# MINUTES – REGULAR MEETING
# BOONE TOWN COUNCIL
# November 19, 2015

## CALL TO ORDER

A regular meeting of the Boone Town Council was called to order at 5:34 p.m., Thursday, Nov. 19, 2015, in the Council Chambers located at 1500 Blowing Rock Road. Mayor Pro Tem Rennie Brantz presided. Council members present were Lynne Mason, Loretta Clawson, Quint David and Fred Hay. Town Attorney Allison Meade was also present. Staff members present were Town Manager John Ward, Town Clerk Christine Pope, Assistant to the Manager Jim Byrne, Human Resources Director Peri Moretz, Fire Chief Jimmy Isaacs, Planning Director Bill Bailey, Public Works Director Rick Miller, Police Chief Dana Crawford, Finance Director Amy Davis, Cultural Resources Director Pilar Fotta and Planning Supervisor Jane Shook.

## ANNOUNCEMENTS

Police Chief Dana Crawford thanked Francesca Field and Janet Pepin for their support of the Boone Police Department's K-9 Program with their most recent donation, and stated that this program would not exist without their continued support.

Mayor Pro Tem Rennie Brantz welcomed all in attendance, and noted that anyone wanting to speak during the public comment session would need to sign the public comment sign-up sheet. He also announced the town's Christmas Parade scheduled for Saturday, Dec. 5, 2015.

## TENTATIVE AGENDA ADOPTION

Town Manager John Ward noted there were no changes to the agenda. Council accepted the agenda as is.

## PUBLIC COMMENT

Rich Campbell, Director of Outdoor Programs at ASU, announced that the 2016 Banff Film Festival would be the 20th anniversary event and there will be a banner competition. He stated they are soliciting design ideas and the winning banner will be displayed in downtown Boone and on campus.

Cathy LaMarre of Boone voiced her concerns with the Planned Development process to be considered later in the meeting. She also briefly discussed the recommendation for a speed hump in the Beverly Heights neighborhood.

Pam Williamson of Boone voiced her concerns with the Planned Development text amendment and presented Council with an e-mail she sent earlier in the week for the record **(Copy of e-mail on file in November 2015 Meeting File)**.

## REQUESTED APPEARANCES (FIVE MINUTES EACH)

### CONSIDERATION OF APPROVAL OF CARBON FEE AND DIVIDEND RESOLUTION

Harvard Ayers presented a Carbon Fee and Dividend Resolution for Council's consideration. He noted that Council would be endorsing the collection of a fee for all fossil fuels extracted, which will eventually make people conserve more and turn to solar, wind, electric cars and other means. Mayor Pro Tem Brantz felt that the Council needed more information before approving the resolution. Council members Mason and Clawson stated they would also like additional information. Town Manager John Ward stated he would get a list of questions from Council and get with Harvard on those questions in order to provide Council with more information.

### MET HOLDINGS SPECIAL PUBLIC HEARING REQUEST

Tyler Moffatt presented a request on behalf of MET Holdings, LLC for Council to schedule a special public hearing for a conditional district zoning map amendment request. Upon a motion by Council Member Mason, seconded by Council Member David, Council moved to schedule a special public hearing for Wednesday, Jan. 6, 2016, at 5:30 p.m. in the Council Chambers located at 1500 Blowing Rock Road in order to hear MET Holdings, LLC.

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| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Lynne Mason, Council Member |
| **SECONDER:** | Quint David, Council Member |
| **AYES:** | Hay, Mason, David, Clawson, Brantz |

## REQUEST FOR UDO ADDITION

Cathy LaMarre presented a request that the Beverly Heights neighborhood be added to the Town's neighborhood conservation district and have staff prepare the necessary text amendment in order to do so. She stated this district would include portions of Beverly Heights Avenue, Berkley Avenue, Sheridan Avenue, Olancha Avenue, Telescope Peak Avenue, VFW Drive and Shady Lane. Upon a motion by Council Member Clawson, seconded by Council Member Mason, Council moved to direct staff to begin the process to make this area a neighborhood conservation district.

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| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Loretta Clawson, Council Member |
| **SECONDER:** | Lynne Mason, Council Member |
| **AYES:** | Hay, Mason, David, Clawson, Brantz |

## REQUEST FOR AMENDMENT TO ORDINANCE #11-01

Meredith Trattler of Cornerstone Campus Communities presented a request for an amendment to Ordinance #11-01 with the following text:

"If an applicant extends the initial vesting period for a third year upon payment of an additional 30% of the full availability fee, an increase or decrease of 40% in predicted water use for the site specific development plan is not considered a substantial change as defined by Section 10(a)."

