

**MINUTES – SPECIAL MEETING
BOONE TOWN COUNCIL
JANUARY 12, 2011**

A special meeting of the Boone Town Council was called to order at 3:00 p.m. in the Conference Room at the Boone Town Hall, 567 West King Street. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Andy Ball, Rennie Brantz, Jamie Leigh and Stephen Phillips. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Town Clerk Freida Van Allen and Public Utilities Director Rick Miller.

The purpose of the meeting was to discuss and prioritize the NC League of Municipalities Advocacy Goals. These goals will be presented at a meeting scheduled for January 20, 2011 in Raleigh, NC. Mayor Clawson, Mayor Pro-Tem Mason and Council member Ball plan to attend the meeting.

Council discussed each advocacy goal as presented by the NC League of Municipalities. On a motion by Council member Ball, seconded by Council member Phillips, Council moved to adopt the following advocacy goal list and prioritization:

Proposed 2011-2012 NCLM Advocacy Goals
In service and support of your citizens

*Goals are not currently prioritized. Prioritization will take place on January 20 after discussion, debate and narrowing of this list.

COLOR CODES: HIGH MEDIUM LOW

*=Town of Boone Priority

Build Prosperous Cities and Towns

* Seek legislation reforming annexation laws that ensures the ability of a city to grow in a reasonable manner, while providing quality municipal services on a timely basis. - **HIGH**

- In 2009, NCLM advocated to reasonably reform the annexation laws by having a bill introduced. Late in the session, a referendum requirement was added to the bill, making it incompatible with NCLM annexation policy, which does not support a referendum provision because of the uncertainty and potential for inconsistent 'patchwork' growth such a law could create across North Carolina. The amended bill had no traction during the 2010 session.
- During the 2011-2012 biennium, NCLM will work to improve the annexation laws based on reasonable changes to address legitimate concerns.

Seek legislation enhancing the authority of cities to own and operate broadband systems for their citizens, and providing incentives for last mile public private partnerships. - **LOW**

- State law allows municipalities to operate "public enterprises" for services such as electric power, cable television and trash - areas where private companies historically have not always been willing to invest.
- In 2007, the City of Wilson's Greenlight became the first fiber to the premises (FriP) system in the state, although there are many successful public systems across the country. The City of Salisbury is currently building a city-wide fiber-optic utility. Both offer wider bandwidth and much faster data transmission speeds than private sector systems even in the large cities.
- Since a 2005 appeals court ruling upheld the right of towns and cities to offer high-speed Internet to their residents under the public enterprise statutes, large cable and phone companies have been urging the General Assembly to impose a moratorium on local governments while the issue is studied further. Several detrimental bills have been stopped. Additional attempts are expected in the 2011-12 session.

- Some cities are interested in building high-speed broadband systems, sometimes with private sector partners, because local businesses need this 21st century technology as an economic development tool,

*** Seek legislation to allow municipal creation or extensions of extra-territorial jurisdictions (ETJ) without county approval. - HIGH**

- An ETJ is a defined area beyond a municipality's limits - usually 2-3 miles - in which a municipality may enforce certain aspects of its development regulations.
- In order to extend its municipal extraterritorial jurisdiction into an area where the county has adopted and is enforcing a zoning ordinance and subdivision regulations, and is enforcing the State Building Code, a municipality must request permission to extend its ETJ from the county.
- Cities utilize extraterritorial jurisdiction in order to control development standards in an area that will likely become part of the city in the future.

Seek legislation to allow municipalities to establish vacant housing receivership programs for the purpose of rehabilitating structures not meeting minimum housing standards and transferring them to responsible ownership. - MEDIUM

- Current law allows a municipality only two options for addressing housing that is unfit for habitation: 1) repair a property owned by someone who has shown an inability or unwillingness to maintain it; or 2) demolish the property. A municipality does not have any way to keep the dwelling in service and ensure that it will be maintained in the future.
- Vacant property receivership allows a municipality to ask a court to turn over the property to a private receiver who would undertake the rehabilitation process and sell the property to buyers who have demonstrated an ability to maintain it. This is authorized in some other states.

