

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
DECEMBER 17, 2013**

An organizational meeting of the Boone Town Council was called to order at 6:30 p.m., Tuesday, December 17, 2013, in the Council Chambers, 1500 Blowing Rock Road. Mayor Andy Ball presided. Council members present were Mayor Pro-Tem Rennie Brantz, Lynne Mason, Jennifer Peña, Quint David, and Fred Hay. Town Attorney Sam Furguele was also present. Staff members present were Town Manager Greg Young, Town Clerk Kimberly Brown, Finance Director Amy Davis, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Assistant to the Manager Jim Byrne, Public Utilities Director Rick Miller, Interim Public Works Director Eric Gustaveson, Planning Director Bill Bailey, Building Inspector Todd Miller, Human Resources Director Peri Moretz, Cultural Resources Director Pilar Fotta, and Downtown Development Coordinator Virginia Falck.

District Court Judge Greg Horne presided over the swearing-in ceremonies for Mayor Andy Ball and Council Members Jennifer Peña, Rennie Brantz, and Quint David. Official oaths precede this page.

TENTATIVE AGENDA ADOPTION

Town Manager Greg Young presented the following changes to the agenda:

1. Table Item 11.B. until the January regular meeting.
2. Addition of Item 11.H.1 – Hear report from Cultural Resources Advisory Board on December 16th meeting and possible action regarding recommendations from said meeting.

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to adopt the tentative agenda, as presented.

VOTE: Aye – All
 Nay – None

APPOINTMENT OF COUNCIL MEMBER

Mayor Ball invited each applicant to speak before the Council:

Diane Blanks stated that she cares about quality of life for the citizens, maintaining and creating long-term jobs, and wants to be a voice for the town.

Virginia Roseman stated that she believes there is always a way to negotiate between all parties. She stated that there are still some issues in the comprehensive plan and other policies that can be tweaked. She stated that tourism is a big issue, as well as consideration of the people that live here in Boone.

Fred Hay stated that his priorities include protection of single family neighborhoods and making Boone a more walkable and bicycle-friendly town.

Bryan Martin stated that his priorities include the creation of more recreation space and economic development.

Mayor Ball called for nominations. Council Member Peña nominated Fred Hay. She stated that Dr. Hay is a proven leader, a respected scholar, has served for 14 years on Boone Board of

Adjustment, and is a strong advocate of neighborhoods. With no other nominations, Mayor Ball called for a vote on the appointment of Dr. Fred Hay to the Boone Town Council.

VOTE: Aye – All
 Nay – None

Dr. Hay's term will expire in December 2015.

Members of the Council thanked each of the applicants for their willingness to serve and encouraged them to volunteer for service on one of the many town boards and committees.

District Court Judge Greg Horne presided over the swearing-in ceremony for Dr. Fred Hay.

ANNOUNCEMENTS

Mayor Ball presented Loretta Clawson with a plaque commemorating her service as Mayor of Boone. Mayor Clawson thanked all for the support shown to her during her years of service.

Mayor Ball presented Jamie Leigh with a plaque commemorating her service as a member of the Boone Town Council. Ms. Leigh thanked all of the staff for their help and support during her service as a member of the Council.

Mayor Ball presented Allan Scherlen with a plaque commemorating his service as a member of the Boone Town Council. Mr. Scherlen thanked Mayor Clawson for her support during his tenure as a council member.

Council Member Mason stated her appreciation for the time and dedication each person has given during service to the town. Council Member Brantz expressed his appreciation for the enthusiasm and dedication each person has brought during their service to the town.

Mayor Ball stated that any persons wishing to speak during public comment would need to sign the public comment sign-up sheet.

CONSENT AGENDA ADOPTION

Minutes: October 30, 2013 – Special Meeting.
 November 12, 2013 – Special Meeting.
 November 19&21, 2013 – Regular Meetings.
 November 20, 2013 – Special Meeting.

Adoption of Resolution – Service Appreciation for Loretta Clawson:

RESOLUTION

WHEREAS, Loretta Clawson served on the Boone Town Council from 1997 to 2005, with six of those years as mayor pro-tem, and served as mayor from 2005 to 2013; and,

WHEREAS, Loretta Clawson has contributed much of her time to countless civic and charitable endeavors and has always given herself unstintingly; and,

WHEREAS, During her tenure, Loretta Clawson has had many accomplishments, some of which include the Clawson-Burnley Park, the renovation of the downtown Boone post office, and the development of the Steep Slope Ordinance; and,

WHEREAS, through the performance of her duties and responsibilities as mayor of the Town of Boone, she has made excellent and constructive contributions to municipal government in our Town; and

WHEREAS, her contributions to the community—including time on Town Council—include working closely with the Community Appearance Commission, Tree Board, Water Use Committee, Historic Preservation Commission, High Country Council of Governments, Metropolitan Mayors Coalition, Watauga County Historical Society, North Carolina League of Municipalities and many others; and,

WHEREAS, Loretta Clawson’s dedicated and enthusiastic service to the community earned her the Order of the Long Leaf Pine—one of the most prestigious awards presented by the Governor of North Carolina.

NOW, THEREFORE, BE IT RESOLVED that the Town Council for the Town of Boone does hereby express our sincere appreciation and thanks, as well as that of our citizens to Loretta Clawson for her distinguished service to the community;

BE IT FURTHER RESOLVED that a copy of this resolution shall be forwarded to Loretta Clawson with sincere best wishes for continued success and many happy years ahead.

Adopted by unanimous vote of the Town Council on the 17th day of December, 2013.

Mayor

ATTEST:

Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 214)

Adoption of Resolution – Service Appreciation for Jamie Leigh:

RESOLUTION

WHEREAS, **Jamie Leigh** has served this community well for many years in numerous capacities, including **4** years as a member of the Boone Town Council; and

WHEREAS, these years of service have been marked by exemplary dedication to the best interest of the community as she has worked constantly for the betterment of its economic, cultural, and aesthetic development; and

WHEREAS, the Town has benefitted greatly because of her particular interest and work in the areas of Greenway Committee, Outside Agency Funding Committee, Affordable Housing Task Force, Sustainability Task Force, MSD Special Task Force, and DBDA Board; and

WHEREAS, through the performance of her duties and responsibilities as a member of the Town Council she has made excellent and constructive contributions to municipal government in our Town; and

WHEREAS, she has earned the admiration and high regard of those with whom she has come into contact and the affection of her fellow public servants, who are proud to call her Afriend@;

NOW, THEREFORE, BE IT RESOLVED that the Town Council for the Town of Boone does hereby express our sincere appreciation and thanks, as well as that of our citizens to **Jamie Leigh** for her distinguished service to the community;

BE IT FURTHER RESOLVED that a copy of this resolution shall be forwarded to **Jamie Leigh** with sincere best wishes for continued success and many happy years ahead.

Adopted by unanimous vote of the Town Council on the **17th** day of **December, 2013.**

Mayor

ATTEST:

Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 213)

Adoption of Resolution – Service Appreciation for Allan Scherlen:

RESOLUTION

WHEREAS, **Allan Scherlen** has served this community well for many years in numerous capacities, including **2** years as a member of the Boone Town Council; and

WHEREAS, these years of service have been marked by exemplary dedication to the best interest of the community as he has worked constantly for the betterment of its economic, cultural, and aesthetic development; and

WHEREAS, the Town has benefitted greatly because of his particular interest and work in the areas of Historic Preservation, Greenway,Committee, ASU Town/Gown, Mountain Keepers, Parks & Recreation, Transportation Committee, and Water Use Committee; and

WHEREAS, through the performance of his duties and responsibilities as a member of the Town Council he has made excellent and constructive contributions to municipal government in 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, who are proud to call him Afriend@;

NOW, THEREFORE, BE IT RESOLVED that the Town Council for the Town of Boone does hereby express our sincere appreciation and thanks, as well as that of our citizens to **Allan Scherlen** for his distinguished service to the community;

BE IT FURTHER RESOLVED that a copy of this resolution shall be forwarded to **Allan Scherlen** with sincere best wishes for continued success and many happy years ahead.