Ms. Trattler also presented a PowerPoint presentation to the Council to review the development to-date **(Copy of PowerPoint presentation on file in November 2015 meeting packet).** Mayor Pro Tem Brantz stated he would like more information on the long-range consequences of doing this before approving. Council Member Mason noted this request would need to go back to the Water Use Committee for review before approving. Brief discussion ensued regarding the process through which this amendment would need to be taken before the amendment could be adopted. No action was taken on this request.

# CONSENT AGENDA ADOPTION

Council Member Mason stated the Bicycle Friendly Designation is a process the Transportation Committee would complete. She noted they received honorable mention when they applied a couple years ago. Town Attorney Allison Meade suggested sending the item on the agenda that is scheduled to go to the next quarterly public hearing to instead go to the Jan. 6 special public hearing, so Council would not need the February hearing.

A. Minutes: Oct. 13, 2015 - Special Meeting.
Oct. 15, 2015 - Regular Meeting.
B. Direction to Send Modification to UDO to Jan. 6, 2015 Special Public Hearing - Revisions to Appendix B, Guide for Landscaping to Replace the Old Plant List with an Updated List and Include a Guide for Pruning Standards.

C. Approval of Budget Amendments:

| Description: | Account Number: | To: | From: |
|---|---|---|---|
| Canine Unit | 010-500-300-519902 | $2,500 | |
| Contributions/Donations | 010-000-000-482200 | | ($2,500) |
| Parking Meters | 010-600-401-525206 | $987 | |
| Miscellaneous Revenue | 010-000-000-489900 | | ($987) |
| Community Appearance | 010-600-405-525100 | $686 | |
| Miscellaneous Revenue | 010-000-000-489900 | | ($686) |

D. Transportation Committee Request regarding a Designation from the League of American Bicyclists.

Upon a motion by Council Member Clawson, seconded by Council Member Mason, Council moved to adopt the Consent Agenda as amended.

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| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Loretta Clawson, Council Member |
| **SECONDER:** | Lynne Mason, Council Member |
| **AYES:** | Hay, Mason, David, Clawson, Brantz |

# COUNCIL MATTERS

## CLARIFICATION REGARDING COUNCIL MINUTES

Council Member Clawson provided the following statement regarding the closed session minutes of Aug. 20, 2015:

"I am including this statement to correct the record of this closed session. There was no vote taken and it was taken for granted that there was a consensus on moving forward with the filing of the condemnations. I want to clarify that I did not support moving forward with the condemnations. If a vote had been taken, given the challenges to the Town's future ability to avoid unwanted development, I would have voted against authorization of condemnations."

## APPROVAL OF ATTORNEY-CLIENT AGREEMENT

Town Attorney Allison Meade presented an attorney-client agreement between the Town and Clement Law Office for Council's consideration. She stated that the law office would be helping with the open meetings lawsuit filed as well as consulting with them as necessary with respect to other matters including the condemnation matters pending. Ms. Meade added that the law firm was kind enough to reduce their fees for the town. Upon a motion by Council Member Mason, seconded by Council Member David, Council moved to approve the attorney-client agreement between the Town of Boone and Clement Law Office:

ATTORNEY/CLIENT AGREEMENT

THIS AGREEMENT for the employment of the law firm of CLEMENT LAW OFFICE, is made and entered into as of the 26th day of October, 2015, by and between CLEMENT LAW OFFICE, Attorneys and Counsellors at Law, duly licensed by the North Carolina State Bar (“the Firm”) and THE TOWN OF BOONE (collectively referred to as “the Client”):

By signing this Agreement, the Client hereby employs the Firm to represent the Client in the following described matter:

Client File No. 9108.1

Representation of Client with respect to matters, including litigation, associated with the Town of Boone water intake transmission line.

Representation will include all actions necessary to protect and assert the legal rights and interests of the Client, including, but not limited to, investigation of the facts surrounding the matter; legal research; research of records; interviews and conferences with the Client, other counsel and third parties; preparation of necessary correspondence, legal documents, contracts, legal opinions, etc.; participation in settlement negotiations; representation of Client in related court proceedings, review pleadings, discovery documents and conduct such discovery (production of documents, interrogatories, depositions, etc.) as, in the judgment of the Firm, may be necessary. Without further agreement, the representation provided pursuant to this agreement does not include appeal to a subsequent appellate court.

In consideration of the legal services to be furnished by the Firm, the Client agrees to compensate the Firm pursuant to the terms of this Agreement and the Client shall be bound by the following provisions:

**1.** ***Fees*.** The Client's fees will be determined primarily, but not solely, by the actual billable time spent by attorneys and employees of the Firm in providing legal services. When any particular person works on the legal matter, the fee charged will be determined, in part, by multiplying that person's billing rate by the billable time spent. Different employees have different billing rates. The billing rates are expressed in dollars per billable hour. These rates are established according to ability, experience, and other factors suggested by the North Carolina State Bar. The billing rates of all employees of the Firm are reviewed at least annually and may be increased.

