

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
JANUARY 22, 2015**

A regular meeting of the Boone Town Council was called to order at 5:32 p.m., Thursday, Jan. 22, 2015, in the Council Chambers, 1500 Blowing Rock Road. Mayor Andy Ball presided. Council members present were Mayor Pro-Tem Rennie Brantz, Lynne Mason, Fred Hay, Jennifer Peña and Quint David. Town Attorney Allison Meade was also present. Staff members present were Town Manager John Ward, Town Clerk Christine Pope, Administrative Support Specialist Nicole Worley, Assistant to the Manager Jim Byrne, Human Resources Director Peri Moretz, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Finance Director Amy Davis, Planning Director Bill Bailey, Public Works Director Rick Miller and Cultural Resources Director Pilar Fotta.

CALL TO ORDER

Mayor Ball called the meeting to order and welcomed all in attendance.

He stated that the Council would like to express their sincere appreciation for the 31 years of service Brenda Hicks has dedicated to the Town of Boone. Brenda, who is our Water Treatment Plant Superintendent, began her career with the town in August of 1986 and will be retiring as of February 1. The Council wishes her and her family blessings for good health and best wishes for the future.

TENTATIVE AGENDA ADOPTION

Town Manager John Ward presented the following changes to the agenda:

1. Additional Item for Closed Session:
 - G. Discussion of UDO for violations concerning Frogurt Properties, LLC.

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

VOTE: Aye – All
 Nay – None

CONSENT AGENDA ADOPTION

- A. Minutes: Dec. 9, 2014 – Special Meeting.

Dec. 18, 2014 – Special Public Hearing.

Dec. 18, 2014 – Regular Meeting.

- B. Authorization to Execute Agreement with NCDOT for Installation of Pedestrian Signals and Transfer of Funds from within the Public Works Budget to Complete the Project (**Agreement permanently on file in Town Hall**).
- C. Approval of Deed between the Town and Gang of 5, LLC (**Deed permanently on file in Town Hall**).
- D. Approval of Contract to Audit Accounts for the Town and TDA – Combs, Tennant & Carpenter, P.C. (**Contract permanently on file in Town Hall**).
- E. Approval of Bid from Iron Mountain Construction Company, Inc. for Clement Street Sewer Replacement Project and Accompanying Budget Amendment.
- F. Approval of Bid from Iron Mountain Construction Company, Inc. for Hardin Street Sewer Replacement Project and Accompanying Budget Amendment.
- G. Approval of Budget Adjustment for Donation.

Town Manager John Ward pointed out a change incorporated in the agenda in which projects that require any funds come with an accompanying budget amendment so that Council does not have to wait until the following month as well as a total of the funds in the account the amendment is coming from.

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

VOTE: Aye – All
 Nay – None

PUBLIC COMMENT

Pannu Sinah, of Roanoke, Va., appeared before Council to speak regarding the violation of Frogurt Properties. He stated that living in Virginia, he just found out about the violation the previous night. He added that because none of the Frogurt partners live in Boone, they relied on engineers to fix the issue and trusted the professionals to know what needed to be done. Mr. Sinah stated that the certified letter that was sent by Planning Director Bill Bailey went to one of the partners' houses, and they could not recognize the signature of who received it, but it must have been a family member. He stated that they have spent over \$70,000 already to fix the sink hole, and not acknowledging the letter sent was a mistake, not intentional.

Mahesh Chhabria of Greensboro, N.C., appeared before Council to also speak regarding the violation of Frogurt Properties. He provided a timeline of the events leading up to the Council meeting, advising that they had to change engineers after the work was not being completed, and

combined with heavy rains and changes in what needed to be fixed, it took more time than expected to fix the sink hole. He advised that there was no intent to avoid what the Town was trying to say, they just had no clue other than what they were trying to do to fix the property to sell. He added that they were relying on people here to give them their best judgment as to what needed to be done.

Judy Humphries of 601 Grand Boulevard spoke regarding the Town's noise ordinance. She stated there is only one venue that affects it and insulation could help to alleviate this issue.

PRESENTATION BY COMBS, TENNANT & CARPENTER, P.C. – FISCAL YEAR 2013/2014 AUDIT

Billy Combs and Jason Carpenter provided Council with a summary of the results of the 2013/14 audit for the Town, advising that the Town appears healthy in the fund balances.

