Ward added that staff had been working with WithersRavenel on a site plan, and were progressing to full construction documents. He anticipated in next month being able to bring the cost of that project to the Town Council for consideration. Mr. Ward reminded members that if they accepted this offer, it would begin the upset bid process, though it would not necessarily mean that they had to accept it as the final amount, unless there were no further upset bids. Mr. Milner clarified that the property was listed at \$4,750,000 per Council's instructions, and noted that the rear of the property had some floodway and floodplain characteristics which limited the development within the UDO. He also brought to Council's attention that the corridor district ran along Blowing Rock Road and believed that was going to reduce the driveway cut from the two existing down to one. Mr. Milner stated that everyone that he had spoken to about the property said that they would not utilize the existing building on the property and would tear that building down for redevelopment. He expressed some concerns regarding setbacks in the B3 district with the street setback at 20 feet and the interior setbacks at 17 feet. Mr. Milner indicated that the

concern received from this specific buyer was that since the property was surveyed at 3.711 acres, some space in the flood plain and floodway area, and some space in the Blowing Rock Road right of way, the property was not a true net usable 3.711 acres, but actually 2.835 acres. Based on this amount, Mr. Milner stated that the property being offered at \$22.67, a square foot was in line with market expectations. Mr. Milner then reiterated Mr. Ward's position that if Council allowed this offer to start the upset bid process, he believed people would come out of the woodwork that maybe had been looking at the property and reminded members that they could reject any and all bids. Mr. Furgiuele asked whether the appraiser was aware that the property was in the flood zone. Mr. Milner stated that he was, but Mr. Milner believed that the appraisal the Town received attributed a large majority of the appraised value to the building improvements contributory value, and he did not believe that today's buyer or the market recognized that those building improvements had any contributory value. Mr. Furgiuele asked how big the former Southern States property was since it sold for more than the asking price. While Mr. Milner looked up that information, Mr. Ward noted that one of the difficulties with the public works project was factoring in livability standards, such as green space. He also added that any temporary space for the police department would have to include space for the 911 communication center which included a generator on site that provided emergency power backup. Mr. Ward expressed that his biggest concern was finding an appropriate space for this price, even though rent at \$13,000 per month would still eat away at any additional profits. Mr. Milner responded that the Rivers Walk property as it was assembled in and technically two different sales was a total of 2.748 acres at \$2.5 million. He added that The Greene's Motel property had also been for sale for several years and was a 2.7 acre site that was currently listed for \$3.9 million. Mr. Furgiuele stated that he did not think Council should accept this offer. He added that he heard the arguments about the possibility of upset bids, and that was somewhat persuasive, but from his standpoint, there was finally light at the end of the tunnel in terms of the Coronavirus and believed that there would be some acceleration of economic activity in the near future. Mr. Furgiuele thought that Council would be taking a great risk right now to accept an offer so much lower than the appraised value. Mr. Milner responded that the ability to find a buyer who was willing to lease the property back to the Town for fair terms and conditions in order to get a higher price could be difficult and believed that this particular buyer was willing to lease it back to the Town at a number much less than what typical economics would suggest. Ms. Ulmer asked whether potential buyers were concerned with the size of the property. Mr. Milner answered that the problem was not necessarily a point of size, but that the site had limitations in terms of site characteristics. Mr. Furgiuele asked how long ago the appraisal was done on this property and whether the Town should consider obtaining an updated appraisal. Mr. Milner indicated that the appraisal was performed in 2019. Ms. Meade added that Mr. Milner had not only advocated a lower listing price, but indicated he thought the problem with the appraisal was that it included the value of the current structure. She stated that it seemed that the issue could be discussed with the appraiser. She added that Council could terminate negotiations or the upset bid processes anytime but would not recommend Council accepting an offer, thinking that it may just end up canceling the upset bid process down the line. She thought Council should only enter into that process if it was very serious in accepting the proposal. Ms. Meade noted that this opinion was not so much from a legal perspective as simply from a negotiation perspective and whether the Town would lose trust in its good faith negotiating position. She added that given the uncertainty on the development of the Bolick property at this point and the expense of the rent, she was unsure why Council would accept a lower bid unless Council felt that property values were going to be changing and deteriorating. Mr. Furgiuele made a motion that Council reject this offer, but to direct the Town manager to be in touch with the person who appraised the property to follow up to find out what the cost would be to obtain an appraisal with the building removed. Mr. Ward asked whether if funds were available if he could be granted authority to go ahead and have the appraisal updated. Mr. Furgiuele accepted this suggestion. Mayor Pro-Tem Clawson seconded the motion, which carried unanimously.