The present hourly billing rates in the firm are:
Charles E. Clement—$225.00
D. Dale Howard—$225.00
Charles A. Brady III—$225.00
Legal Assistants—$100.00
Support Staff—$75.00

**2.** ***Billable Time*.** Billable time will be charged in one-quarter hour increments and will be rounded up to the nearest one-quarter hour. A one-quarter hour minimum is imposed on all time charges. It is impossible to determine in advance how much time will be needed to handle the matter. In addition to the attorney primarily responsible for handling the matter, it may be necessary for other professionals in the Firm to work on the matter. The Firm will use its best judgment to determine the most economical and effective use of the attorneys and staff. The Client will be billed for all time spent on the matter including conferences, telephone calls, pretrial discovery, trial preparation, document drafting, correspondence, pleadings, negotiations, legal research, mediation and court time, and travel to and from locations away from the office. Travel time will be billed at half time. Any figures quoted for the total cost of services are merely estimates.

**3.** ***Other Factors Which May Affect The Fee*.** The Client's fee may be adjusted in view of other factors adopted by the North Carolina State Bar as a part of Rule 2.6 (b) of the North Carolina Rules of Professional Conduct, such as the nature of the employment, the amount involved, the results obtained, and the Firm's experience and ability. This Rule provides that the reasonableness of a fee is determined by considering the following factors:

**a.** The time and labor required, the novelty and difficulty of the questions involved, and the skills requisite to perform the legal service properly.
**b.** The likelihood, if apparent to the Client, that the acceptance of the particular employment will preclude other employment by the Firm.
**c.** The fee customarily charged in the locality for similar legal services.
**d.** The amount involved and the results obtained.
**e.** The time limitations imposed by the Client or by the circumstances.
**f.** The nature and length of the professional relationship with the Client.

**g.** The experience, reputation, and ability of the lawyer or others in the Firm performing the services.

The above factors may result in a fee which is more than an actual time-based charge.

**4.** ***Costs and Other Charges***. The Firm will incur various costs and expenses in performing legal services under this agreement. The Client agrees to pay for those costs and expenses in addition to fees. The Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by office personnel. The Client will also be charged half the hourly rate for the time legal personnel spend traveling.

**5.** ***Billing Frequency***. All bills are due when received. The Client agrees to pay any outstanding balance within 30 days of receiving the bill and agrees to pay interest at the rate of 1 1/2% per month (18% per year) on all amounts more than 30 days past due.

**6.** ***Termination***. The Client may terminate the Firm's representation at any time. Any termination of representation does not relieve the Client of the obligation to pay amounts owed for fees and expenses incurred through the date of termination. The Firm may terminate representation of the Client and withdraw as counsel if: the Firm discovers any conflict of interest; the Firm determines that the Client has made a misrepresentation in connection with the matter; the Client fails to pay when due any amounts required to be paid by this agreement; the Client fails to heed the Firm's advice or recommendations or otherwise does not cooperate with the Firm in its representation of the Client; there is a disagreement over what legal matters the Firm has been employed to handle for the Client.

Although the Client shall ultimately control and decide whether to accept any proposed settlement made in connection with the matter, the Client agrees neither to engage directly in attempts to settle or compromise the matter nor to make any settlement of the matter without prior approval of the Firm. The Client acknowledges that the Firm has been employed, and one of its principal roles will be, to attempt to settle all claims without the necessity for filing suit.

The Client grants to the Firm the authority to represent the Client in the matter for which the Firm has been employed and to enter appearances on behalf of the Client in any court or proceeding.

**7.** ***Disclaimer of Guarantee***. Nothing in this Agreement and nothing in statements made to the Client will be construed as a promise or guarantee about the outcome of the matter for which the Firm is engaged. The Firm makes no such promise or guarantee. Any statements about the outcome of the matter are expressions of opinion only. The Client understands that this is not a contingent fee contract and that the fee charged by the Firm must be paid regardless of the outcome or result obtained.

**8.** ***Communication***. The Client is encouraged to ask immediately any questions about charges or services, and is expected to inform the Firm of any complaints about any bill immediately after it is submitted. If the Client fails to pay the amounts due under this Agreement, the Client agrees to pay all reasonable attorney's fees and other expenses incurred in collecting the amounts due.

By signing below, the Client acknowledges that this Agreement has been thoroughly explained and reviewed before signing, or that the Client has had ample opportunity to review it and have it fully explained.