ADOPTION OF ORDINANCE – UDO VIOLATIONS BY FROGURT PROPERTIES, LLC

Planning Director Bill Bailey provided some background regarding the sink hole and violations by Frogurt Properties, LLC. Town Attorney Allison Meade advised that it would be appropriate for Council to discuss this matter in closed session since it deals with a possible settlement with the Town. Mr. Bailey stated the second letter was sent on June 26, 2014, received July 2, and was followed shortly after by an application. He added that this letter provided three actions: applying for a new application, getting a licensed engineer to submit an appropriate solution and to pay the accumulated fines. He advised that the first notice of violation was sent February 2013, and between the notice of violation and the second letter, there was no additional notice sent to Frogurt, since the contact moving forward was the engineer. Council agreed to continue their discussion of this matter in closed session.

DISCUSSION OF TOWN CODE CHAPTER 93: NOISE CONTROL

Council Member Fred Hay stated he put this item on the agenda because the noise ordinance as it is is controversial. He advised that he spoke with Council Member Mason about the previous Council's decision and she had suggested getting more information. Several members of the Council voiced their support in looking at this ordinance again. Upon a motion by Council Member Hay, seconded by Council Member David, Council moved to direct staff to look at the history of enforcement of the noise ordinance, find comparisons to other communities, provide information regarding issues had, and time frames, specifically for the downtown area, and to provide a report back to Council at the February meeting.

VOTE: Aye – All
 Nay – None

APPROVAL OF AGREEMENT WITH NCDOT – SAFE ROUTES TO SCHOOL AGREEMENT FOR SIDEWALKS

Public Works Director Rick Miller presented the agreement for Council’s consideration. He advised there is a February deadline before termination of the project by the legal department of NCDOT. Mr. Miller added that he is not aware of an estimate for the total cost yet, and won’t know until NCDOT’s legal department reviews. He stated that an engineer will be hired by the town to finish the final design, which will include curb and gutter for both sides of the street, and a separate engineer will be hired to do the inspection through federal funds. Upon a motion by Council Member Mason, seconded by Council Member Hay, Council moved to approve the Town moving forward with funding for this project (**Agreement permanently on file in Town Hall**).

VOTE: Aye – All
 Nay – None

CONSIDERATION OF ZONING CASES TO BE SENT TO THE FEBRUARY QUARTELRY PUBLIC HEARING

Planning Director Bill Bailey presented two zoning cases for Council’s consideration to send to the February Quarterly Public Hearing. Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to send the River’s Walk and Text Amendment Clarification to the February Quarterly Public Hearing.

VOTE: Aye – All
 Nay – None

P&I MONTHLY REPORT

Planning Director Bill Bailey presented the P & I monthly report. (**Permanently on file in the January 2015 Town Council meeting packet.**)

MONTHLY WATER USE STATUS REPORT

Public Works Director Rick Miller presented the monthly water status report. (**Permanently on file in the January 2015 Town Council meeting packet.**)

TOWN MANAGER UPDATE

Town Manager John Ward provided Council with two updates. He advised that the Public Services and Public Utilities departments have been consolidated into the single Public Works Department, which will make more efficient resource allocation for equipment, projects, etc., and has been completed with existing budgeted funds. He also provided Council with an update on the parking meter project, indicating that February will start the launching of the education campaign and they are looking at a go-live date of March.

Council Member Peña stated she would like some feedback from staff regarding the new reorganization of Public Works. Mr. Ward advised that they have been operating in this format for the past month and have seen positive feedback so far, but is welcome to hear additional feedback as well.

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Ball advised that Stephanie Parker has resigned from the Tree Board, and the term is set to expire Oct. 31, 2015.

Mayor Ball noted that in addition to the resigned positions, the following positions are also vacant:

Board of Adjustment: six positions – three Alternate Resident, two Alternate ETJ and one ETJ position.

Community Appearance Commission: four positions – must reside in the Town of Boone's planning jurisdiction.

Downtown Boone Development Association: one position – town-appointed.

Greenway Committee: two regular positions.

Outside Agency Funding Review Committee: three at-large positions – must reside in the Town of Boone.

Planning Commission: two ETJ positions.

TDA Board: one resident position in the BACC.

Tree Board: one position – to the extent qualified persons can be found, the applicant shall have special training or experience in arboriculture, horticulture, architecture or landscape design.