Adopted by unanimous vote of the Town Council on the **17th** day of **December, 2013.**

Mayor

ATTEST:

Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 212)

Adoption of Annual Meeting Notice:

PUBLIC NOTICE

The public will take notice that the Boone Town Council holds its regularly scheduled meetings at the Council Chambers, 1500 Blowing Rock Road, Boone, NC, on the following dates:

THIRD (3RD) TUESDAY AND SUBSEQUENT THURSDAY OF EACH CALENDAR MONTH

Closed Sessions, if necessary, will be held on the subsequent Thursday of each calendar month, at the end of each regularly scheduled meeting.

Persons wishing to appear on the Town Council meeting agenda must notify the Town Clerk (268-6200) by 9 a.m., one week before the Tuesday meeting date. No agenda item will be added for action after this time, unless approved by a majority vote of the Boone Town Council.

Agendas are posted on the Town Hall bulletin board as soon as prepared.

NOTE: Special meetings are called as necessary and are posted and delivered to local news media forty-eight (48) hours in advance.

Adopted: December 22, 1987

Amended: 3/88, 3/90, 12/91, 9/98, /11/03, 12/09, 6/10

Acceptance of Easement – Gilbert Family Holdings, LLC. **(Permanently on file at Boone Town Hall.)**

Acceptance of Morgan Murray Settlement.

Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to approve the consent agenda. Council Member Mason asked that the issue of the meeting schedule be revisited in the near future.

VOTE: Aye – All
Nay – None

PUBLIC COMMENT

Mary Greene appeared before the Council to speak in support of the Horn in the West program and the Southern Appalachian Historical Association.

ELECTION OF MAYOR PRO-TEM

Mayor Ball explained the duties of the Mayor Pro-Tem. Council Member Mason nominated Council Member Brantz. She stated that Dr. Brantz has served with integrity and honor and acts with fairness in consideration of all issues that come before the council. Council Member Hay seconded the nomination. With no other nominations, Mayor Ball closed the floor. Upon a motion by Council Member Mason, seconded by Council Member Peña, Council moved to appoint Council Member Brantz to serve as the Mayor Pro-Tem of the Boone Town Council.

VOTE: Aye – All
 Nay – None

PRESENTATION OF DRAFT TEXT AMENDMENTS

Town Attorney Sam Furgiuele presented the following proposed draft revision to the UDO which addresses issues regarding the process by which ETJ members are selected and appointed by the Watauga County Commissioners to the Planning Commission and Board of Adjustment. Mr. Furgiuele suggested that the proposed draft language be shared with the members of the Watauga County Board of Commissioners before it is presented for public hearing.

Board of Adjustment

2.01.01 The Board is a quasi-judicial body which acts on specified appeals, variances, and major subdivision preliminary plat approval and special use permit requests. Except for major subdivision preliminary plat approval, the decisions by the Board represent the final decision by the Town.

2.01.02 Appointment and Terms of Board of Adjustment

A. Number of Members: There shall be a Board of Adjustment consisting of eight (8) regular members and eight (8) alternates. Alternates shall serve on the Board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Each alternate, while attending any regular or special meeting of the Board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member.

1. Number of Town Members: Five (5) regular members and three (3) alternates shall reside within the Town's ETJ. Should the Town's ETJ be expanded or the ratio of the population of the ETJ relative to the population of the Town increase or decrease, in accordance with N.C. Gen. Stat. §160A-362 and as specified herein, the Town will adjust the number of members from the ETJ in order to maintain proportional representation based on population for residents of the ETJ relative to the Town. However, the resident members may never number fewer than five (5) regular members and five (5) alternates, so if necessary to maintain proportionality, the full size of the Board shall be increased. **So long as the Town exercises extraterritorial jurisdiction,** there shall be at all times at least one representative of the ETJ on the Board of Adjustment.

B. Adjustment of Ratio of Town and ETJ Members: Within six months of publication of the decennial census information for the Town of Boone and Watauga County, conducted by the United States Census Bureau, the Administrator shall inform the Town Council of any change in the ratio of Town population to ETJ population which requires a modification in the number of Town and ETJ members. Thereafter, as positions open by resignation, removal for cause or absence, or expiration of term, the number

of members shall be adjusted through the appointment process to achieve the required balance between Town and ETJ members. An ETJ position shall be created or the number of ETJ positions reduced on the Board of Adjustment when the population of the entire ETJ constitutes a full fraction of the Town's population divided by the total membership of the Board of Adjustment or when the population of the ETJ falls below a full fraction of the Town's population divided by the total membership of the Board of Adjustment, respectively.

C. Appointment of Members to the Board of Adjustment

1. **Town Appointments:** All Town members of the Board of Adjustment shall be appointed by the Town Council following the procedures of Section 35.01 of the Municipal Code.

- a. **Qualifications:** The Council shall select appointees only from those who apply for the position and are otherwise qualified. A qualified person is one who lives in the Town, who expresses a willingness to familiarize herself with the Town's UDO, Comprehensive Plan and all other duly adopted plans and Ordinances relating to the regulation of development within the Town planning jurisdiction, who agrees to apply in good faith the Town's Unified Development Ordinance and Comprehensive Plan, and who expresses a willingness to serve on the Board of Adjustment.

2. **ETJ Appointments:** When an ETJ member vacancy exists as the result of the expiration of a term, resignation, or because a new area is brought into the ETJ and the increased population requires that a new ETJ member be appointed, the following procedures shall be followed:

- a. **Council Town Procedure:** ~~When an ETJ member vacancy exists as the result of the expiration of a term, resignation, or because a new area is brought into the ETJ and the increased population requires that a new ETJ member be appointed, the following procedures shall be followed:~~

- i. By January 15 of each calendar year, the Town Clerk shall forward to the County Clerk a list of the current members of the Board, designating the ETJ members and the expiration date of their terms.

- ii. When a vacancy occurs in an ETJ position prior to the end of a term or due to increased population which requires that a new ETJ member be appointed, the Town Clerk will notify the County Clerk, in writing, of the vacancy or position, including, as applicable, the name of the person who has vacated the position and the date the vacancy is effective, with vacancies which have already occurred at the time of the notification labeled "immediate."

- iii. At least sixty (60) days before a vacancy occurs due to the expiration of a term; or in the case of a vacancy prior to the end of a term, at the next meeting of the Council after the Town Clerk becomes aware of the vacancy; the Town Clerk shall inform the Town Council of the vacancy. The Council will announce the vacancy at the meeting at which it is so informed by the Town Clerk and solicit applications for the vacancy. The Town Clerk shall promptly post notice of the vacancy on the Town's website.

- iv. At its next regular meeting after it has announced a vacancy, whether it is due to the expiration of a term, a vacancy prior to the end of a term, or increased population which requires that a new ETJ member be appointed, the Town Council shall adopt a resolution requesting that the Watauga County Board of Commissioners appoint a qualified person ~~as a member~~ to the position and it shall direct the Town Clerk to forward the resolution to the County Clerk, along with the names of such persons who have applied through the Town for the position and who the Council recommend for appointment. ~~Prior to adopting the resolution, when it pertains to positions created by vacancy due to the expiration of a term or resignation of a member, the Town Council may itself solicit applications for the position, and it may transmit its two top choices for each position to the Board of Commissioners. If, after a protracted time, the Council has received a single application or no applications, it may nevertheless request that the Board of Commissioners proceed with an appointment.~~
- v. If the Board of County Commissioners fails to make an appointment within ninety (90) days after receiving a resolution from the Town Council requesting that it be made, the Council may make the appointment, but the person appointed shall reside in the ETJ and be otherwise qualified.

b. Board of Commissioners Procedure:

- i. The Board of Commissioners shall have ninety (90) days after the County Clerk receives the Town Council's resolution requesting the Board of Commissioners to appoint a person to fill an ETJ member vacancy. If it does not make an appointment within that time, the power of appointment shall revert to the Council.
- ii. The Board of Commissioners shall only appoint a person to the Board to fill a term which has expired on or after date of expiration and only after it had received the resolution from the Council requesting the appointment.
- iii. The Board of Commissioners shall only appoint a person to fill a vacancy that occurs prior to the end of a term or which has been created due to increased population which requires that a new ETJ member be appointed after thirty days have elapsed from the receipt by the County Clerk of the Council's resolution requesting the appointment.
- iv. Before making an appointment, the Board of Commissioners shall announce the vacancy at a regularly scheduled meeting and solicit applications for the position, and the County Clerk shall post notice of the vacancy on the Watauga County Website.
- v. The Board of Commissioners shall not make an appointment until its next regularly scheduled meeting after it has announced the vacancy.
- vi. The Board of Commissioners shall consider the ~~choices directed to it~~ person(s) recommended by the Council for the position. If the Board of Commissioners is unwilling to appoint ~~either any~~ of the ~~two~~ applicants submitted by the

Town Council, it may appoint a person of its own choosing. ~~However, before appointing a new person to the Board of Adjustment, the Watauga County Board of Commissioners must hold a public hearing on the selection.~~

vii. In the event of an extension of the ETJ by the Town which creates new positions on the Board, the County shall follow the procedures mandated by N.C. Gen. Stat. §160A-362.