The Firm and the Client hereby indicate their Agreement to these terms by signing this Agreement in the space provided below in duplicate originals, as of the day and year first above written.

CLEMENT LAW OFFICE

By: ________________________________(Seal)
Charles E. Clement

N.C. State Bar #842

By: ________________________________(Seal)
Charles A. Brady III
N.C. State Bar #9709

The Client

THE TOWN OF BOONE

By:________________________________(Seal)
John Ward
Town Manager

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| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Lynne Mason, Council Member |
| **SECONDER:** | Quint David, Council Member |
| **AYES:** | Hay, Mason, David, Clawson, Brantz |

## CONSIDERATION OF PROCESS FOR APPOINTMENT TO UPCOMING TOWN COUNCIL VACANCY

Town Manager John Ward presented a request for direction from Council to use the same process for appointment to the upcoming Town council vacancy as was used following the 2013 municipal election. The procedure is as follows:

1. Advertise the vacancy through various media outlets by the town clerk.
2. Applications and resumes will be accepted by the clerk until the agenda submission deadline of Dec. 4, 2015, and will be placed on the December regular meeting agenda.
3. Council will then consider applications and make an appointment during the December meeting at which point the new Council member will be sworn-in and seated.

Council Member Mason requested that Council have an opportunity to include other questions on the application similar to what the new Council members went through during the campaign. She advised she had four questions she would like to submit to be included. Mr. Ward said he would reach out to all Council members for questions they'd like to include on the application before publishing.

Upon a motion by Council Member Mason, seconded by Council Member David, Council moved to direct staff to use this process to fill the upcoming Council vacancy.

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| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Lynne Mason, Council Member |
| **SECONDER:** | Quint David, Council Member |
| **AYES:** | Hay, Mason, David, Clawson, Brantz |

## CONSIDERATION OF RESOLUTION FOR WATER INTAKE PROJECT

Public Works Director Rick Miller presented a resolution with regard to the water intake project for Council's consideration. He indicated this is the last resolution required from the USDA for approval of the plans and specifications.

Upon a motion by Council Member David, seconded by Council Member Mason, Council moved to approve the resolution presented.

Council Member Clawson stated she believed the community understood her position on this matter. With no further discussion, Mayor Pro Tem Brantz called for a vote.

RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA, ADOPTING PLANS AND SPECIFICATIONS FOR IMPROVING AND ENGLARGING ITS WATER SUPPLY SYSTEM

WHEREAS, the Town of Boone ("Town") operates a water supply and distribution system serving the citizens and residents of the Town of Boone and its environs, a public enterprise authorized by N.C. Gen. Stat. § 160A-311(2) ("the water supply system"); and,

WHEREAS, the Town has determined that it is necessary to improve and enlarge its water supply system in order to protect the public health by providing the public with an adequate and sound water system and meet the future needs of the Town's residents and water customers; and

WHEREAS, the Town Council has previously authorized certain contracts, project plans, property acquisition, condemnations, and other activities and efforts to enable planning, financing and construction of certain improvements and enlargements to its public water supply system ("the project");

WHEREAS, said project is to be financed by means of certain loans and a grant from the United States Department of Agriculture ("USDA");

NOW, THEREFORE, BE IT RESOLVED, the Boone Town Council does hereby approve and accept the project plans and specifications as submitted by W.K. Dickson and Associates on September 30, 2015 to USDA for approval.

This resolution was passed by a vote of _____ for and _____ against, at the regularly scheduled monthly meeting of the Town Council on November 19, 2015.

Adopted this 19th day of November, 2015.

**(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 250)**

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| **RESULT:** | **ADOPTED [3 TO 2]** |
| **MOVER:** | Quint David, Council Member |
| **SECONDER:** | Lynne Mason, Council Member |
| **AYES:** | Mason, David, Brantz |
| **NAYS:** | Hay, Clawson |

## CONSIDERATION OF UPDATED EQUIPMENT AND FURNITURE FOR 911 COMMUNICATIONS CENTER

Police Chief Dana Crawford presented a request for authorization to move forward with the purchase of new furniture for the communications center and approval of lease agreements for updated 911 communications equipment. Town Attorney Allison Meade advised she had reviewed the leases and made minor changes which were agreed to by the lessor. Upon a motion by Council Member Clawson, seconded by Council Member David, Council moved to approve the purchase of new furniture and approval of the lease agreements for updated 911 communications equipment with the revisions agreed to by the lessor **(Copy of lease agreements with revisions made on file in Town Hall and in November 2015 meeting file).**

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| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Loretta Clawson, Council Member |
| **SECONDER:** | Quint David, Council Member |
| **AYES:** | Hay, Mason, David, Clawson, Brantz |

