

FILED

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
2015 OCT 20 PM 12:12 SUPERIOR COURT DIVISION
WATAUGA COUNTY WATAUGA COUNTY, C.S.C. 15-CVS- 539

RONALD SIDNEY COOPER and wife, LF)
LINDA COOPER, and DONALD LEE)
COOPER and wife, DEVETA K.)
COOPER.)

Plaintiffs,)

v.)

COMPLAINT

The Town of BOONE, a North Carolina)
Municipal Corporation, the Boone Town)
Council, and Mayor Pro-Tem Rennie)
Brantz, Quint David IV, Lynne Mason,)
Fred Hay, and Loretta Clawson, all in)
their official capacities as officials of the)
Town of Boone and members of the)
Boone Town Council)

Defendants.

NOW COME Plaintiffs, complaining of the Defendants, alleging and saying as follows:

1. Plaintiffs Ronald S. Cooper and wife Linda Cooper are residents of Ashe County, North Carolina.
2. Plaintiffs Donald L. Cooper and wife Deveta K. Cooper are residents of Wilkes County, North Carolina.
3. Plaintiffs are the record owners of a parcel of real property (the "Subject Property") located within Ashe and Watauga County, North Carolina and more particularly described in Deed Book 365 Pages 1747 to 1750 in the Ashe County Register of Deeds and in Deed Book 1288 Pages 634 to 637 in the Watauga County Register of Deeds (the "Deed") and also being shown on Plat Book 5, Page 545 in the Ashe County Register of Deeds and Plat Book 15 Page 69 in the Watauga County Register of Deeds.
4. The Subject Property is located along Cranberry Springs Road in the unincorporated areas of Ashe and Watauga Counties approximately 10 miles outside of Boone's corporate limits.
5. Defendant Town of Boone ("Boone") is a municipal corporation existing within the territorial boundaries of Watauga County and organized under the laws of North Carolina.

6. The remaining Defendants are the Town Council, public officials and individual members of the Town Council of Boone (the "Council"). The Council is an agency of North Carolina government and a "public body" within the meaning of North Carolina's Open Meetings Law, G.S. §143-318.10 et. seq.

7. This is an action pursuant to G.S. §143-318.9 to §143-318.18 (the "Open Meetings Law").

8. North Carolina's public policy with respect to public meetings is stated in G.S. §143-318.9 as follows: "Whereas the public bodies that administer the ...policy making...functions of North Carolina and its political subdivisions exist solely to conduct the people's business, it is the public policy of North Carolina that the hearings, deliberations and actions of these bodies be conducted openly."

9. Each of the allegations referencing closed sessions by the Council herein refers to closed sessions of official meetings of the Council within the meaning of the Open Meetings Law, G.S. §143-318.10 et. seq.

10. On April 16, 2015, April 27, 2015, May 21, 2015, June 18, 2015 and July 23, 2015 the Council went into unlawful closed session to consider the expenditure of public funds and the acquisition of property interests in Watauga County, including the Subject Property, without identifying in open session the location or ownership of the property interest:

"Pursuant to N.C. Gen. Stat. 143-318.11(a)(3) and (a)(5), 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 terms of possible acquisition of easements from Watauga County related to the water intake project."

11. On information and belief the Council went into unlawful closed session under the guise of N.C. Gen. Stat. 143-318.11(a)(3) on August 20, 2015 and September 17, 2015 to consider the expenditure of public funds and the acquisition of property interests in Watauga County, including the Subject Property, without identifying in open session the location or ownership of the property interest.

12. As of October 15, 2015 the Council has declined to make available to the public the minutes of those closed sessions in violation of North Carolina's Public Records Act, G.S. §132-1 et. seq.

13. The actions taken in each of these closed sessions by the Council were unlawful in violation of the Open Meetings Law and N.C. Gen. Stat. §160A-75.

14. The Open Meetings Law and N.C. Gen. Stat. §160A-75 require that any action having the effect of committing or authorizing the expenditure of public funds, any action making, ratifying or authorizing a contract on behalf of the town and any action to acquire property by condemnation or otherwise, be voted upon in open session.