Mayor Brantz called for a break at p.m. Council reconvened at p.m.

POSSIBLE CHANGES TO THE TOWN CODE REGARDING SMOKING & VAPING

Ms. Meade presented changes to the Town Code regarding smoking and vaping which included correction of several grammatical mistakes, as well as the addition of a definition of the term "wall" pertaining to the definition of "enclosed" structures. Mr. Furgiuele stated that he attended the recent DBDA meeting during which this item was discussed and noted that there was discussion of specifically increasing the radius around doors about the width of the sidewalks. He noted that some people observed that, at some point, a larger radius would in essence, be a ban of smoking on the sidewalks. He indicated that even though the DBDA did not endorse it, he wondered if Council should consider just banning smoking all together in the downtown. Mr. Furgiuele stated that the police should educate people first, then give them a warning before they would actually cite offenders, but believed that the case had been made by both the County health director and the study group from ASU that both vaping and smoking presented a significant health problem for people who were close by. He stated that if people wanted to harm themselves, that was fine with him, but felt that Council should try to prevent people from harming others to the extent that it could. Mr. Furgiuele added that if Council voted to draw lines on the sidewalks as had been suggested, he was unsure how the police would ever be able to figure that out to enforce the ordinance. Ms. Meade stated that if members were inclined for the ordinance to prohibit smoking in the most dense area of King Street, she suggested they consider an outright prohibition on the sidewalks on King Street, from Water Street to College Street, or Appalachian Street, and then in the rest of Town, a prohibition based upon the distance away from entry ways would make more sense. In response to a question raised by Ms. Ulmer, Ms. Meade answered that it was already in the ordinance that smoking was prohibited in Town parks. She added that there were two different kinds of potential conflict in that during the day, there was the typical smoker who may step outside to try to smoke, which had become more and more the norm. Ms. Meade continued that due to the location of ASU and the nightlife types of use in the evening, there were areas outside certain establishments that may be on King Street and on Howard Street, that would see more smoking going on in the evening hours. Ms. Meade felt that it was arguably less justified because folks were voluntarily placing themselves in that situation rather than tourists and residents who were walking King Street during the day and could not avoid smokers. Mr. Ward suggested Council consider using the same delineated area used in the skateboarding ordinance, and felt that a 25 foot radius would be too much. Mr. Hicks echoed the comments previously made and noted that a survey had been sent out by the DBDA to MSD members. He indicated that the feedback was that most of it was in support of treating vaping the same as smoking, as well as expanding the no smoking areas outside of businesses. In addition, Mr. Hicks stated that the DBDA received 13 additional comments with the bulk of those in favor of banning smoking. He noted that there were a couple of comments received that recognized that there were some restaurants and bars downtown that had a night life feature and did not want to impact that. Ms. Ulmer was concerned that if smoking were banned on King Street, smokers would be forced to another area of downtown. Mayor Pro-Tem Clawson expressed concern about expended cigarette butts on sidewalks, with Ms. Meade responding that only banning smoking during certain hours would justify the continued use of containers to collect the cigarette butts. She added that signage would have to be installed that in very short terms explained the ban and the time limit. Mr. Furgiuele made a motion to adopt the ordinance as drafted except that rather than the 25 feet radius that was described, that the radius be reduced to 15 feet; this apply to areas within the boundaries of the municipal service district with amendments to the draft proposal to include a ban on the two blocks of King Street from Appalachian Street to Burrell Street and, and Water Street between the hours of 10 am and 8 pm. Mr. Furgiuele also suggested in terms of signage, in the future loosening the restrictions on skateboarding and bicycles on these blocks during the hours with reduced pedestrian use to correspond. Ms. Meade suggested some minor revisions which Mr. Furgiuele agreed to. Ms. Meade stated that she would bring the final version back to Council next month for approval. Mr. Furgiuele then withdrew his motion and it was the consensus of Council to have Ms. Meade come back next month with final text for Council's consideration on the Consent Agenda. Mr. Hicks suggested a map outlining areas in which people were allowed to smoke would be helpful as well.