## DISCUSSION OF POTENTIAL PARK AND GREENWAY PROPERTY ON HODGES GAP ROAD

Council Member David presented a request for Council to consider the property located off Hodges Gap Road currently owned by NCDOT as a location for greenspace and hiking trails. He advised that this property is located within the Town's extraterritorial jurisdiction, and that side of town is severely lacking greenspace. Council Member Mason asked if that location would be suitable for the Watauga County Land Trust for workforce housing. Town Manager John Ward advised that the conversation between Richard Rosenfield, who originally wanted the site for a public disc golf course, and DOT stopped with the discussion of a recreational location, but he could ask if they would be agreeable to that as well. Mr. Ward added that Council should keep liability in mind with the budget since doing this could have a financial impact in regard to liability. He stated the Town could keep this location on the radar as they move forward with looking at potential greenspace.

## REQUEST FOR STAFF TO EXPLORE OPTIONS TO SELL BEER AND WINE BY THE GLASS PER THE NOVEMBER 2011 MEETING VOTE

Council Member Mason presented a request for staff and the town attorney to research and present Council with options for Wine and Beer Specialty Shops to have the option of selling beer by the glass. She stated that this matter came before Council in 2011, but there was no progress made after directing the attorney to explore the option of pursuing special legislation for this purpose. Ms. Mason added that Jeff Collins at Peabody's asked that the Town re-explore these options. Upon a motion by Council Member Hay, seconded by Council Member Mason, Council moved to direct staff and the town attorney to explore options for Wine and Beer Specialty Shops to have the ability to sell beer by the glass and bring those options back to Council.

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| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Fred Hay, Council Member |
| **SECONDER:** | Lynne Mason, Council Member |
| **AYES:** | Hay, Mason, David, Clawson, Brantz |

## DISCUSSION REGARDING POSSIBLE RENAMING OF STREET

Council Member Fred Hay presented a request for staff to investigate possible locations where it may be feasible to rename a Town-owned street after Dr. Martin Luther King, Jr. He proposed that it not be in Junaluska, but a main street within the community. Upon a motion by Council Member Clawson, seconded by Mayor Pro Tem Brantz, Council moved to send this discussion to the Transportation Committee in order to look into possible streets that could be renamed and to invite residents of those areas to the meeting for input as well.

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| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Loretta Clawson, Council Member |
| **SECONDER:** | Rennie Brantz, Mayor Pro-Tem |
| **AYES:** | Hay, Mason, David, Clawson, Brantz |

## CONSIDERATION OF CASES HEARD AT QUARTERLY PUBLIC HEARING

### ***Hampton General Use Zoning Amendment***

Case 20150685 - Mr. Tommy Hampton has filed a General Use Zoning Map Amendment Petition to rezone properties at 240 and 265 Turbo Drive from B2 Neighborhood Business to RA Residential Agriculture.

## VOTE #1

Upon a motion by Council Member Mason, seconded by Council Member Clawson, Council moved that the proposed amendment to the Town's zoning map is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because it protects neighborhoods and zones property to align with the adjoining properties which supports the Comprehensive Plan that ensures the livability of neighborhoods through land-use and traffic planning. A single family use is appropriate because that is how the adjacent properties are zoned and this parcel is located in the G1 sector which is intended for low-density residential development; it is not appropriate for redevelopment and so would be an appropriate zoning for those two parcels.

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| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Lynne Mason, Council Member |
| **SECONDER:** | Loretta Clawson, Council Member |
| **AYES:** | Hay, Mason, David, Clawson, Brantz |

## VOTE #2

Upon a motion by Council Member Mason, seconded by Mayor Pro Tem Brantz, Council moved to approve the amendment to the Town's zoning map, and believe approval is reasonable and in the public's interest for the following reasons: 1. The existing B2 zoning is not appropriate for the proposed development; 2. The proposed zoning ensures the development will be low density residential; 3. The proposed zoning supports the viability of neighborhoods; and, 4. The proposed zoning is aligned with adjacent land uses.

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| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Lynne Mason, Council Member |
| **SECONDER:** | Rennie Brantz, Mayor Pro-Tem |
| **AYES:** | Hay, Mason, David, Clawson, Brantz |

### ***Jazz Baby Holdings Conditional District Zoning Map Amendment***

Case 20150697 - Hunter Coffey has filed a Conditional District Zoning Map Amendment Petition for property owned by Jazz Baby Holdings, LLC to rezone 280 Queen Street from O/I Office Institutional to B1 Central Business with a site specific development plan for Use 11.19 Professional Office.