Seek legislation to provide recurring funding for the Main Street Solutions program to allow more cities and towns to participate in the program and facilitate reuse of existing commercial buildings. - MEDIUM

- Small towns with the most successful downtown development efforts tend to use community partnerships to implement a local vision of how the community's existing assets can be put to use through a comprehensive package of strategies and tools, rather than a piecemeal approach.
- The work of the Main Street Solutions program promotes this method of development through guidance, technical assistance, training, and grant funding. The Main Street program does not receive recurring annual funding for its grant programs, which limits the ability of small cities and towns to participate.

Seek legislation eliminating the ability of counties to disapprove municipal project development financing projects in which the county does not participate. MEDIUM

- State law gives counties the ability to prevent municipalities from undertaking projects utilizing project development financing, also known as Tax Increment Financing (TIF), even if the county has no involvement in the project under consideration and there would be no diminution of county property tax revenues below current levels.

Support amending the N.C. Rehabilitation Code to provide greater flexibility for renovation of buildings built prior to 1936. - MEDIUM

- The North Carolina Rehabilitation Code requires that before work can begin on any restoration of an existing building, that building must first meet the Building Code from the year in which it was built.
- The first North Carolina Building Code went into effect in 1936. Buildings constructed before that time must meet the 1936 Building Code standards, which often is infeasible.
- Many underutilized buildings in downtown areas were built before 1936, and without additional flexibility in the Code it may not be economically feasible to put these buildings into productive use.

Seek legislation to allow for minimum building codes for commercial buildings, including condemnation. - **HIGH**

- The legislature significantly reformed this part of the law, effective August 21, 2007.
- N.C.G.S. § 160A-439 outlines the minimum standards of maintenance, sanitation, and safety for nonresidential buildings or structures, including the investigation of a complaint, the granting of an order, and the authority of a city to act if a property owner fails to comply with an order to meet minimum building standards.
- Changes in the law were the result of a long negotiation process between the League and various stakeholders. There is interest among municipal officials to increase the existing minimum standards for maintenance, sanitation and safety to allow for additional remedial action by the municipality.

Seek legislation allowing municipalities to use revenue bonds to finance all projects that ultimately will be paid for through special assessments. - **MEDIUM**

- Traditional special assessment authority requires municipalities to complete the project before special assessments are imposed, thus forcing them to front the money for the project before any additional revenues can be realized. Many states provide municipalities with the ability to use revenue bonds for all special assessment projects. Special assessments are a good way to pay for infrastructure projects that have a direct benefit to a defined set of property owners, such as downtown businesses benefitting from streetscape improvements.

Protect Citizens and Improve Quality of Life

*Support a system of liquor sales that maintains a local referendum about the decision to sell liquor, preserves local control over the location and density of liquor outlets, and preserves the local revenue stream from liquor sales. - **HIGH**

- The decision whether liquor is sold at retail within a municipality is made locally, not by the State. The goal supports continuation of this local authority.
- Cities and counties currently control the number and location of liquor stores in their communities through the local ABC board system, unlike beer and wine outlets. The goal supports continuation of this local authority.
- Cities and towns currently receive over \$23 million in revenue each year through distributions of liquor revenue derived from taxes and profits. The goal supports continuation of this local revenue stream.

Seek legislation to strengthen the role of municipalities in the approval, renewal, and revocation of ABC permits. - **HIGH**

- Currently, N.C. cities complete a public input form as a part of the ABC Commission review of ABC permit applications. Local input is advisory only.
- Zoning and land use powers cannot be used under existing case law as a means to deny an ABC permit application.

Seek legislation to grant more flexible authority for local public safety officers to enforce ABC-related laws. - **HIGH**

- The authority of local LEOs to participate in the enforcement of state ABC laws is limited. The authority to decide whether local law enforcement can play a part in ABC law enforcement rests in practice with local ABC Boards.

Support legislation permitting a governmental entity to seek an order of abatement where a property may have some legitimate use, but is also the source of regular criminal nuisance activity. - **MEDIUM**(The TOB suggests broadening legislation to include nuisances and hazardous situations to public health and safety.)

- Recent case law (City of Salisbury v. Campbell) requires that a city prove that the owner or tenant used the property solely for illegal activity in a nuisance action.
- This goal seeks to override the case law via statute, such that an order of abatement could be granted if criminal activity regularly occurs on the property, even if the property is used for "legitimate" purposes.