A. ~~Notice: Notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area.~~

viii. Qualifications: The Watauga County Board of Commissioners shall select appointees only from those who apply ~~at or before the public hearing for the position~~ and are otherwise qualified. A qualified person is one who lives in the ETJ, who expresses a willingness to familiarize herself with the Town's UDO, Comprehensive Plan and all other duly adopted plans and Ordinances relating to the regulation of development within the Town planning jurisdiction, who agrees to apply in good faith the Town's Unified Development Ordinance and Comprehensive Plan, and who expresses a willingness to serve on the Board of Adjustment. If, despite good faith efforts, enough qualified residents of the ETJ cannot be found to fill the seats reserved for residents of such area, then the Watauga County Board of Commissioners may appoint other residents of the county who are otherwise qualified, including residents of the Town, to fill these seats.

~~B. The Commissioners shall make the appointment within forty-five days following the public hearing. If the Watauga County Board of Commissioners fails to make an appointment within ninety (90) days after receiving a resolution from the Town Council requesting that it be made, the Council may make the appointment, but the person appointed shall reside in the ETJ. —~~

Planning Commission

2.02.01 Appointment and Terms of Planning Commission Members

A. Number of Members: There shall be a Planning Commission consisting of thirteen (13) members.

1. Number of Town Members: Eight (8) members of the Planning Commission shall reside within the Town. To the extent a qualified person can be found, one of the Town members shall be a resident of Boone and a full-time student of Appalachian State University.

2. Number of ETJ Members: Five (5) members shall reside within the Town's extraterritorial planning area (hereafter "ETJ"). Should the Town's ETJ be expanded or the ratio of the population of the ETJ relative to the population of the Town increase or decrease, in accordance with N.C. Gen. Stat. §160A-362 and as specified herein, the Town will adjust the number of members from the ETJ in order to maintain proportional

representation based on population for residents of the ETJ. **So long as the Town exercises extraterritorial jurisdiction,** there shall be at all times at least one representative of the ETJ on the Planning Commission.

B. Adjustment of Ratio of Town and ETJ Members: Within six months of the publication of the decennial census information for the Town of Boone and Watauga County, conducted by the United States Census Bureau, the Administrator shall inform the Town Council of any change in the ratio of Town population to ETJ population which requires a modification in the number of Town and ETJ members. Thereafter, as positions open by resignation, removal for cause or absence, or expiration of term, the number of members shall be adjusted through the appointment process to achieve the required balance between Town and ETJ members. An ETJ position shall be created or the number of ETJ positions reduced on the Planning Commission when the population of the entire ETJ constitutes a full fraction of the Town's population divided by the total membership of the Planning Commission or when the population of the ETJ falls below a full fraction of the Town's population divided by the total membership of the Planning Commission, respectively.

C. Appointment of Members to the Planning Commission:

1. Town Appointments: All Town members of the Planning Commission shall be appointed by the Town Council following the procedures of Section 35.01 of the Municipal Code.

a. Qualifications: The Council shall select appointees only from those who apply for the position and are otherwise qualified. A qualified person is one who lives in the Town, who expresses a willingness to familiarize herself with the Town's UDO, Comprehensive Plan and all other duly adopted plans and Ordinances relating to the regulation of development within the Town planning jurisdiction, and who expresses a willingness to serve on the Planning Commission.

2. ETJ Appointments: When an ETJ member vacancy exists as the result of the expiration of a term, resignation, or because a new area is brought into the ETJ and the increased population requires that a new ETJ member be appointed, the following procedures shall be followed:

a. Council Town Procedure: ~~When an ETJ member vacancy exists as the result of the expiration of a term, resignation, or because a new area is brought into the ETJ and the increased population requires that a new ETJ member be appointed, the following procedures shall be followed:~~

i. By January 15 of each calendar year, the Town Clerk shall forward to the County Clerk a list of the current members of the Board, designating the ETJ members and the expiration date of their terms.

ii. When a vacancy occurs in an ETJ position prior to the end of a term or due to increased population which requires that a new ETJ member be appointed, the Town Clerk will notify the County Clerk, in writing, of the vacancy or position, including, as applicable, the name of the person who has vacated the position and the date the vacancy is effective, with vacancies which have already occurred at the time of the notification labeled "immediate."

iii. At least sixty (60) days before a vacancy occurs due to the expiration of a term; or in the case of a vacancy prior to the end

of a term, at the next meeting of the Council after the Town Clerk becomes aware of the vacancy; the Town Clerk shall inform the Town Council of the vacancy. The Council will announce the vacancy at the meeting at which it is so informed by the Town Clerk and solicit applications for the vacancy. The Town Clerk shall promptly post notice of the vacancy on the Town' website.

iv. At its next regular meeting after it has announced a vacancy, whether it is due to the expiration of a term, a vacancy prior to the end of a term, or increased population which requires that a new ETJ member be appointed, the ~~Town~~ Council shall adopt a resolution requesting that the Watauga County Board of Commissions appoint a qualified person ~~as a member~~ to the position and it shall direct the Town Clerk to forward the resolution to the County Clerk, along with the names of such persons who have applied through the Town for the position and who the Council recommend for appointment. ~~Prior to adopting the resolution, when it pertains to positions created by vacancy due to the expiration of a term or resignation of a member, the Town Council may itself solicit applications for the position, and it may transmit its two top choices for each position to the Board of Commissioners. If, after a protracted time, the Council has received a single application or no applications, it may nevertheless request that the Board of Commissioners proceed with an appointment.~~

v. If the Board of County Commissioners fails to make an appointment within ninety (90) days after receiving a resolution from the Town Council requesting that it be made, the Council may make the appointment, but the person appointed shall reside in the ETJ and be otherwise qualified.

D. Board of Commissioners Procedure:

i. The Board of Commissioners shall have ninety (90) days after the County Clerk receives the Town Council's resolution requesting the Board of Commissioners to appoint a person to fill an ETJ member vacancy. If it does not make an appointment within that time, the power of appointment shall revert to the Council.

ii. The Board of Commissioners shall only appoint a person to the Board to fill a term which has expired on or after date of expiration and only after it had received the resolution from the Council requesting the appointment.

iii. The Board of Commissioners shall only appoint a person to fill a vacancy that occurs prior to the end of a term or which has been created due to increased population which requires that a new ETJ member be appointed after thirty days have elapsed from the receipt by the County Clerk of the Council's resolution requesting the appointment.

iv. Before making an appointment, the Board of Commissioners shall announce the vacancy at a regularly scheduled meeting and solicit applications for the position, and the County Clerk shall post notice of the vacancy on the Watauga County Website.

v. The Board of Commissioners shall not make an appointment until its next regularly scheduled meeting after it has announced the vacancy.

- vi. The Board of Commissioners shall consider the ~~choices directed to it~~ **person(s) recommended** by the Council **for the position**. If the Board of Commissioners is unwilling to appoint ~~either~~ **any** of the ~~two~~ applicants submitted by the Town Council, it may appoint a person of its own choosing. ~~However, before appointing a new person to the Board of Adjustment, the Watauga County Board of Commissioners must hold a public hearing on the selection.~~
- vii. In the event of an extension of the ETJ by the Town which creates new positions on the Board, the County shall follow the procedures mandated by N.C. Gen. Stat. §160A-362.
 - ~~i. Notice: Notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area.~~
 - viii. Qualifications: The Watauga County Board of Commissioners shall select appointees only from those who apply **at or before the public hearing for the position** and are otherwise qualified. A qualified person is one who lives in the ETJ, who expresses a willingness to familiarize herself with the Town's UDO, Comprehensive Plan and all other duly adopted plans and Ordinances relating to the regulation of development within the Town planning jurisdiction, who agrees to apply in good faith the Town's Unified Development Ordinance and Comprehensive Plan, and who expresses a willingness to serve on the Board of Adjustment. If, despite good faith efforts, enough qualified residents of the ETJ cannot be found to fill the seats reserved for residents of such area, then the Watauga County Board of Commissioners may appoint other residents of the county who are otherwise qualified, including residents of the Town, to fill these seats.
 - ~~ii. The Commissioners shall make the appointment within forty five days following the public hearing. If the Watauga County Board of Commissioners fails to make an appointment within ninety (90) days after receiving a resolution from the Town Council requesting that it be made, the Council may make the appointment, but the person appointed shall reside in the ETJ.~~

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to direct the Town Manager to send a copy of the proposed draft text amendment regarding ETJ board member appointments to the Board of Adjustment and Planning Commission to County Manager Deron Geouque for review by the Watauga County Board of Commissioners and to request feedback of the proposed text amendment prior to the regular meeting in January.