Planning Supervisor Jane Shook advised Council that the Planning Commission attached three conditions to their recommendation, which the architect stated were agreeable. She added that the proposed amendment for material change would not have an impact on this request because it was vested under the ordinance during the time the application was made.

## VOTE #1

Upon a motion by Council Member Mason, seconded by Council Member David, Council moved that the proposed amendment to the Town's zoning map is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because the proposed development that will result from the zoning map amendment is consistent with the neighborhood and architectural context of the immediate area, as required by the Comprehensive Plan, and is located in an area with a relatively dense street grid which is also consistent with the Boone 2030 Land Use Plan.

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| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Lynne Mason, Council Member |
| **SECONDER:** | Quint David, Council Member |
| **AYES:** | Hay, Mason, David, Clawson, Brantz |

## VOTE #2

Upon a motion by Council Member Mason, seconded by Council Member Clawson, Council moved to approve the amendment to the Town's zoning map, and believe approval is reasonable and in the public's interest for the following reasons: this will correct a nonconforming use; the existing properties across the street are also zoned B1; and, as a condition of approval, the applicant agrees to the three conditions as stated on pages 5-6 of the staff report:

1. Where there is a conflict between the application information, the applicant's narrative and the plans (dated received Sept. 25, 2015), the plans and narrative shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.

2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.

3. The applicant shall submit the necessary applications, plans, details and specifications which meet the requirements of the Town Code, UDO, Building Code and any other applicable plans for review and approval necessary to issue Zoning and Building Permits.

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| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Lynne Mason, Council Member |
| **SECONDER:** | Loretta Clawson, Council Member |
| **AYES:** | Hay, Mason, David, Clawson, Brantz |

### *B1 Central Business Material(s) Change UDO Text Amendment*

Case 20150767 - B1 Central Business Building Material Change UDO Text Amendment: request to modify the Unified Development Ordinance to prohibit and require certain field materials in a remodel or new construction.

Planning Supervisor Jane Shook advised Council that the Planning Commission had additional requests including a 12-month sunset condition, one year from the meeting date. There was concern that this was proposed as a stop-gap measure rather than a permanent measure, and the commission wanted a way to ensure it is a stop-gap measure.

## VOTE #1

Upon a motion by Council Member Mason, seconded by Council Member David, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because: the amendment promotes compatible design character for the downtown and protects the historical character of the downtown business district; it supports Comprehensive Plan Update 1.1 Community Appearance and Character-blend the built environment with the natural, scenic and historic character of a High Country small town and it supports the Boone 2030 Lane Use Plan Downtown Improvements which calls for a uniform look in downtown. The Planning Commission also recommends, and Council Member Mason voiced her support for a 12-month sunset provision, which calls for the revised text to expire on Nov. 8, 2016.

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| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Lynne Mason, Council Member |
| **SECONDER:** | Quint David, Council Member |
| **AYES:** | Hay, Mason, David, Clawson, Brantz |

## VOTE #2

Upon a motion by Council Member Mason, seconded by Council Member Clawson, Council moved to approve the proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public's interest because: this proposal supports the Boone 2030 Plan to provide uniformity of character in downtown development; it recognizes that a vibrant well-planned downtown will generate economic vitality; this proposal was requested by the Community Appearance Commission until such time the Commission completes their formal recommendations based upon historical assessments and materials; and, properties designated as historic landmarks or under consideration for the historic landmark designation shall be exempt from the B1 building material change text amendment.

Following the vote, Mayor Pro Tem Brantz declared a break at 7:17 p.m. Council reconvened at 7:29 p.m.

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| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Lynne Mason, Council Member |
| **SECONDER:** | Loretta Clawson, Council Member |
| **AYES:** | Hay, Mason, David, Clawson, Brantz |

## ***Planned Development UDO Text Amendment***

Case 20150028 - Planned Development UDO Text Amendment: request to modify the Unified Development Ordinance to create a Planned Development (PD) zoning map amendment process. A PD zoning district creates a sui generis (unique) district not limited to the authorized uses and the development standards of a specific zoning district.

Council members Clawson and Hay voiced their concerns with the Planned Development process as proposed, wondering if it would be better to attempt this process in a specific area of Boone first to see how it works. Lengthy discussion ensued regarding differences between this process and the one currently being used through the Board of Adjustment. Planning Director Bill Bailey explained that this process would force applicants to talk to the surrounding neighbors and address concerns before filing a petition, and makes transitional zones mandatory on every application. He also discussed the difference between going before the Board of Adjustment and the Town Council, which would be the case through the Planned Development process.

## VOTE #1

Upon a motion by Mayor Pro Tem Brantz, seconded by Council Member David, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because: the proposed planned development text to the UDO will result in a more comprehensive, modern planning process for developers, citizens, and town administrators; it supports the comprehensive plan policies around economic development and fosters a regulatory environment conducive to business recruitment and expansion while protecting the area's physical and human resources.