Seek legislation to protect the privacy of municipal residents by limiting public access to lists of email addresses submitted by citizens to municipalities. – **HIGH**

In 2010, a local bill restricted public access to email address lists compiled by Wake County and most of its municipalities so that the public could only inspect the lists, rather than receive a copy. Often requests are made by firms wishing to use the addresses for commercial solicitation, which can make citizens unwilling to share their address. The legislation also restricted the use of the lists by the governments to the purpose for which the email address was submitted. This legislation represented a compromise between the governments involved and open government interests in the state, and so could serve as the basis for statewide legislation.

Enhance the Fiscal Health of Municipalities

* Seek legislation to: 1) require that counties conduct a public hearing before approving a resolution choosing the method of sales tax distribution; 2) delay the implementation of a change in method until July 1 of the calendar year following the adoption of the change; and 3) phase in the change in method over four years. - **HIGH**

- Currently, 49 counties use a sales tax distribution method that provides them with less money than the alternative method. Any of these counties can change its method of sales tax distribution in April, with the change taking effect on July 1 of the same calendar year.
- Requiring a hearing on the change, delaying its effective date, and phasing in its effects would discourage counties from changing methods to improve their fiscal situation, while providing municipalities time to prepare for a detrimental change.

Support legislation to expand the sales tax base to include services. - **LOW**

- North Carolina taxes only a few services, and most states with a sales tax include more services within their tax base.
- Expanding the sales tax to include services would create a more general consumption tax that would not favor some businesses over others.
- Expansion of the base could raise revenues without a rate increase, and possibly lead to a rate decrease as the economy improves.

Seek legislation to revise the local land transfer tax so that: 1) it can be adopted without a referendum; and 2) municipalities receive a share of the revenues. - **HIGH**

- The land transfer tax must be approved by a referendum in each county that seeks to impose it. Since receiving the authority to impose the tax, 23 counties have submitted the tax to a referendum, all of which have failed to gain approval. Eliminating the referendum requirement would place the decision to levy the tax in the hands of county commissioners. Requiring that the proceeds be shared with municipalities could increase support of the tax from municipal residents. We are open to legislation restricting the proceeds to capital facilities only.

Seek legislation to allow all municipalities to adopt a prepared meals and beverage tax. - **HIGH**

- Currently four counties (Cumberland, Dare, Mecklenburg, and Wake) and the Town of Hillsborough have the authority to levy a 1 percent prepared meals and beverage tax. The tax applies to meals served in restaurants, delivered to homes, or purchased on site and carried out. The tax raises over \$30 million in these jurisdictions alone.
- If all municipalities imposed the tax, it would raise over \$100 million in revenue statewide. These revenues would be available for any public purpose and could be used to fund essential public facilities, public safety, economic development, transportation, and other pressing needs, which would be an especially beneficial tool for communities in the current difficult economy.

* Seek legislation to allow all municipalities to adopt impact fees to pay for growth-related infrastructure and services. - **HIGH**

- Impact fees are one-time public charges applied to new construction that are levied by

local governments to pay for the off-site costs associated with the new development. These fees are needed to ensure that developers pay for the full public costs that development imposes on communities. Several studies have shown the local public sector costs of development exceed the local tax revenues derived from the development. A limited number of units have this authority under local acts from the 1980s.

Support legislation to reform the municipal business privilege license tax by: 1) eliminating exemptions and caps for specific categories of businesses; 2) specifying the appropriate bases for the tax; 3) requiring municipalities to adopt a rate schedule that applies to all types of businesses within a municipality; 4) limiting the amount of taxes paid by businesses that have business activity within a municipality but no business location within it; and 5) capping the amount of tax that can be imposed on any single business location. – **MEDIUM**

- Concerns about the complexity of the privilege tax have led to calls for its elimination. Elimination of the tax could be seen as a way to provide tax relief to businesses without affecting state revenues.
- The privilege tax provides cities and towns with approximately \$50 million of general purpose revenue each year. It is one of the few taxes, other than the property tax, that municipal governments have the authority to levy.
- There is room for reasonable reform without eliminating a revenue source that is significant for many municipalities.

Support legislation providing municipalities with the authority to impose a fee to recover the costs of vehicle accident and fire response from at-fault drivers and parties responsible for fires, up to a statutory maximum amount. - **MEDIUM**

- Although police response and fire response services are financed through property and sales taxes because the public services generally benefit all citizens, those who do call for service benefit more from the service.
- The fee would allow for some recovery of the cost of service from those who cause it to be needed, many of whom do not pay property or sales taxes that go to the municipality.