VOTE: Aye – All
 Nay – None

CREATION OF BOA SUBCOMMITTEE

Town Attorney Sam Furgiuele explained the request for the creation of a Board of Adjustment subcommittee, staffed by Planning Director Bill Bailey and the Town Attorney, to reformulate the Rules of Procedure for the Board in light of statutory changes and ideas for creating more efficiency and fewer burdens on applicants with relatively limited cases. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to authorize the creation of a Board of Adjustment subcommittee to include Planning Director Bill Bailey and Town Attorney Sam Furgiuele, to allow the Board of Adjustment to determine the numbers of

subcommittee members, to determine a meeting schedule, and to consider the creation of an informational brochure and review of the current sign ordinance.

VOTE: Aye – All
 Nay – None

UPDATE ON VETRO CASE

Town Attorney Sam Furgieuele stated that the Council had authorized the Town Manager to extend a one-year offer to Michael Vetro to reserve 13 parking spaces directly behind his building. He noted that instead of accepting the offer, Mr. Vetro sued the Town, demanding an injunction, damages and attorney's fees and claiming that he was entitled to the use of the parking area for an additional 9 years. He indicated that the Town defended the action and filed a motion for summary judgment against Mr. Vetro, as well as sanctions against him. Although sanctions were not awarded, he informed the Council that the District Court granted a summary judgment, finding for the Town on the merits of the case and that the parking area is now available for public use and the Howard Street project. Council Member Mason asked that the usage of the parking lot be monitored.

DISCUSSION OF PROPOSED LEASE – HORN IN THE WEST PROPERTY

Town Attorney Sam Furgieuele presented the draft license for the Horn in the West property. Cultural Resources Director Pilar Fotta began discussion by stating that the health and safety issue on the property should be rectified. Lengthy discussion ensued regarding the safety issues on the property that need to immediately be addressed. Ms. Fotta also informed the Council of the recommendation by the Cultural Resources Advisory Board to postpone the proposed demolition that was approved for the property by the Council at the November regular meeting. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to approve the following proposed two-month license between the Town of Boone and the Southern Appalachian Historical Association (SAHA) which include the conditions as recommended by the Cultural Resources Advisory Board:

STATE OF NORTH CAROLINA

LICENSE

COUNTY OF WATAUGA

THIS License is granted this ____ day of _____, 20____, by the Town of Boone, a North Carolina Municipal Corporation, hereinafter referred to as "Licensor," to the Southern Appalachian Historical Association, Inc., a North Carolina non-profit corporation, hereinafter referred to as "Licensee," collectively referred to as the "parties." Licensee has signed this License to signify that it understands and agrees to its limitations and requirements.

1. **Express Conditions:** This License is conditioned upon Licensee meeting the following conditions, and Licensee's failure to do so is a basis for Licensor to terminate the License.
 - A. During the term of the License, Licensee shall complete the process to cure all illegal and improper electric work which has been done at Horn in the West in violation of its prior leases with Licensor and without proper permits, permission or approval by Licensor.
 - B. Licensee, through its Chair and Finance Officer, shall participate in a meeting with the Town of Boone Cultural Resources Director and other pertinent Town staff prior to January 30, 2014 and shall provide updated information concerning its plans for its operation in 2014. The Chair and Finance officer,

along with the designated Town of Boone personnel will inspect and evaluate the progress it has made regarding facility repair and safety at Horn in the West. At the time of the meeting, Licensee shall provide a timeline for proposed repairs, the estimated total and individual costs for proposed repairs, plans and drawings for proposed repairs, and proof of the financial meant to pay for the proposed repairs.

C. Prior to January 30, 2014, Licensee shall submit to the Town of Boone Cultural Resources Director the following information:

- i. It's 2014 calendar year budget with a statement detailing any anticipated changes;
- ii. Profit and loss statements for the period from April 1, 2013 through the date of the report;
- iii. A balance sheet for Licensee which includes explanations for any reserves;
- iv. Licensee's 2012 990 form, or an explanation why one was not required if that is Licensee's contention;
- v. Licensee's 2012 audit report and any and all management letters, if any, for the most recent fiscal or calendar year. If there is not an audit, Licensee shall substitute a sworn statement of account for all receipts and expenditures or a certification statement by the organization's Treasurer certifying that the organization's accounting system is adequate;
- vi. A list of the current board of directors for Licensee, showing terms of office and officer assignments, along with a certification whether the currently comprised board of directors meets the requirements of Licensee's bylaws, and if it does not, an explanation for the non-compliance; and
- vii. Licensee's current North Carolina solicitation license, or if Licensee does not have one and contends one is not required, an explanation for its contention.

2. **License Area:** As detailed on Attachment "A," attached hereto and incorporated by reference herein, Licensee shall be entitled to the use of the described portions of "Horn in the West," that certain piece, parcel or lot of land situated, lying and being in Boone Township, Watauga County, North Carolina, and the described improvements thereto, hereinafter referred to as "the License area," during the times described therein, for the purposes provided herein.

3. **Term:** This License authorizes the described uses by Licensee, its officers, agents, employees and invitees for the period commencing and including January 1, 2014 and ending and including February 28, 2014. Subsequent licenses may be issued for additional periods of time and upon such terms as may be provided.

4. **Scope of License:**

A. The license area may be used by Licensee for the primary purposes of:

I. Operating an outdoor theater for the preparation and presentation of the outdoor drama, "Horn in the West;"

ii. Displaying and maintaining the cabins, contents of the cabins and related surroundings constituting the "Hickory Ridge Living History Museum," the parties stipulating that the historical buildings comprising this facility and the personal property contained in the buildings are the property of Licensee; and

iii. For the conduct of the festivals/celebrations specified on Attachment "A."

B. This License includes and authorizes other and secondary activities conducted in association with the allowed uses so long as they are integral to the approved uses or constitute only an incidental and insubstantial part of the total activity, as long as they are commonly associated with the use; as well as the use of such other and secondary facilities which are integral and necessary to support the authorized uses. Associated support activities shall include use of the parking lot in appropriate locations during appropriate times, as further specified in Attachment "A," use of the bathrooms, operation of concession stands during performances, and storage of Licensee's personal property in the locations described in Attachment "A."

C. Any specific uses beyond the primary ones listed are permitted only with the advance approval of Licensor, following approval by the Town of Boone Cultural Resources Board (hereafter "CRAB").

D. When not in use by Licensee during the term and at the conclusion of this License, Licensee shall properly:

I. Clean and make safe all structures to which it is entitled to only non-exclusive use;

ii. Secure and make safe all structures to which it is entitled to exclusive use; and

iii. Remove any portable structures, or, if they do not interfere with potential use by other licensees, secure and make them safe.

iv. For purposes of this section, the term "make safe" shall include remediation of hazards which do not involve alterations of facilities or repair work which requires a permit or an expert to perform; and removal of litter, debris, scrap materials, junk, trash, and other items which could cause injury to a person, promote rodent infestation, or the like.

v. For purposes of this section, "clean" shall mean restoring all interior and exterior surfaces and floors of structures and facilities to a condition of cleanliness and sanitation which will allow a subsequent licensee to utilize the structure and facilities with no more than a minimal amount of cleaning.

E. Licensee shall not use or knowingly permit any part of the license area to be used for any purpose which violates any law, and Licensee shall familiarize

itself and comply with all Town ordinances.