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| **RESULT:** | **APPROVED [3 TO 2]** |
| **MOVER:** | Rennie Brantz, Mayor Pro-Tem |
| **SECONDER:** | Quint David, Council Member |
| **AYES:** | Mason, David, Brantz |
| **NAYS:** | Hay, Clawson |

### VOTE #2

Upon a motion by Mayor Pro Tem Brantz, seconded by Council Member David, Council moved to approve the proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public's interest because the proposed text amendment supports economic development, encourages public involvement in the Town planning process, aligns the Town's values for community appearance and character, and reflects the sentiment of the Planning Commission.

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| **RESULT:** | **APPROVED [3 TO 2]** |
| **MOVER:** | Rennie Brantz, Mayor Pro-Tem |
| **SECONDER:** | Quint David, Council Member |
| **AYES:** | Mason, David, Brantz |
| **NAYS:** | Hay, Clawson |

## CULTURAL RESOURCES ADVISORY BOARD REQUEST - APPROVAL OF RIVER'S PARK PROPERTY CONCEPT

Cultural Resources Director Pilar Fotta presented a request from the Cultural Resources Advisory Board to follow the below concept at the River's Park property:

1. Explore the development of a nature trail that features native plants with educational signage.
2. Explore the development of a green space area with picnic tables and/or benches in the less-hilly area around the rock house.
3. Explore security needs for the rock house.
4. Explore potential uses for the rock house after the above items are addressed.

Brief discussion ensued regarding the condition of the rock house. Upon a motion by Council Member Mason, seconded by Council Member Clawson, Council moved to approve the recommendation and pursue this concept plan, and come back to Council with further recommendations.

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| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Lynne Mason, Council Member |
| **SECONDER:** | Loretta Clawson, Council Member |
| **AYES:** | Hay, Mason, David, Clawson, Brantz |

## TRANSPORTATION COMMITTEE RECOMMENDATION REGARDING BEVERLY HEIGHTS NEIGHBORHOOD

Public Works Director Rick Miller presented a recommendation by the Transportation Committee to approve the placement of speed humps on Sheridan Avenue and Berkley Avenue, and to investigate the feasibility of placing a speed hump on the lower section of Beverly Heights Drive. Mr. Miller also cleared up the confusion regarding the gravel area near Zaxby's, which was where staff replaced a culvert. He stated he would look into the right-of-way for that section for the possibility of putting up a guard rail. Upon a motion by Council Member Mason, seconded by Council Member Clawson, Council moved to approve the recommendation by the Transportation Committee and direct staff to investigate the feasibility of a speed hump on Beverly Heights Drive.

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| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Lynne Mason, Council Member |
| **SECONDER:** | Loretta Clawson, Council Member |
| **AYES:** | Hay, Mason, David, Clawson, Brantz |

## TOWN MANAGER UPDATE

Town Manager John Ward provided an update on the water intake project to-date **(Copy of timeline on file in November 2015 meeting packet).** He also provided updates on the solar panels to be installed in the Depot Street parking lot, the winter farmers' market, the Middlefork Greenway plan, the Greenway restoration project with the US Army Corps of Engineers, the Howard Street project and upcoming events in town.

## ANNOUNCEMENT OF BOARD VACANCIES

Mayor Pro Tem Brantz announced that Charlotte Mizelle's seat on the Planning Commission will be vacant as of Dec. 17 when she moves into a Council position. He also reviewed the list of current board vacancies.

## APPOINTMENT TO COMMUNITY APPEARANCE COMMISSION

Town Manager John Ward noted that Council may want to wait to appoint someone to this commission, since board consolidations will be made in the near future.

## APPOINTMENT TO CULTURAL RESOURCES ADVISORY BOARD

Council Member Clawson nominated Suzanne Thompson to serve on this board. With no further nominations, Mayor Pro Tem Brantz called for a vote.

Ms. Thompson's term will expire June 30, 2018.

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| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Loretta Clawson, Council Member |
| **AYES:** | Hay, Mason, David, Clawson, Brantz |

## APPOINTMENT TO PLANNING COMMISSION

Council Member Mason nominated Michelle Dineen to serve on this commission in the resident position. With no further nominations, Mayor Pro Tem Brantz called for a vote.

Ms. Dineen's position will expire June 30, 2016.