SOLSMART DESIGNATION FOR THE TOWN OF BOONE

Ms. Meade stated that the SolSmart organization has reviewed the Town's UDO as to how the Town could be more friendly toward solar installation and has offered suggestions. Mr. Furgiuele believed that the most permissive options would work in every district except the historic district, and added that he would be nervous moving forward without input from the Historic Preservation Commission and the Community Appearance Commission. Ms. LaPlaca agreed, and added that there were plenty of other places to install solar without endangering historic buildings. Ms. Shook noted that the recently completed design guidelines took solar into consideration, but believed it to be a good idea to get input from the Historic Preservation Commission. Ms. LaPlaca added that this was a great project, but unless Boone had net metering, there would be no solar. It was the consensus of Council for staff to proceed with draft language and to bring back at a later date.

RESULT:	CONSENSUS
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CONSIDERATION OF SIGN REGULATION ISSUES

Ms. Meade asked Council for direction regarding temporary sign regulation issues. She stated that recent Supreme Court cases had made it questionable whether a distinction between commercial and non-commercial messages on temporary signage was viable. Ms. Meade believed the reality was that the distinction was probably effectively subject to strict scrutiny and would leave the Town having to carry the burden of showing that that regulation was not only reasonable, but narrowly justified to serve an important or compelling interest. She noted that a recent case decision in the federal Fourth Circuit indicated that a town would have to come forward with actual evidence to prove this point, as opposed to having a discussion amongst Council about what was in the best interest of the town and what it considered to be a problem in a town. Ms. Meade believed that the Town's current ordinance had problematic aspects to it in that it distinguished between all sorts of signs, which could only be considered content based distinctions. She believed that it would be easier to deal with either an outright prohibition or completely allowing these signs, because either one of those options were obviously not content based, and were easier to justify. Ms. Meade suggested allowing signs which were up to 18 inch by 18 inch or two foot by two foot, which were both very common sizes and, and then either allow them with a certain restriction and number which she believed could be justified based upon restricting clutter. She continued that if it turned out that this regulation was creating a problem for Boone then the Town will have gathered evidence for hearings, and could justify a restriction and number. She stated that this would be her suggestion in residential areas and suggested that the Town prohibit the illumination of any such signs or at least internal illumination. Ms. Meade suggested that the Town also prohibit the collection of fees for displaying such signs to try to dissuade people from selling the space in their yard. Mr. Furgiuele asked whether there would be a duration limit on these signs as well as whether the Town was able to legally prohibit the collection of fees. Ms. Meade responded that she believed Council could place a durational limit on signs, but with a renewal period. In terms of fees, Ms. Meade answered that if there were an enforcement program where people were required to come into the Planning Department and get temporary sign permits, then they could be required to pay a fee, which in turn could fund the enforcement program. Mr. Furgiuele asked whether temporary signs in commercial areas also raised a content issue and whether what was displayed on the sign in the commercial areas should relate to the commercial property. Ms. Meade answered that this was a separate issue and that only a few different types of signs that businesses were allowed to have including new business signs, special sales signs and inflatable signs. She believed that they did tie to the use of that particular business, and usually did not allow off premises marketing. Mr. Furgiuele asked whether a limit could be made on commercial signage. Ms. Meade answered that Council could limit commercial signage and anticipated that the UDO would continue to limit commercial signage. Ms. Shook pointed out that choose and cut Christmas tree farm signs were often placed in the right of way and that these would also be considered agricultural signs. Ms. Meade stated that Council could consider creating a public forum at the 105, 421 and 321 intersection since it was already used for signs, and banners, but noted that it could create a mess with clutter. Ms. Shook noted that

DOT no longer collected temporary signs in the right of way, but that Ms. Meade had contacted them to see if they would be willing to do so if the Town entered into an agreement with them to do so. She reported that the DOT was willing to do so if there was Council support for such an agreement. It was the consensus of Council that Ms. Meade come back with a more specific proposal.

RESULT:	CONSENSUS
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ADJOURNMENT

Upon a motion by Ms. LaPlaca, seconded by Mayor Pro-Tem Clawson, Council voted unanimously to adjourn the meeting at 10:40 p.m.

Nicole Harmon, Town Clerk

Rennie Brantz, Mayor