F. Licensee acknowledges that Licensor may authorize other licensees to use portions of the license area in ways which do not unduly interfere with Licensee's licensed use and that Licensor shall be the sole arbiter of what constitutes undue interference.

G. During an emergency, as determined by Licensor, Licensor may utilize the license area to its full extent even if it substantially interferes with this License.

H. Licensee will take no action(s) which are in any way inconsistent with Licensor's ownership interest in the property.

I. Licensee will take no action(s) which are not undertaken in accordance with the procedures mandated by its duly adopted by-laws.

5. **Rules for Operation:** In addition to any rules adopted by Licensor for the use of the license area, which rules shall be effective when adopted even if they are adopted during the term, Licensee shall have the right to promulgate such rules and regulations as it may deem appropriate for the behavior of patrons and its invitees during its authorized use of the license area so long as they are not inconsistent with any rules promulgated by Licensor and are otherwise consistent with this License. Licensee shall provide Licensor with a copy of its rules and regulations, if any, sufficiently prior to their effective date to allow review by CRAB and the Boone Town Council prior to their implementation.
6. **Licensing Fee:** The fee for this License is one dollar (\$1.00), due and payable in full upon the effective date of the License.
7. **Utilities:** Licensee shall be responsible for paying or reimbursing Licensor all utility costs incurred in connection with its use of the license area. If more than one licensee is authorized to use all or a portion of the license area concurrently, Licensor may apportion these costs in an equitable way in proportion to the relative use of the license area by different licensees, and Licensee shall promptly reimburse Licensor for its share of these costs. Should Licensee fail to pay its share of utility costs within the time set by Licensor, this License shall terminate. To the extent Licensee's use of the licensed area is exclusive and the utilities used relative to that exclusive use can be placed in an account in Licensee's name by the relevant utility company, Licensor may require that Licensee obtain such utility service in its own name. If Licensee obtains utility service in its name, it must keep its account in good standing and notify Licensor immediately if it receives any notice of the possible disconnection of service.
8. **Maintenance:** During and after its use of the license area, Licensee shall provide all maintenance necessary to keep and restore the area to a good and sanitary condition as the result of its use. Such maintenance shall be performed as often as necessary to insure that any other licensee authorized to use the license area will find the license area in a sanitary and orderly state. For purposes of this section, "maintenance" shall include collection and removal of trash, garbage, and litter, regular cleaning of facilities and structures, and other activities required to conserve the condition of the property while minimizing for normal wear and tear.
9. **Repairs:** Licensee must notify Licensor, in writing, of any and all conditions in need of correction or repair which it discovers, whatever the origin of the conditions (caused by Licensee, its employees, contractors, invitees, or others). Except as to the cabins at Hickory Ridge Living History Museum, which belong to Licensee, Licensee shall make no repairs and no person or entity will be hired to undertake any repairs without first

notifying Licensor in writing, at least ten days in advance, of Licensee's intention to undertake or make such repairs, or in the event of an emergency, without first notifying Licensor by telephone at (828) 268-6200 of the condition and repairs contemplated. Any repairs made to the license area shall be done in a workmanlike manner and shall become the property of Licensor. In making any authorized repairs, including repairs to Hickory Ridge Living History Museum, Licensee shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all relevant federal and state laws relating to its operation of a facility and enterprise open to the public, and to its use of paid employees therein. Should Licensee be given permission to make repairs to the license area and for repairs to Hickory Ridge Living History Museum, for repairs requiring skilled workers, such as electrical repairs, plumbing repairs, structural repairs, and the like, Licensee shall only employ appropriately licensed workers to make the repairs. For purposes of this section, "repairs" shall refer to fixing something which has been damaged, broken, or not working correctly, so that it is in good condition and working properly.

10. **Alterations:** Except as to alterations to the cabins of Hickory Ridge Living History Museum, Licensee agrees to neither make nor arrange for any alterations to the license area without the advance written approval of Licensor. Should any alterations be approved by Licensor, they shall be done in a workmanlike manner, and they shall become the property of Licensor. Should Licensee be given permission to make alterations to the license area, or should it make alterations to the cabins of Hickory Ridge Living History Museum, for alterations requiring skilled workers, such as electrical installations, plumbing installations, construction activities, and the like, Licensee shall only employ appropriately licensed workers to make the alterations. In making any alterations, Licensee shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all other relevant federal and State laws. For purposes of this section, "alterations" includes, but is not limited to: removal of vegetation, other than weeds removed as part of normal maintenance, permanent modification of any existing structures, and construction of new structures.
11. **Compliance with Laws:** In particular, and not by way of exclusion, in any and all its actions and activities, Licensee will comply and hereby certifies its compliance with the Americans with Disabilities Act, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Fair Labor Standards Act, as amended, the Occupational and Health Safety Act, as amended, the North Carolina Employment Security Act, as amended, and the North Carolina Worker's Compensation Act, as amended, to the extent each such law applies to Licensee or any of its activities. Should Licensee's corporate status be revoked by the North Carolina Secretary of State, or should the Licensee's non-profit status be revoked by the United States Internal Revenue Service or otherwise, this License shall immediately terminate. Licensee commits that it will act in accordance with all laws related to its status as a non-profit North Carolina Corporation.
12. **Keys and Locks:** Should Licensee change any of the locks or add any locks to any of the doors, windows or other locked feature of the license area, Licensee shall, at its own expense, immediately provide duplicate keys to all such locks to Licensor. At the end of the License, Licensee shall return or turn over all keys which relate to the license area to Licensor
13. **Information Required to be Furnished:** Licensee shall provide Licensor with its current by-laws at any time requested. Within ten days of any change, Licensee shall provide to Licensor any change to its by-laws, shall notify Licensor of any change to its management staff, and at the execution of this License and any time such composition

changes, shall advise Licensor of the names and addresses of each member of its board of directors.

14. **Termination or Expiration:** This License is terminable at will by either party. Upon termination or expiration of this License, Licensee shall remove its personal property from the license area and shall surrender the license area to Licensor in good order and repair, reasonable wear and tear excepted.
15. **Abandoned Property:** Following the termination or expiration of this License, any property left by Licensee on the license area shall be considered abandoned and may be retained by or disposed of by Licensor as it sees fit. However, Licensee shall have a sixty day period following the termination of this license to remove any building(s) which it owns, including the cabins of Hickory Ridge Living Homestead Museum. Thereafter, such building(s) will be deemed donated to Licensor. Licensee shall not leave, place, or store any personal property unrelated to the scope of the License in the license area, and any such property shall be considered abandoned and may be disposed of by Licensor.
16. **Waiver and Exculpation, Indemnification:** Licensor shall not be liable for, and Licensee hereby waives all claims against Licensor for damage to its property, or for injury, illness or death of any person in, upon or about the license area arising from any act or neglect of Licensee or caused to any person using the license area pursuant to Licensee's authority. Licensee shall indemnify, defend, protect and hold harmless Licensor from and against any and all claims, actions, loss, cost, damage, expense, and liability associated with personal injury, damage to property, or any other matter arising out of any occurrence in, upon or at the License area, or associated with any act or omission of the Licensee, its agents, employees or invitees, or associated with Licensee's use, occupancy or activities in the license area or access thereto by Licensee, Licensee's agents, contractors, employees, or invitees; provided, however, that the foregoing indemnity shall not be applicable to claims arising by reason of the gross negligence or willful misconduct of Licensor. In the event that the Licensor is made a party to any litigation brought against the Licensee or by reason of the Licensee's use or occupancy of the license area, the Licensee shall defend, protect and hold harmless the Licensor from any and all liability that may result therefrom, including Licensor's costs in defending itself against any claim, action, litigation or other assertion of liability.
17. **Insurance:** Licensee shall provide and maintain insurance coverage against loss, destruction, or other damage to its property located on the license area, as well as against all risks for which Licensee is required to indemnify and hold Licensor harmless. Licensee's liability insurance coverage shall provide coverage for personal injury or bodily harm occurring during the term of the License, whensoever the claim is made, in an amount no less than two million dollars (\$2,000,000.00) per occurrence, and shall insure against injuries or damages which occur as a result of Licensee's operations. Certificates of insurance for each policy required to be obtained by Licensee in compliance with this paragraph shall be filed and maintained with Licensor. Licensee shall immediately advise Licensor of any injury, damage, or assertion of claim or litigation that may result in a claim of liability against Licensor.
18. **Modification of License:** There shall be no modification of this License unless the modification is in writing and signed by both parties.
19. **Assignments:** This License may not be assigned.
20. **Not a Lease or Estate:** The parties agree and acknowledge that in no event shall this License constitute a lease or grant or create any leasehold estate or other estate in the license area. This License is intended and shall be construed as granting a License or

right of use in the license area, and Licensee's use and occupancy of the License area shall not be deemed to be a tenancy under the laws of North Carolina, and Licensee shall not enjoy, and hereby waives, any protections afforded tenants under federal, state, or local laws or regulations.