REUBEN KLINE – 3rd ANNUAL BOONE GRAN FONDO EVENT

Reuben Kline appeared before Council to request approval of a special event permit for the 3rd annual Boone Gran Fondo to be held Sunday, Aug. 2, 2015, from 6 a.m. to 6 p.m. with the closure of Depot Street from Rivers to Howard from 7 a.m. to 6 p.m. He stated he is also requesting waiver of the \$1,500 event fee. Town Manager John Ward pointed out that an accompanying budget amendment is attached to this request, showing that should Council choose to waive the event fee, funds could be provided to the appropriate departments from the Appropriated Fund Balance (General Fund) to cover the costs to them. Council Member David mentioned the promotional points by doing this and wanted to make sure the Council was budgeting for it correctly in the future. Upon a motion by Council Member Peña, seconded by Council Member Brantz, Council moved to approve the special event permit for the Boone Gran Fondo for Sunday, Aug. 2, 2015, to waive the \$1,500 event fee and to approve the accompanying budget amendment.

VOTE: Aye – All
 Nay – None

ASHECO REAL ESTATE INC. –UNUSUAL CIRCUMSTANCES WAIVER REQUEST

Graydon Eggers of Asheco Real Estate appeared before Council to request an unusual circumstances waiver of water and sewer charges due to a leak. He stated that in late November, an underground water line ruptured and was unnoticeable to them, since there was still good water pressure. Mr. Eggers distributed a picture of the location to Council (**Picture permanently on file in the January 2015 meeting file**). He added that when they finally saw the bill, 30 additional days had already passed, and the entire underground crawl space was full of water, and the issue has been corrected. Public Works Director Rick Miller advised that the ordinance provides for a recommendation for an unusual circumstances waiver, and the current meter software is based on the previous month’s usage. Council Member David stated he would be interested in knowing the price to move to a faster notification system for meter reading. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to authorize the unusual circumstances waiver of \$4,125.10 for water charges and \$3,292.90 for the sewer charges reflected on Asheco Real Estate, Inc.’s bill in order to bring the bill in question back to its average monthly usage.

VOTE: Aye – All
 Nay – None

CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to enter Closed Session at 6:52 p.m. pursuant to NCGS § 143-318-11(a)(1)(3)(5) and NCGS § 132-1.4(a) to hear the following items:

- A. Pursuant to N.C. Gen. Stat. §143-318.11(a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and consider and give instructions to the attorney concerning the handling of a claim by the Town of Boone against the State of North Carolina.
- B. Pursuant to N.C. Gen. Stat. §143-318.11(a)(5), to establish, or to instruct Town staff and negotiating agents concerning the position to be taken by or on behalf of the Town in negotiating with Appalachian Theatre of the High Country, Inc., the price and other material terms of a proposed contract for the acquisition of real property involving a portion of the Town Hall parking lot, and pursuant to §143-318.11(a)(3), to consult with the Town Attorney concerning the same in order to preserve the attorney-client privilege between the attorney and the Town Council.
- C. Pursuant to N.C. Gen. Stat. §143-318.11(a)(1) and N.C. Gen. Stat. §132-1.4(a), and pursuant to N.C. Gen. Stat. §143-318.11(a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and consider and give instructions to the attorney concerning the handling of a claim involving the Town.
- D. Pursuant to N.C. Gen. Stat. §143-318.11(a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council, and to consider and give instructions to the attorney concerning the handling of a claim involving the Town.
- E. Pursuant to N.C. Gen. Stat. § 143-318.11(a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council, and to consider and give instructions to the attorney concerning the handling of the claim by the Town of Boone against Delta Holdings.
- F. Pursuant to N.C. Gen. Stat. § 143-318.11(a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and consider and give instructions to the attorney concerning the handling of the lawsuit involving the Town of Boone and Templeton Properties.

- G. Pursuant to N.C. Gen. Stat. § 143-318.11(a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and consider and give instructions to the attorney concerning the handling of the Frogurt Properties, LLC case.

VOTE: Aye – All
 Nay – None

Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to exit Closed Session at 8:54 p.m.