15. The Council, in closed session, sometime prior to September 16, 2015, unlawfully voted on and made the decision to commit the expenditure of public funds and to acquire by eminent domain and otherwise, the property interests of certain property owners, including Plaintiffs, lying outside the corporate limits of Boone.

16. The Council, in closed session, prior to September 16, 2015, further unlawfully voted on and made the decision to commit the expenditure of public funds and to file civil actions against the Plaintiffs and others; and in furtherance of those decisions made in closed session, authorized and directed the town's staff and the Town Attorney, in closed sessions, to acquire property by condemnation from the Plaintiffs and others.

17. Although there was no valid authorization in open meeting for the expenditure of public funds under G.S. §160A-75 or for the exercise of eminent domain to acquire real property interests, the Town Attorney filed sixteen (16) condemnation actions in Watauga Superior Court, file numbers 15 CVS 461 through 15 CvS 476 on September 16, 2015 (the "Sixteen Condemnation Actions"). These filings included filing a condemnation action against the Plaintiffs in file number 15 CvS 476 which affects the Subject Property. A copy of the Complaint, Declaration of Taking and Notice of Deposit filed against the Plaintiffs is attached as Exhibit A.

18. At the time that the Council went into the closed sessions set out above, the Defendants were aware that legislation was pending before the General Assembly in the form of House Bill 875 that would substantially limit the Town of Boone's power of eminent domain outside of its municipal borders.

19. On September 17, 2015 the North Carolina Legislature passed House Bill 875 enacting into law N.C. Gen. Stat. §153A-14.5, which requires the consent of the County Board of Commissioners in Watauga County before Boone can acquire by condemnation any real property located in Watauga County outside of its municipal borders. A copy of this statute is attached hereto as Exhibit B.

20. On September 16, 2015, with knowledge that the Legislature was contemporaneously acting on House Bill 875 (N.C. Gen. Stat. §153A-14) to limit the Town's eminent domain authority, Boone, without voting in open session, filed the Sixteen Condemnation Actions in an attempt to circumvent that legislation.

21. The actions of the Defendants set out above were calculated to utilize the process of closed session meetings to avoid the limitations placed upon the municipal authority of the Council by the General Assembly through the requirements of N.C. Gen. Stat. §153A-14.5.

22. Prior to October 15, 2015 the Council had not voted in open public session to approve the expenditure of public funds for or to approve the acquisition by condemnation or otherwise of any of the specific interests in real property for the water intake project, including that of the Plaintiffs.

23. Prior to October 15, 2015 the Council had not voted in open public session to approve the making of contracts or expenditure of funds for the acquisition of any of the specific interests in real property for the water intake project.

24. It is against North Carolina public policy as set out in G.S. §143-318.9 et. seq. that Boone, by taking secret action in unlawful closed sessions, might be able to avoid the limitation placed by N.C. Gen. Stat. §153A-14.5 on its municipal power with respect to the Sixteen Condemnation Actions.

25. The actions of the Defendants taken in closed sessions are in violation of the Open Meetings Law, G.S. §143-318.9 to 143-318.18 and such violations cannot be cured under the guise of G.S. §143-318.11 which allows closed sessions in very limited circumstances which are not applicable here.

26. The Council violated the Open Meeting Laws by reserving for discussion in closed session, under the guise of G.S. §143-318.11(a) (3) and (5), matters relating to the expenditure of public funds and the acquisition of real property interests in Watauga County for the water intake including the location and ownership of those properties and the method of acquisition.

27. The Council violated the Open Meetings Law by failing to disclose, in open public sessions, matters relating to the expenditure of public funds and to the acquisition of real property interests for the water intake including the location and ownership of those properties and the method of acquisition.

28. Contrary to existing North Carolina law the Council failed to identify in open session, before going into closed session, either the ownership or location of the property interest it sought to acquire from persons living in Watauga County. See *Boney Publishers, Inc., dba The Alamance News v. The Burlington City Council, et. al.* 151 N.C. App. 651, 566 S.E.2d 701 (2002).