21. **Governing Law:** This License shall be governed by and construed in accordance with the laws of the State of North Carolina. Venue concerning any dispute regarding this License shall be in Watauga County, North Carolina.
22. **Severability:** If any provision of this License or the application thereof to any person or circumstance shall, for any reason and to any extent, be held invalid or unenforceable, that provision shall be severed therefrom, and the remainder of this License and the application of that provision to other persons or circumstances shall not be affected, but rather shall be enforced to the extent permitted by law.
23. **Parties' Relationship:** Nothing contained in this License shall be deemed or construed by the parties or by any third party to create the relationship of principal and agent, employer and employee, or of partnership or joint venture or of any association whatsoever between Licensor and Licensee other than as is contained herein, it being expressly understood and agreed that none of the provisions contained in this License nor any act or acts of the parties hereto shall be deemed to create any relationship between Licensor and Licensee other than the relationship of a Licensor and Licensee.
24. **Waiver:** Licensor's failure to strictly enforce its rights under this License shall not constitute a waiver of such rights.
25. **Entire Agreement:** This License contains all of the terms and conditions concerning the licensing and use of the license area by Licensee. There are no oral terms or conditions agreed to by the parties which are not contained in this License. Licensor has not made and is not making, and Licensee, in executing and delivering this License, is not relying upon any warranties, representations, promises or statements, except those that are expressly set forth in this License. All prior verbal agreements previously made by and/or between the parties, if not contained herein, are hereby expressly null and void, and insofar as such prior agreements and understandings between the parties are included herein, the same have merged into this License, which alone fully and completely expresses the current agreement of the parties.
26. **Execution:** Licensor and Licensee each represent and warrant to the other that all necessary authorizations and approvals required for execution and performance of this License have been given and that the undersigned individual is duly authorized to execute this License and bind the 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 **Licensor**, to: Greg Young
 Town Manager
 Town of Boone
 P.O. Drawer 192
 Boone, NC 28607

If to **Licensee**, to: Chair, Board of Directors
 Southern Appalachian Historical Association
 P.O. Box 295

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

ATTACHMENT “A”

1. Exclusive use of Hickory Ridge Living History Museum and museum store for License term, with parking for up to two buses and five cars.
2. Exclusive use of “main office” for License term with parking available for six cars.
3. Exclusive use of ticket office for License term.
4. Exclusive storage use of the “Principal Men’s Dressing Room, “pyro rooms,” “prop room,” “scene room,” “old PMS booth,” light booth, and sound booth for License term.
5. Exclusive storage use of “Small Pox,” and “old PMS Booth” for License term.

VOTE: Aye – All
 Nay – None

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to amend the agenda to rescind action taken by the Council at the November 2013 regular meeting to authorize specific demolition of certain items on the Horn in the West property.

VOTE: Aye – All
 Nay – None

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to rescind action taken by the Council at the November 2013 regular meeting to authorize specific demolition of certain items on the Horn in the West property and to delay demolition of any structures previously approved by the Council during the duration of the 60-day license period between the Town of Boone and SAHA.

VOTE: Aye – All
 Nay – None

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to amend the agenda to include action on a recommendation by the Cultural Resources Advisory Board in regard to demolition and securing of the Horn in the West property.

VOTE: Aye – All
 Nay – None

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to accept the recommendation of the Cultural Resources Advisory Board to postpone demolition of any structures on the Horn in the West property for the 60-day duration of the license agreement between the Town of Boone and SAHA and to direct town staff to secure the property, not to exceed the cost of \$3,000, which will be taken from the general fund balance.

VOTE: Aye – All
 Nay – None

Frank Mohler, chair of the Cultural Resources Advisory Board, stated that in discussion with SAHA chair Michelle Ligon both parties agreed that better communication between all entities involved will benefit in the resolution of issues.

P&I MONTHLY REPORT

Planning Director Bill Bailey presented the P&I Monthly report. **(Permanently on file in the December 2013 Town Council packet.)**

WATER COMMITTEE RECOMMENDATION – EXTENSION OF ORDINANCE #11-01

Public Utilities Director Rick Miller presented the recommendation from the Water Use Committee to authorize the extension of Ordinance #11-01 for an additional six months, allowing for 150,000 gallons per day to the allocation amount. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to adopt the following amendments to Ordinance #11-01:

ORDINANCE 11-01

(FORMERLY ORDINANCE 05-01)

1. **Term and Applicability of Ordinance:**

- a. This ordinance shall control the approval of new water or sewer connections to the extent specified herein during the period beginning ~~January 1, 2008 through December 31, 2013~~ **January 1, 2014 through June 30, 2014** or such other end date as the Town Council may by majority vote designate. To the extent its provisions create any conflict with the Town of Boone Water and Sewer Use Code this ordinance shall supercede and control. To the extent the provisions of this ordinance do not conflict with or otherwise supercede the Town of Boone Water and Sewer Use Code, that Code remains in full force and effect.

2. **Amount of Water which may be Allocated:**

- ~~a.~~ **Annual Amount Which May Be Allocated.** The amount of water available for allocation and attributable to any designated calendar year during the remaining term of this ordinance shall be ~~110,000~~ **150,000** gallons per day. The Town shall always reserve at least 10,000 gallons per day from its available water supply for possible allocations to existing vacant lots within the corporate limits of the Town ~~The amount of water available for allocation and attributable to any designated calendar year during the remaining term of this ordinance shall be 110,000 gallons per day, except 2011, in which it shall be 65,000 gallons per day (in addition to any amount reserved for the old Watauga High School property) collectively referred to as “the water census.” The Town shall always reserve at least 10,000 gallons per day from its available water supply for possible allocations to existing vacant lots within the corporate limits of the Town. In addition, in recognition of its value to the citizens of the Town and the taxpayers of Watauga County in terms of its size, key location, and financial importance; and as a result of the Town Council’s express interest in promoting the sale and beneficial development of the property currently owned by Watauga County upon which the old Watauga High School is situated (“the property”), and in recognition that the previous reserve amount of 70,000 gallons per day may not be sufficient for this property, there shall be a reserve of 150,000 gallons per day set aside until December 31, 2013 (“the high school reserve”), for allocation to the property, subject to the following conditions and provisions:~~

- ~~i. For a site-specific development plan (hereinafter, “the project”) to qualify for allocation of the high school reserve, both the preparation of the site for the project and the construction of the project must fully comply with all provisions of the Town’s Unified Development Ordinance, whether or not they would generally be applicable to Watauga County;~~
- ~~ii. The applicant for the reserve must obtain approval for the allocation of the reserve from the Boone Town Council in conformity with this ordinance;~~
- ~~iii. The application for the reserve may request an amount larger than the reserve, if needed for the project; and~~
- ~~iv. If the reserve is not allocated before December 31, 2013, the water thus reserved shall again be made available to applicants in conformity with this ordinance or such other procedures which may then be in place.~~

b. Determination of the Amount of Water to be Allocated and Deducted if a Request is Granted. The water usage predicted for each application and thus deducted from the available water from the year(s) to which it is attributed shall be determined by multiplying the usage predicted by the North Carolina Discharge Rate (NCDRS) Schedule by .60, even in cases where an applicant asserts that actual use will be less than the predicted use.

- i. Deductions for Subdivision Approvals.** When an application for water service to either a proposed minor or major residential subdivision is approved, the Director of Public Utilities (“the Director”) shall subtract an amount of water from the available water census which reflects the projected amount of water when all residences in the proposed subdivision are fully constructed and occupied.

c. Designation of Year from Which Allocation Is Made.