Make Wise Use of Natural Resources

Support legislation to establish a bottle deposit program to further develop recycling markets and to decrease the presence of recyclables in the waste stream. - **HIGH**

- Bottle deposit programs generally require the purchaser of glass and plastic bottles to deposit a certain amount of money per bottle with the retailer, which is then redeemed upon the return of the bottles to the retailer.
- Eleven states have enacted such laws in the United States.
- Redemption rates are 85-95%, with unclaimed deposits generally retained by state government and/or bottling companies.

*Seek legislation creating a state bond program for upgrades to water and wastewater treatment systems, expansion of stormwater programs, and assured water supplies. - **HIGH**

- In 1998, voters approved \$300 million in State-issued bonds to provide loans and grants to local government units for water and wastewater capital projects.
- A new bond program is needed in order for cities and towns to maintain and improve their water and wastewater facilities, with lower interest rates and issuance costs on loans than the municipality could get on its own.

Support legislative and regulatory efforts for efficiencies in water, wastewater, and stormwater permitting processes. - **HIGH**

New water and wastewater facilities require timely permit decisions in order to meet operational needs. Municipalities have seen unnecessary delays in permit issuances, creating unwarranted financial hardships.

*Support the equal application of water quality management rules that impact cities to N.C. municipalities, counties, state agencies, and private operations, and require payment of city stormwater fees by all state agencies. - **HIGH**

- Water quality management techniques include (a) further treatment of wastewater; (b) restrictions on land application of biosolids; (c) stormwater management; (d) development regulations such as stream buffers; and (e) restoration of wetlands and streams.
- Some municipalities, counties, and state agencies do not comply equally with these types of water quality management techniques, particularly stormwater management.
- Private operations such as agriculture do not comply with these rules to the same extent as municipalities.
- Some state agencies do not willingly pay municipal stormwater fees, although their facilities generate significant stormwater volume.

Support legislation increasing funding and incentives for detecting and repairing leaking public water supply systems. - **MEDIUM**

- Applications to repair leaking lines receive priority points under the common criteria (GS 159G-23(3) d.) and the rules for the Drinking Water SRF provide eligibility for projects that install or replace distribution or transmission pipe to prevent contamination.
- Cities and towns support clarification that repair of leaking lines (consistent with the imperative provided in the drought bill) is considered a state funding priority.
- This is a supply-side management strategy that can be employed by the water system owner to enhance the efficiency of operations.

Seek legislation to classify reclaimed water as a resource water, and study the injection of treated water into aquifers. - **HIGH**

- Reclaimed water is defined by N.C. state statute as highly treated wastewater effluent, meeting specified standards, and used for beneficial reuse. Communities across the country reuse this water in many ways, including irrigation, street cleaning, fire-fighting training, toilet and urinal flushing, stream augmentation, and wetland reconstruction. Use of reclaimed water has grown more important as water resources have become scarce.
- North Carolina's classification of reclaimed water as a wastewater runs counter to the example set by leading states for reclaimed water use, like California and Florida. Instead, North Carolina's classification limits the uses of reclaimed water to a narrow set of uses, primarily irrigation and wetland augmentation.
- Re-classifying reclaimed water as a resource would remove a barrier to expanded use of reclaimed water.

*Support legislation establishing a water permitting system that protects existing municipal withdrawals, allows for future growth, includes all withdrawers, and accounts for all downstream users. - **HIGH**

- Currently, municipal water withdrawals receive a permit that is not regulatory in nature.
- A conversation has begun at the state level advancing the idea that all water use in the state should receive a permit regulating the amount of water withdrawn. This conversation comes as Georgia responds to a lawsuit that would shut off Atlanta's withdrawals from Lake Lanier, a move that would create a massive water shortage in the Atlanta metro region.

Support legislation to ensure proper disposal of excess pharmaceuticals, to include education regarding handling and disposal. - **HIGH (The Town of Boone feels this is a public health risk but should be resolved nationally.)**

- There is a debate about whether the disposal of excess pharmaceuticals in wastewater systems is harmful to the environment and public health. Scientists are seeing these substances in greater concentrations in rivers from treatment plants, and groundwater sources from septic systems.
- Nonetheless, some states and localities have passed laws requiring or authorizing "take back" programs at law enforcement offices, waste disposal facilities and

pharmacies.