29. The Council violated the Open Meetings Law by acquiring a substantial number of real property easements in Watauga Country without ever identifying in open session the location and ownership of those easements, without authorizing the expenditure of public funds for those easements in open sessions and without ever voting in open session to acquire the real property interests once the material terms were agreed upon.

30. This is an action requesting entry of a judgment declaring that the actions of the Council, taken in closed sessions, authorizing the expenditure of public funds and exercising the power of eminent domain by filing suit for condemnation against Plaintiffs and others, were actions taken, considered, discussed and/or deliberated in violation of the Open Meetings Law.

31. The Plaintiffs further seek a declaration pursuant to G.S. §143-318.16A that the civil action resulting from the Council's unlawful actions which was filed against Plaintiffs in Watauga County File No. 15 CvS 476 on September 16, 2015 is null and void and should be dismissed.

32. The Plaintiffs further seek a declaration pursuant to G.S. §143-318.16A that the remaining fifteen (15) actions of the Sixteen Condemnation Actions resulting from the Council's unlawful actions filed on September 16, 2015 are null and void and should be dismissed.

33. On October 15, 2015 the Council voted upon and passed a resolution admitting that the unlawful actions alleged above, including the authorization to acquire property for the water intake by condemnation and otherwise and the expenditure of public funds, had taken place in prior closed sessions. The unlawful actions by the Defendants cannot retroactively be cured by resolution. Although the actual minutes are not yet available to the public from the Council, a copy of the relevant pages of the agenda and the resolution for the Council's meeting on October 15, 2015 are attached as Exhibit C.

34. This suit is commenced within 45 days following the initial disclosure of the actions that the suit seeks to have declared null and void, which date was no earlier than October 15, 2015, the date the challenged actions were first placed in the Council's minutes. G. S. §143-318.16A(b).

35. The closed session violations materially affected the substance of the challenged actions by permitting the Town of Boone to evade a significant limitation placed on its municipal authority by the General Assembly.

36. By secretly approving the filing of the Sixteen Condemnation Actions in closed session one day before the passage of G.S. 153A-14.5, the violations were an unlawful attempt to circumvent the limitation upon their eminent domain authority imposed by the statute which requires the consent of the county board of commissioners to any taking outside Boone's borders.

37. By going into closed session to decide and authorize the use of eminent domain to circumvent the limitation on the Council's authority placed by G.S. §153A-14.5, the Council thwarted and impaired the right of the public to access meeting or proceedings that they had a right to attend and be informed about the people's business.

38. The widespread use of closed sessions by the Council with regard to the expenditure of public funds and the acquisition of the proposed real property interests for the water intake project under the guise of G.S. §143-318.11(a) (3) and (5) materially impaired the public knowledge or understanding of the people's business.

39. The closed sessions regarding the acquisitions of real property interests for the water intake were part of a continuing pattern of violations the Open Meetings Law and lack of transparency designed by the Council to prevent or impair the public knowledge or understanding of the people's business.

40. Pursuant to G.S. §143-318.16A, this Court is authorized to enter a judgment declaring that the actions taken by the defendants as set out above were in violation of the Open Meetings Law. In addition, pursuant to the Open Meetings Law, this Court is authorized to declare that any action taken, considered, discussed, or deliberated in violation of the Open Meetings Law to be null and void.

41. Pursuant to G.S. §143-318.16A(a), this Court is authorized to grant injunctive relief to enjoin the recurrence of similar violations of the Open Meetings Law.

42. The Court is also authorized to enjoin future similar violations of the Open Meetings Law by the Council and other defendants.

43. Pursuant to G.S. §132-9 of the Public Records Act, this Court is authorized to compel disclosure of the minutes of the unlawful closed sessions of the Council referred to above, as those sessions pertained to the identity of the properties, the owners of the properties, the purpose of the acquisitions, the exercise of eminent domain, the expenditure of public funds for such property interests and the method of the acquisitions.

44. As a result of the defendants' continuing violations of the Open Meetings Law and the Public Records Act, the public's, including these Plaintiffs', knowledge and understanding of the people's business has been impaired.

45. The Defendants were aware that there existed significant public opposition to the water intake project and to the use of eminent domain for the project and employed the closed sessions to thwart and impair the public's access to meetings and proceedings which the public had a right to attend.