- i.** Depending upon which is given authority to approve an application, the Town Council or the Director shall designate the calendar year(s) from which an allocation shall be deducted.
- ii.** An approval of water service by the Director shall always be attributed to the calendar year in which it is approved.
- iii.** An approval of water service by the Town Council shall ordinarily be attributed to the calendar year in which it is approved; however, the Town Council may designate that a particular approval of water service shall be attributed to the available allocation from another year within the term of this resolution or may apportion the allocation over two or more years.

d. Water Remaining at End of Year. Any unused allocation from a prior calendar year may be made available in any subsequent calendar year(s).

e. Water Shortage Declarations. When either a Stage II or Stage III water shortage is declared pursuant to Article VII of the Town of Boone Water and Sewer Code or imposed on the Town by the State of North Carolina, the Town Council may suspend its consideration and approval of any new water applications for the duration of the water shortage, and it may direct the Public Utilities Department (hereafter, “the Department”) to suspend its consideration or approval of any new water applications until further action by the Town Council.

- f. **Adjustment of Water Census.** Each year while this ordinance is in effect the Town shall review actual water usage records to determine whether changes should be made to the allocation allotments for subsequent years either because more water is being used than was predicted or less water is being used. At any time the Town Council may increase or decrease any yearly allocation amount based on actual usage information concerning remaining capacity.

3. **Who May Allocate Water:**

- a. **Allocations by Director.** Until the Town has allocated two-thirds or more of the full water allotment for the year during which the request is made, the Director may approve new applications for water serving property within the corporate limits of the Town (“the Town limits”) when the predicted water usage is five thousand (5,000) gallons per day or less. In addition, the Director may approve new applications for water service in the ETJ of the Town in which the predicted water usage is five hundred (500) gallon per day or less. Once more than two-thirds of the full water allotment for the year has been approved, the Director may only approve new applications for water serving property within the Town limits when the predicted water usage is no more than five hundred (500) gallons per day.
- b. **Allocations by Town Council.** Except those allocations which may be approved by the Director, every other request for a new allocation of water serving property within the Town limits or within the Town’s planning extra-territorial jurisdiction (“ETJ”) must be approved upon action, by majority vote, of the Boone Town Council acting in its *quasi* judicial capacity. Any request for a new water allocation serving property outside the Town limits and ETJ of the Town, without regard to the amount of the request, must be approved by a two-thirds super-majority of the Town Council members present and not excused from the vote.

4. **Requests for Service in the Town’s Secondary Pressure Zone.** Requests for extensions and connections into the Town’s secondary pressure zone may only be approved if the following additional criteria are satisfied. For purposes of this paragraph, an “extension” refers to the continuation of a water main beyond its currently existing limits while a “connection” is defined as the linking of pipes serving a single customer to an existing water main.

- a. **Requests for Extensions into the Secondary Pressure Zone.** No service extensions into the secondary pressure zone shall be considered for approval unless:
 - i. The property for which service is requested was located inside the Boone Town limits on or before March 8, 2007; and
 - ii. The applicant agrees to adhere to Town of Boone secondary pressure zone specifications, and among other things, agrees at its expense to:
 - A. Use minimum eight-inch minimum pipe diameter;
 - B. Provides all needed booster pumping station(s) of EFI design with fire pumping capabilities;
 - C. Provides a minimum 100,000 gallon welded joint steel storage tank;
 - D. Installs pressure protection for each individual water service; and
 - E. Install Dataflow Systems radio telemetry compatible with existing Town of Boone system is provided; and
 - iii. All portions of a proposed extension are below 3,620 feet in elevation.

- b. Request for Connections into the Secondary Pressure Zone.** A connection to an existing water main in a secondary pressure zone may be approved by the Town Council in cases in which such connection:
 - i.** Creates no negative impact on the Town's distribution system;
 - ii.** Allows adequate pressure to be maintained as may be necessary to comply with the requirements of the Boone Fire Department and applicable fire codes;
 - iii.** Results in no additional costs to the Town; and
 - iv.** Otherwise complies with the requirements of the Town of Boone Water and Sewer Code for connection to the Town's water system.
- 5. What information Must be Provided by an Applicant for Water or Sewer Service.** At the time of application, an applicant for water service shall designate and describe the following and provide all required assurances. The refusal of an applicant to provide such information, or, for applicants for service outside the corporate boundaries of the Town, the stated unwillingness to petition for annexation or comply with the Town's Unified Development Ordinance shall be grounds for the Director to deny the application without further consideration. There shall be no appeal of the Director's denial of an application. An applicant must provide the following information and assurances, as applicable:
 - a.** The name and address of the applicant;
 - b.** The specific location of the property to be served so that it may be determined whether it is in the Town limits or ETJ, whether any portion of it is within the secondary pressure zone, and the relative location of available water and sewer connections;
 - c.** The name and address of the owner of the property if the applicant is not the owner of the property;
 - d.** If the applicant is not the owner of the property, a description of the legal rights of the applicant to apply for and obtain service and proof of those rights, as requested by the Director;
 - e.** If water rights have previously been approved for a property and are currently vested, a written relinquishment of previously granted water rights signed by the owner or other person with legal authority to do so.
 - f.** A site specific development plan for the property for which service is requested in sufficient detail to enable the Town to assess the factors which may be considered under this ordinance; and
 - g.** Any technical information needed by the Director to determine compliance with this ordinance or the Water and Sewer Use Code.
 - h.** If the application is for property located outside the corporate limits of the Town, a statement that if approved, the applicant will petition for voluntary annexation if requested to do so as a condition of approval, and in cases in which new construction or development is anticipated, the applicant will construct any such structures or develop the property in accordance with the requirements of the Town's Unified Development Ordinance if required to do so as a condition of approval.
- 6. Town Council Priorities in the Allocation of Water.**

- a. Requests Considered on a First-Come, First-Served Basis.** The Town shall ordinarily provide water service to future customers within the Town limits on a “first- come, first-served,” basis. Hearings on requests shall be conducted by the Town Council in the order in which completed applications have been received by the Department, unless a case has been tabled to a later date for consideration either at the request of the applicant or by action of the Town Council.
 - b. Requests for Service in Town Preferred over Other Requests.** Requests for water service serving properties within the Town limits shall be preferred over other requests. Ordinarily, only requests for service connections to property which is in the Town limits will be granted.
 - c. Smaller Requests are Preferred over Larger Requests.** Ordinarily, the Town Council shall prefer small requests over large requests for water, and a request may be denied based on the determination by the Town Council that a particular request, if approved, would too greatly reduce the remaining water to be allocated.
 - d. Compliance by Applicant with Other Conditions Required by this Ordinance and the Water and Sewer Use Code.** The Town Council may also deny a request because an applicant has not complied with any other requirement of this ordinance or the Water and Sewer Use Code.
- 7. Additional Factors Which the Town Council May Consider When Deciding Whether to Grant a Request for Water.** In addition to the priorities and considerations described in paragraph 7, the Town Council can consider the following in deciding whether to grant or deny a request for water or sewer service:
 - a.** Any factor which may make the predicted actual use different from the NCDRS predicted use;
 - b.** The amount of water usage in gallons per day previously approved during the calendar year and the amount still left to be allocated for the year;
 - c.** Whether in its opinion the application is for a land use which is consistent with the Town’s adopted policies concerning growth and development; and
 - d.** Such other factors as may be identified by the Town Council in its deliberations, which either suggest that a particular application promotes or undermines the public health or safety, or the general welfare of the Town.
- 8. Conditions.** The Town Council may place conditions upon a successful application for water or sewer service. Without limitation and by way of example only, the Town Council may require:
 - a.** That an applicant whose property is partly or wholly outside the Town limits petition the Town for annexation in accordance with the requirements of North Carolina General Statutes and the Town of Boone’s ordinances before service is provided.
 - b.** That an applicant whose property is partly or wholly outside the Town limits comply with designated development policies of the Town in order to receive and continue to receive service.
 - c.** That an applicant granted the right to connect to the sanitary sewer system agree to connect into the Town’s water system should the Town later request that such a connection be made, and that the applicant sign a statement of commitment to that effect which will remain on file with the Town’s Public Utilities Department.
- 9. Vesting of Water Rights.**