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| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Lynne Mason, Council Member |
| **AYES:** | Hay, Mason, David, Clawson, Brantz |

## APPOINTMENT TO SUSTAINABILITY, ECONOMICS AND ENVIRONMENT COMMITTEE

Council Member Clawson nominated Bailey Winecoff to serve on this committee. Council Member Mason nominated Nicholas Stover and Nicholas Williams to serve on this committee as well. Mayor Pro Tem Brantz called for a vote.

Mr. Winecoff's term will expire Nov. 19, 2017. Mr. Stover's and Mr. Williams' terms will expire Nov. 19, 2016.

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| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Loretta Clawson, Council Member |
| **AYES:** | Hay, Mason, David, Clawson, Brantz |

## REQUEST FOR WATER AND SEWER SERVICE (QUASI-JUDICIAL)

Before deliberating on the quasi-judicial request, Town Attorney Allison Meade questioned the members of Council on whether or not they had contact with the applicant regarding the request. All Council members stated that they had not had any significant contact with the applicant for the request.

Town Attorney Allison Meade opened a public hearing at 8:46 p.m. to hear sworn testimony on a request for water and sewer service to a property located on/near Maplewood Circle Ms. Naomi Smith, being duly sworn, advised that she would like water and sewer service brought to her home. She stated she received a letter from the Town of Boone several years ago indicating they were eligible to receive water and sewer from the town at that time, but elected not to do so. Ms. Smith also stated that she received a letter on Oct. 19, 2015, stating that as of Dec. 9, the well would be closed up and utility turned off **(Copy of letter in November 2015 meeting file).** She stated that there have been changing owners of the community well, and she does not know the woman who currently owns it and sent the letter. Ms. Smith discussed at length the issues they have had in the past with the well including leaks, and that no one is willing to take on the responsibility of owning the community well and handling the needed repairs at this time. She stated she checked into drilling a well, but it is not financially feasible for her. Following questions by Ms. Meade, Ms. Smith advised she does not know the woman who sent the letter, and there is apparently no legal agreement with respect to the community well. She stated she believed other property owners were able to connect to town water and sewer in the past, and that she is the only one remaining with no other option. Public Works Director Rick Miller, being duly sworn, noted there was a similar request to this several years ago when all of the residents in a community came to the town, but in this case, it's just one resident. He stated the water line stops at the bypass, and Ms. Smith would have to come to that point if she wanted service. Discussion ensued regarding the ability to get a right-of-way from another property owner to cross through to connect. Mr. Miller stated it would be less expensive for her to go across that way and connect to the meter, but she would need permission to do so. With no further testimony, Ms. Meade closed the hearing at 9:02 p.m.

Council Member David stated he felt this was clearly a hardship, and was curious about the other property owners. He wondered if there would be savings if several property owners went in together. Council Member Mason stated these are small lot sizes, making the addition of wells and septic systems more problematic, adding that it becomes a public health issue when people can't acquire water or sanitary services. Upon a motion by Council Member Hay, seconded by Council Member Clawson, Council moved to approve Ms. Smith's request for water and sewer service to the property located on/near Maplewood Circle with the predicted usage of 180 gallons per day.

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| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Fred Hay, Council Member |
| **SECONDER:** | Loretta Clawson, Council Member |
| **AYES:** | Hay, Mason, David, Clawson, Brantz |

# CLOSED SESSION

## ENTERING CLOSED SESSION

Upon a motion by Mayor Pro Tem Brantz, seconded by Council Member Clawson, Council moved to enter closed session at 9:06 p.m to hear the following items:

1. 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 the lawsuit involving the Town of Boone and the State of North Carolina and Watauga County.

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 the lawsuits involving the Town of Boone and Ronald and Donald Cooper.

3. 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 a possible claim involving the Town of Boone.

4. 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 involving the condemnation settlement between the Town of Boone, and David and Myra Hayler, Jamie and Heather Ward, and Cleve and Kathy Ray.

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| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Rennie Brantz, Mayor Pro-Tem |
| **SECONDER:** | Loretta Clawson, Council Member |
| **AYES:** | Hay, Mason, David, Clawson, Brantz |

## EXITING CLOSED SESSION

Upon a motion by Council Member Clawson, seconded by Council Member Hay, Council moved to exit closed session at 9:55 p.m.

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| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Loretta Clawson, Council Member |
| **SECONDER:** | Fred Hay, Council Member |
| **AYES:** | Hay, Mason, David, Clawson, Brantz |

# ADJOURNMENT

## MOTION TO ADJOURN

Upon a motion by Council Member David, seconded by Council Member Clawson, Council moved to adjourn the meeting at 9:57 p.m.

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| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Quint David, Council Member |
| **SECONDER:** | Loretta Clawson, Council Member |
| **AYES:** | Hay, Mason, David, Clawson, Brantz |

Christine Pope, Town Clerk

Rennie Brantz, Mayor