46. The violations of the Open Meetings Law by the Defendants prevented and/or impaired public knowledge or understanding that the Defendants were attempting to thwart or circumvent the effect of a limitation placed by the General Assembly on their municipal authority.

47. The violations of the Open Meetings Law by the Defendants were committed in bad faith for the purpose of evading or subverting the public policy embodied in G.S. §143-318.9 by authorizing the acquisition of property by eminent domain or otherwise and committing to the expenditure of funds in closed session.

48. The Council acted secretly as a "cowboy" council without regard to due process to those affected by its actions, including Plaintiffs, and without regard to the right of the public to open meetings under the Open Meetings Act. The Defendants intentionally violated the public policy of North Carolina with regard to open meetings by performing the Council's business in secret out of the public eye.

49. The proposed real property acquisitions for the water intake project have not been completed and the Council will continue to have meetings and closed sessions pertaining to the proposed acquisitions in violation of the Open Meetings Law. The Defendants should be enjoined from further violations of the Open Meetings Law.

50. As set forth above, the Defendants have violated the Open Meetings Law on numerous occasions. As recently as October 13 and 15, 2015 the Defendants went into closed session to discuss the acquisition of the proposed real property interests for the water intake project under the guise of G.S. §143-318.11(a) (3) and (5), without disclosing in open session the location and ownership of those properties, or the method of acquisition. The Defendants should be enjoined from further violations of the Open Meetings Law.

51. By declaring the Sixteen Condemnation Actions null and void, this Court will effectively stop the Defendants' secret attempt to circumvent the limitations placed on its municipal powers by the General Assembly. It will allow the elected political officials representing the Plaintiffs, the Watauga County Commissioners, to determine the fate of their property as intended by the General Assembly. The Court's action will force the Defendants to vote in open meetings to expend funds and acquire property and will require the consent of the Watauga County commissioners before they can exercise of the power of eminent domain for land located far outside Boone's corporate limits.

52. The determination in closed sessions to make deposits of public funds and file the Sixteen Condemnation Actions, one day prior to the passage of G.S. 153A-14.5, violated the public policy of North Carolina that hearings, deliberations,, and actions of the public bodies be conducted openly and significantly impaired public knowledge and understanding of the people's business.

53. The effect of the unlawful closed sessions resulting in the filing of the Sixteen Condemnation Actions is a taking without due process by the Town of Boone of the Subject Property in derogation of the Fifth Amendment of the United States Constitution as applied to the State of North Carolina pursuant to the Fourteenth Amendment of the United States Constitution and should be enjoined.

54. The effect of the unlawful closed sessions resulting in the filing of the Sixteen Condemnation Actions is a taking without due process by the Town of Boone of the Subject Property in violation of the Law of the Land Clause contained in Article I, Section 19 of the North Carolina Constitution and should be enjoined.

55. Pursuant to G.S. §143-318.16B, the Court is authorized to and should award attorney's fees and costs to the Plaintiffs from the Defendants if they prevail in this action.

WHEREFORE, the Plaintiffs respectfully pray the Court as follows:

1. For judgment declaring the above-described closed sessions were in violation of the Open Meetings Law and declaring that any action taken, considered, discussed or deliberated is null and void.

2. For judgment declaring that the action of the Boone Town Council in determining to commit to the expenditure of public funds and to exercise the power of eminent domain by filing suit for condemnation against these plaintiffs was taken, considered, discussed and/or deliberated in violation of the Open Meetings Law and is therefore null and void.

3. For judgment pursuant to G.S. §143-318.16A declaring that the civil action filed against Plaintiffs in Watauga County File No. 15 CvS 476 on September 16, 2015 is null and void and should be dismissed.

4. For judgment pursuant to G.S. §143-318.16A declaring that the civil actions filed in the remaining fifteen actions of the Sixteen Condemnation Actions filed on September 16, 2015 are null and void and should be dismissed.

5. For judgment pursuant to G.S. §143-318.16A declaring that all actions by which property was acquired by the Defendants in violation of the Open Meetings Act and G.S. 160A-75 should be declared null and void.