- a. **Rights Vest to Property, Not Applicant.** Any vesting of water rights which is obtained through a successful application during the term of this ordinance vests to the property itself for the specific project rather than to the applicant personally. Therefore, any change in ownership or change in legal rights subsequent to approval shall not affect the vesting of the water rights, the time periods described herein, or the payment or retention of required fees.
- b. **Rights not Transferrable.** Water rights may not be transferred from the property designated in the application to a different piece of property, even for the same or a similar site specific development plan.
- c. **Vesting Does Not Occur until Required Fees Are Paid.** No vesting of water or sewer rights occurs until the fees required by this ordinance are paid.
- d. **Initial Payment of Fees.** Within thirty days of the time an application is approved and at the applicant's option, the applicant must pay with ten percent (10%) or twenty percent (20%) of the availability fee for the approved site specific development plan. Such fee is non-refundable, but will be credited against the availability fee charged at the time of the actual connection to the Town's system if the site specific plan is constructed as proposed.
 - i. **Fees are Non-Transferrable to Another Property.** A fee paid pursuant to this paragraph may not be transferred from one property to another property.
 - ii. **Fees May not be Transferred to Another Project on the Same Property.** A fee paid pursuant to this paragraph may not be transferred from one site specific development plan to another, even if both are on the same property, if the subsequent plan represents a substantial change, as defined in paragraph 11, below, from the plan which has been approved.
- e. **Initial Vesting Period.** If an applicant pays ten percent (10%) of the availability fee for the approved site specific development plan, the applicant shall be entitled to a one year initial vesting period; if an applicant pays twenty percent (20%), the applicant shall be entitled to a two year initial vesting period, dated from the date of approval by the Town Council or Director of the application.
- f. **Lapse of Vesting after Initial Period of Vesting.** Unless extended by the payment of full availability fees, any applicant granted the right to connect to the Town's water distribution system must obtain all needed development permits within the initial vesting period or said approval will expire and the allocated water usage shall return into the water census for redistribution. For purposes of this section the term "development permits" shall mean the following:
 - i. In the case of applicants for water service for a minor subdivision, the minor subdivision plat approval and recording of the approved plat with the Watauga County Register of Deeds, and any associated zoning and grading compliance certificates;
 - ii. In the case of applicants for water service for a major subdivision, a special use permit, and associated zoning and grading compliance certificates;
 - iii. In the case of a commercial development project, all permits required for the physical development of the land, plus those permits necessary for the building. These may include some or all of the following: a special use permit, a zoning permit and a building permit.
- g. **Extension of Period of Vesting upon Payment of Full Availability Fees.** Upon payment made prior to the expiration of the initial vesting period of the full remainder of the availability fee predicted for the site specific development plan for which approval has been granted, the approval of a water application will

be extended for an

additional period matching the vesting period of approved development permits for the site specific development plan, but not less than one additional year from the expiration of the initial vesting period, and any additional vesting of development permits which is obtained during the additional vesting period shall automatically extend the water rights to match that vesting period.

- i. **Availability Fee Payment Non-Refundable.** The funds paid pursuant to this section are non-refundable, but will be credited against the availability fee charged at the time of the actual connection to the Town's system if the site specific plan is constructed as proposed.
 - ii. **Availability Fee Payment Non-Transferrable.** The funds paid pursuant to this section are non-transferrable, as described. Such funds may not be transferred as a credit from one property to another property, and they may not be transferred from one site specific development plan to another, even if both are on the same property, if the subsequent plan represents a substantial change, as defined in paragraph 11, below, from the approved plan.
 - iii. **Adjustment in Availability Fee at Time of Connection.** If the required availability fee at the time of the connection to the Town's system is more than the amount which has been previously paid, the remainder of the then current availability fee must be paid before a connection will be allowed; if the required current availability fee at the time of the connection to the Town's system is less than the amount which has been previously paid, no refund shall be due.
- h. **Expiration of Vesting.** Without regard to the payment of fees and term of vesting, should any applicant whose development project requires a special use permit or zoning permit allow the special use permit or zoning permit to expire, the applicant's water rights will also immediately expire. Likewise, should any applicant whose development project acquires a building permit allow the building permit to expire, the applicant's water rights will also immediately expire.

10. Changes in Development Plan after Approval.

- a. **Substantial Changes Prohibited.** When an application has been approved for water or sewer service and fees paid to vest the approval, a substantial change may not be made in the site specific development plan designated in the application without a new application and appropriate payment of fees if approved. Except for a mixed use development proposed in accordance with Section 179 if the Town's Unified Development Ordinance (a "mixed use project"), a "substantial change" is one for which a different type of principal zoning use is proposed, e.g. multi-family to commercial, or there is more than a ten percent (10%) change, plus or minus, in the predicted water use for the site specific development plan, as determined by the calculations prescribed in paragraph 2(b), provided that a reduction in predicted use which is the result of a change to a site specific development plan initiated and mandated by the Board of Adjustment in a special use permit proceeding, or one which is the result of conditions or modifications agreed upon by the Town Council in a conditional district zoning proceeding shall not be considered a "substantial change" for purposes of this ordinance.
- b. A substantial change in a mixed use project shall occur when there is a change in the multi-family portion of the project which, if viewed as an independent project, would be considered a substantial change pursuant to subparagraph 11(a), or for which there is more than a 10% change, plus or minus, in the square footage of the completed commercial space from the commercial space described by the applicant at the time the application is approved, provided that a reduction in predicted square footage which is the result of a change to a site specific

development plan initiated and mandated by the Board of Adjustment in a special use permit proceeding, or one which is the result of conditions or modifications agreed upon by the Town Council in a conditional district zoning proceeding, shall not be considered a “substantial change” for purposes of this ordinance.

11. **Monthly Water Reports.** The Director shall provide a monthly report to the Boone Town Council concerning the number and predicted volume of each water connection request approved during the term of this Resolution.
12. This policy as amended shall become effective upon adoption.

Amended and effective this the 15th day of March, 2011.
Amended and effective this the 26th day of April, 2011.
Amended and effective this the 17th day of May, 2011.
Amended and effective this the 20th day of September, 2011.
Amended and effective this the 13th day of December, 2011.
Amended and effective this the 17th day of December, 2013.

VOTE: Aye – All
 Nay – None

MONTHLY WATER USE STATUS REPORT

Public Utilities Director Rick Miller presented the monthly water status report. **(Copy of report permanently on file in the December 2013 Town Council packet.)**

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Ball announced that Ben Dannemiller, recently appointed as the ASU student representative on the Planning Commission, has moved out of the Town’s planning jurisdiction.

BOARD APPOINTMENTS

Affordable Housing Task Force
Two positions open.

Council Member Mason nominated Jeff Templeton to serve as the Planning Commission representative on the Affordable Housing Task Force. With no other nominations, Mayor Ball called for a vote.

VOTE: Aye – 3 (David, Peña, Mason)
 Nay – 2 (Hay, Brantz)

Board of Adjustment
Two positions open.

Council Member Mason nominated Clinton Coffey for the ETJ alternate position. With no other nominations, Mayor Ball called for a vote.

VOTE: Aye – All
 Nay – 1
 Abstain – 1
 (Hay)

Mr. Coffey’s nomination will be forwarded to the Watauga County Board of Commissioners for consideration.

Community Appearance Commission

Two positions open.

There were no applications for these positions.

Outside Agency Funding Committee

Three positions open.

There were no applications for these positions.

Tourism Development Authority Committee

One position open.

Council Member Mason nominated Shaw Brown to serve on the Boone TDA Board as a position that promotes tourism. With no other nominations, Mayor Ball called for a vote.

VOTE: Aye – All
 Nay – None

Mr. Brown’s term will expire on October 31, 2016.

Tree Board

Two positions open.

Council Member Brantz nominated Stephanie Parker to serve on the Tree Board. With no other nominations, Mayor Ball called for a vote.

VOTE: Aye – All
 Nay – None

Watauga County Recreation Commission

Two positions open.

Council Member Mason nominated Joe Robinson and Greg Dobbins for the Watauga County Recreation Commission. With no other nominations, Mayor Ball called for a vote on each nomination.

Joe Robinson:

VOTE: Aye – All
 Nay – None

Greg Dobbins:

VOTE: Aye – All
 Nay – None

The Clerk will forward the nominations of both Mr. Robinson and Mr. Dobbins to the Watauga County Commissioners for consideration.

Water Committee

One position open.

There were no applications for this position.

ADJOURNMENT

Upon a motion by Council Member Mason, seconded by Council Member Peña, Council moved to adjourn at 8:41 p.m.

Kimberly S. Brown, Town Clerk

Andy Ball, Mayor