Support legislation to increase funding for alternative vehicle public fleets, alternative fuel refueling stations, electrified truck stops or electric vehicle recharging stations, and state and federal programs to retrofit on- and off-road diesel engine vehicles, engines, and equipment. - **HIGH**

- On- and off-road diesel engines are a significant contributor to air emissions. These engines often do not meet the same emissions reduction standards of other engines.
- Many communities promote retrofits of these engines as one method to reduce emissions and achieve compliance with air quality standards.

Improve Our Transportation Infrastructure

*Seek legislation ensuring significant municipal decision-making authority and respect for local ordinances in the design of transportation projects across all NCDOT Divisions, to lower congestion, enhance quality of life, improve aesthetics, improve public safety, and bolster public health for city residents, regardless of the city's financial participation in a project. - **HIGH**

- Many communities believe their actual needs are not given adequate consideration by NCDOT during project development.
- Some have come to believe that the only way their voice is ever heard is if the city participates financially in the project, which is not always possible.
- Cities believe that a more uniform approach to partnering with cities on transportation projects would be helpful. Some NCDOT Divisions actively engage with cities in designing transportation projects, while some do not take advantage of partnership opportunities.

Support legislation to increase funding for the State Mobility Fund in order to support regional congestion mitigation projects, interstate maintenance, and a Powell Bill supplement; and to provide additional funding sources for State transportation projects. - **HIGH**

- Although the Mobility Fund will receive over \$170 million over the next four years, all of this funding is expected to go to the Yadkin River Bridge project. Additional revenue for the Fund is needed in order for urban congestion relief projects to receive funding. In addition, a Powell Bill supplement would help all municipalities address a growing backlog of municipal transportation maintenance needs.
- Additional funding sources for State transportation projects would alleviate the pressure to reduce existing Powell Bill funds in order to provide support for State projects.

*Seek legislation to allow the second \$5(**up to \$20**) vehicle transportation fee, currently available only for public transportation, to be used for pedestrian and bicycle projects. - **HIGH**

- All municipalities may levy a \$5 fee on each vehicle within their corporate limits. For some municipalities, local legislation has increased this amount.
- In addition, each municipality that operates a public transportation system may levy a \$5 fee to be used for public transportation funding.
- This second \$5 fee is not a funding option for towns that are too small or widely dispersed to operate a viable public transportation system. These towns still may have mobility issues that could be addressed with additional funding.

Seek legislation to allow Powell Bill funds to be used for sidewalks that are adjacent to, but not located within, the right-of-way of State-maintained roads. - **MEDIUM**

- NCDOT does not allow the use of Powell Bill funds for sidewalk projects along State-maintained roads unless the sidewalk lies within the DOT right-of-way.
- In some circumstances, the best route for a sidewalk may be near, but not within, the DOT right-of-way, especially if the route is on land owned by a municipality.

Continue to monitor and report on any legislative study committees looking to modify the

Equity Formula. - MEDIUM

- NCLM staff will complete this function regardless of this goal.

VOTE: Aye-All
 Nay-None

SCHEDULING OF SPECIAL MEETING WITH WATAUGA COUNTY BOARD OF COMMISSIONERS

Town Manager Greg Young said the two dates that the County Commissioners proposed, January 24th and January 25th, are not available for the Boone Town Council because of previously scheduled meetings. Council members discussed at length their objectives for the meeting and suggested the following topics be included on an agenda. They are:

- Establishment of shared priorities between Watauga County and the Town of Boone.
- Update on the U-4020 project.
- Update on the Town of Boone's water intake project.

The County Commissioners are encouraged to add items to the agenda also.

After some discussion, on a motion by Council member Mason, seconded by Council member Ball, Council moved to schedule a special meeting with the Watauga County Board of Commissioners for Monday, January 31, 2011 at 5:00 p.m. in the County Commissioners Board Room. An alternative date is February 10, 2011, same time, same location.

VOTE: Aye-All
 Nay-None

ADJOURNMENT

On a motion by Council member Ball, seconded by Council member Leigh, Council moved to adjourn at 6:15 p.m.

VOTE: Aye-All
 Nay-None

Town Clerk

Mayor