6. For judgment, under the Open Meetings Law and the Public Records Act, ordering the Council to disclose the portions of the minutes of the above-described closed sessions that occurred in violation of the Open Meetings Law.

7. That the Town of Boone be required to comply with G.S. §153A-14.5 to obtain and furnish proof that it has the consent of the Watauga County Board of Commissioners to condemn any portion of the Subject Property lying in Watauga County.

8. For an injunction to enjoin future similar violations of the Open Meetings Law by the Council and the other defendants.

9. That the costs of this action be taxed against the Defendants including reasonable attorney fees for the benefit of Plaintiffs in bringing this action to secure the requested relief.

10. For a trial by jury on all issues so triable.

11. For such other and further relief as the Court may deem just and proper.

This the 16 day of October, 2015.



Robert A. Brinson, N.C. State Bar # 7020
James C. Lanik, N. C. State Bar # 30454
Attorneys for Plaintiffs

OF COUNSEL:

Roberson Haworth & Reese, PLLC
P. O. Box 1550
High Point, NC 27261
Phone (336) 889-8733
Fax (336) 885-1280
Email: bbrinson@rhrlaw.com

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

TOWN OF BOONE,
Plaintiff,

vs. Isaac S. Cooper, Ronald Sidney Cooper and
wife, Linda Cooper; and Donald Lee Cooper and
wife, Deveta K. Cooper,

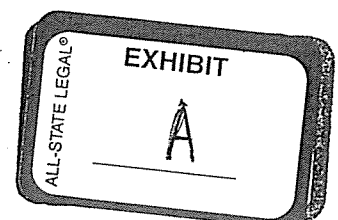
Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 15 CVS 476

CMS COMPLAINT, DECLARATION OF
TAKING, AND NOTICE OF DEPOSIT

NOW COMES the Town of Boone, plaintiff, and alleges, says and declares that:

1. Plaintiff is a municipal corporation organized and existing under the laws of the State of North Carolina, possessing the powers, duties and authority, including the power of eminent domain, vested in it by the General Assembly of North Carolina. Plaintiff is located in Watauga County, North Carolina.
2. Plaintiff is a "local public condemnor," as that term is defined and described in N.C. Gen. Stat. §§ 40A-2 and 40-3. As such, plaintiff is entitled to exercise the power of eminent domain through condemnation of property, whether the property is inside or outside its boundaries, for those purposes described in N.C. Gen. Stat. § 40A-3(b) and relevant provisions of Chapter 160A of the North Carolina General Statutes.
3. Pursuant to said statutory authority, plaintiff is authorized to condemn property for the purpose of establishing, extending, enlarging, or improving any of the public enterprises listed in N.C. Gen. Stat. § 160A-311. Plaintiff operates a water supply and distribution system serving the citizens and residents of the Town of Boone and its environs (hereinafter, "the water system"), which is a public enterprise authorized by N.C. Gen. Stat. § 160A-311(2).
4. Pursuant to the authority vested in plaintiff pursuant to N.C. Gen. Stat. Chapters 40 and 160A, the governing body of the Town of Boone has determined that it is necessary and in the public interest to acquire by condemnation the real property interest(s) described herein for purposes of constructing, maintaining, repairing and improving a water line in order to protect the public health by providing the public with an adequate and sound water system, and to improve and enlarge such system to meet the future needs of the Town's residents and water customers.
5. On information and belief, the persons who are named as defendants herein, whose names and addresses are set forth on the first page of **Exhibit 2** attached to this complaint and incorporated herein by reference, are, insofar as the same can by reasonable diligence be ascertained, the only persons who have or may claim to have an interest or estate in the real property interest described herein.
6. To the best of plaintiff's knowledge and belief, none of the aforesaid defendants are infants, incompetents, inebriates, or under any other disability.
7. As required by N.C. Gen. Stat. § 40A-40, thirty days or more prior to instituting this action, plaintiff gave Notice of Condemnation to defendants. A true and correct copy of the Notice of Condemnation is attached as **Exhibit 2**.
8. The aforesaid Notice of Condemnation was enclosed in a post-paid, properly addressed wrapper and delivered to a post office or official depository under the exclusive care and custody of the United States Postal Service ("USPS"), to be delivered by Certified Mail, Return Receipt Request, as indicated by the USPS Certified Mail Receipt(s), true and correct copies of which are attached hereto as **Exhibit 3**.