POSSIBLE ACTION FOLLOWING CLOSED SESSION

Upon a motion by Council Member Mason, seconded by Council Member Hay, Council moved to adopt the following ordinance regarding Frogurt Properties, LLC:

ORDINANCE # 15-01

WHEREAS, the Town of Boone has duly adopted a Unified Development Ordinance, (hereinafter, the “UDO”); and

WHEREAS, the UDO regulates stormwater facilities within the Town of Boone and its planning jurisdiction; and

WHEREAS, following a complaint and subsequent inspection by personnel from the Town of Boone Planning & Inspections Department of property located at 668 Blowing Rock Road, Boone, North Carolina, 28607, also identified by Watauga County PIN# 2910-15-1434-000, owned and operated by Frogurt Properties, LLC, (hereafter, “Frogurt”), by letter dated February 13, 2013, Code Enforcement Officer Chris Grubb notified Frogurt that a large sink hole had formed at the northern edge of its property at an area of pipe connection and that the condition violated then section 316(c)(8)(b) of the UDO; and

WHEREAS, Frogurt was told that in order to cure its violation, it must submit a zoning application, engineered plans to correct the problem, and a sealed statement from an engineer after the repairs that the work had been completed in accordance with the engineer’s plans; and

WHEREAS, Frogurt was given ten days to repair the problem, but was notified that after the expiration of the ten-day period, should the violation remain uncorrected, it would incur a daily penalty of \$100.00 for its continuing violation of the UDO; and

WHEREAS, Frogurt was notified of its right to appeal the determination and penalty imposed by Mr. Grubb by submitting an appeal to the Town of Boone Board of Adjustment within thirty days, but Frogurt took no action to challenge the determination or penalty; and

WHEREAS, though it did not discharge its violation within the ten day period with which it was afforded, Frogurt applied for a permit to undertake the needed repairs on April 2, 2013; and

WHEREAS, the proposed repairs were approved on April 16, 2013, and a permit was issued, but thereafter Frogurt took no timely action to actually undertake the repairs; and

WHEREAS, by letter dated June 24, 2014, Frogurt was notified that its permit authorizing the repairs had now expired and that it must submit a new application to repair the violations, but that if it did not complete the repairs in question within ten days, the matter would be referred to the Town Attorney for presentation to the Boone Town Council for action against Frogurt to be authorized; and

WHEREAS, Frogurt was again notified of its right to appeal the staff determination to the Town of Boone Board of Adjustment within thirty days of its receipt of this new letter, but again, it did not undertake such appeal; and

WHEREAS, in response to the June 24, 2014 letter, Frogurt applied for a new permit, which was issued, and it began work at the site in August 2014 before again discontinuing all repair activities in September 2014 after the contractor deviated from the approved repair plan and staff requested a modified engineering plan to address the changed activities; and

WHEREAS, Frogurt completed the required repairs on December 15, 2014, but not before accumulating additional daily penalties; and

WHEREAS, the penalties which accrued as of the date the repairs were completed and confirmed, December 15, 2014, based on a daily penalty of \$100.00 beginning February 26, 2013, total \$65,700.00, none of which have been paid by Frogurt;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA, PURSUANT TO N.C. GEN. STAT. § 160A-175, AS FOLLOWS:

1. Frogurt Properties, LLC, is the owner of that certain property located at 668 Blowing Rock Road, Boone, North Carolina, 28607, also identified by Watauga County PIN# 2910-15-

1434-000. Said real property is located within the town limits and planning jurisdiction of the Town of Boone.

2. Frogurt Properties, LLC, has violated the Town of Boone Unified Development Ordinance by failing to maintain stormwater facilities on its property in violation of UDO §21.03.10 ((H)(2) (former §316(c)(8)(b)), allowing a large sink hole to form at the northern edge of its property and to expand beyond its property boundaries. Said violations were continuing in nature and thus constituted repeated violations of the UDO.

3. Frogurt Properties, LLC, completed its repairs on December 15, 2014. Based upon a daily penalty of \$100.00 beginning February 26, 2013, extending through December 15, 2014, it now owes \$65,700.00 in penalties.

4. Unless Frogurt Properties, LLC, after receiving a demand for the full accrued penalties, tenders payment for the accumulated penalties, the Town Attorney is authorized and ordered to initiate a legal action in the General Court of Justice in Watauga County, North Carolina against Frogurt Properties, LLC, to collect the unpaid penalties for its violations of the UDO, including attorney's fees and costs.

5. This Ordinance shall be recorded in the registry of the Watauga County Register of Deeds under the names Frogurt Properties, LLC.

Adopted this 22nd day of January, 2015.

(ORDINANCE TO BE TYPED IN BOOK 4, PAGE 68-70)

VOTE: Aye – All
 Nay - None

ADJOURNMENT

Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to adjourn at 8:55 p.m.

VOTE: Aye – All
 Nay – None

Christine Pope, Town Clerk

Andy Ball, Mayor