9. The aforesaid Notice of Condemnation was in fact received by defendants, or delivery was refused by defendants, as shown by the USPS Return Receipt(s) and/or returned envelopes, true and correct copies of which are attached hereto as **Exhibit 4**.
10. The owners of the easement being condemned contend that it is on property that is part of farmland subject to the N.C. Gen. Stat. §106-735 et seq. and the Watauga County Voluntary Farmland Preservation Program Ordinance ("Ordinance"), and accordingly that pursuant to N.C. Gen. Stat. §106-740 and the Ordinance plaintiff was required to request a public hearing before the Watauga County Agricultural Advisory Board on the proposed condemnation, such request to made at least 30 days before condemnation proceedings were filed.
11. Plaintiff requested such a public hearing by letter dated and delivered to Watauga County and the Watauga County Agricultural Advisory Board on July 16, 2015. A true and correct copy of the aforesaid letter is attached hereto as **Exhibit 5**. The requested public hearing was held on July 14, 2015.
12. As stated in the Notice of Condemnation (**Exhibit 2**), the purposes for which the property is being condemned are to protect and provide for the public health through the provision of an adequate and sound public water supply and distribution system, a public enterprise of the Town, and to improve and enlarge such supply and system to meet the future needs for water by Town and area residents and water customers.
13. The property to be taken consists of one or more easements located entirely within Watauga County as described at **Exhibit 2** and exhibits "A" and "B" thereof.
14. The tract or contiguous tracts affected by the taking for purposes of assessing just compensation are as described or identified at **Exhibit 6** attached hereto and incorporated by reference.
15. On information and belief, the liens and encumbrances set forth at **Exhibit 7** attached to this complaint and incorporated herein by reference, are, insofar as the same can by reasonable diligence be ascertained, the encumbrances upon the real property interest(s)-described herein.
16. On information and belief, there are no timber, buildings, structures, permanent improvements or fixtures situated in the easement area(s) to be condemned, but if there are such items defendants will be permitted to remove them.
17. The value estimated by the condemnor to be just compensation for the easement(s) to be condemned is **\$23,300.00**, based upon an appraisal prepared by a North Carolina certified appraiser.
18. Said amount is deposited with the Watauga County Clerk of Superior Court concurrently with the filing of this action, and by this complaint, plaintiff gives notice to defendants of the depositing of this amount. Defendants herein may apply to the Court for the disbursement of said money in full compensation, or as credit against just compensation, to be determined in this action.
19. The easement(s) described in Exhibit 2 (including exhibits "A" and "B" thereof) is (are) hereby **DECLARED TO BE TAKEN** and condemned, and said easement(s) is (are) **HEREBY VESTED** in plaintiff, Town of Boone.
20. On June 4, 2015, in reaction to the Notice of Condemnation previously served on them, defendants Isaac S. Cooper, Ronald Cooper, and Donald Cooper filed a complaint against the Town of Boone in Ashe County Superior Court, case number 15 CVS 206, pursuant to N.S.G.S. §40A-42 seeking injunctive relief against the Town's proposed condemnation.
21. Defendants' filing was for the clear intended purpose of preventing the immediate vesting of title and the right to possession under N.C. Gen. Stat. § 40A-42(a)(1).
22. Defendants' filing is without merit, and Plaintiff Town of Boone is entitled to an order pursuant to N.C. Gen. Stat. § 40A-42(e) to place plaintiff in possession of the property. Furthermore, upon motion and ten days notice, plaintiff is entitled to a hearing and determination of any and all issues raised by defendant, other than the issue of compensation, including questions of title to the land, the interest taken, the area taken, and the plaintiff's authority to take the area, as provided in N.C. Gen. Stat. § 40A-47.

WHEREFORE, Plaintiff prays:

- (i) That the Court make a determination of just compensation for the property interest(s) taken in

accordance with Chapter 40A of the North Carolina General Statutes;

- (ii) That the Court enter its order giving plaintiff the right to immediate title and/or the immediate possession of the property;
- (iii) That the Court, in order to avoid unnecessary costs or delay, consolidate the action filed in Ashe County Superior Court, case number 15 CVS 206, so that there can be a complete determination of the parties' respective rights in one action.
- (iv) That the Court schedule a hearing at its earliest convenience and in accordance with paragraph 21 of the complaint, to determine all issues, other than compensation, raised by defendant in opposition to plaintiff's taking;
- (v) That the Court enter no order allowing disbursement of the amount deposited as compensation until prior notice has been served upon plaintiff of an application for disbursement; and
- (vi) That the Court grant such other and further relief as it deems appropriate under the circumstances.

This the 16th day of September, 2015.



Allison M. Meade, State Bar No. 34392

MEADE LAW, PLLC

Attorney for Plaintiff

P.O. Box 292, Boone, NC 28607

(828) 865-5555 ameade@meade-law.com

§ 153A-14.5 Consent of board of commissioners necessary before land outside a unit of local government, but within the county where that unit of local government is located, may be condemned by that ~~unit~~ of local government.

This section is likely added by H875. Although the new codification has not yet been released, the likely impact of the new legislation is reflected below.

New Section:

Effective Date for H875: 9/17/2015

(a) Notwithstanding the provisions of Chapter 40A of the General Statutes or any other general law or local act conferring the power of eminent domain, before final judgment may be entered in any action of condemnation initiated by a city or town, special district, or other unit of local government, whereby the condemnor seeks to acquire property located in the county where the condemnor is located, but outside the corporate limits of the condemnor, the condemnor shall furnish proof that the county board of commissioners of the county where the land is located has consented by resolution, by majority vote of all members of the Board, to the taking.

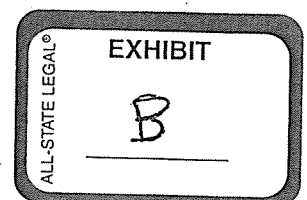
(b) In addition to the procedure specified in subsection (a) of this section, the following shall indicate proof that the county board of commissioners of the county where the city or town, special district, or other unit of local government is initiating an action of condemnation has consented to the taking, as required by subsection (a) of this section, with no further approval of the county board of county commissioners required:

(1) The real property subject to the condemnation action is located in a designated urban growth area or zone of the condemning entity that was approved by a prior action of the county board of commissioners.

(2) The real property subject to the condemnation is located in an extraterritorial jurisdiction area, as defined in G.S. 160A-360, of the condemning entity that was approved by a prior action of the county board of county commissioners.

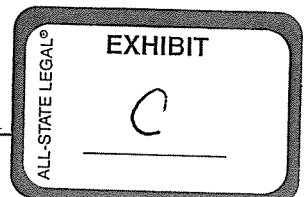
(c) This section does not apply as to any condemnation of real property by a city or town, special district, or other unit of local government where the property to be condemned is within the corporate limits of that city or town, special district, or other unit of local government.

Note: For additional information about this section, visit H875



Town of Boone
Regular Meeting
5:30 PM, Oct. 15, 2015
Council Chambers, 1500 Blowing Rock Road

1. (5:30 PM) Call to Order
2. (5:30 PM) Announcements
 - A. Public Comment
3. (5:35 PM) Tentative Agenda Adoption
4. (5:35 PM) Public Comment
5. (5:50 PM) Requested Appearances (five minutes each)
 1. (5:50 PM) PowerPoint Presentation on Appalachian Theatre
6. (5:55 PM) Consent Agenda Adoption
 - A. Town Council - Regular Meeting - Sep 17, 2015 5:30 PM
 - B. Consideration of Revisions to Town's Personnel Policy
 - C. Adoption of Ordinance - Downtown BOO Street Closure
 - D. Request for Nominee for County's Recreation Commission
 - E. Greenway, Parks and Gardens Committee Recommendation - Council Approval of the Placement of a "Little Free Library" at Jaycee Park
 - F. Approval of Resolution - Private Sale of Service Canine
 - G. Request to Send Cases to Nov. 2, 2015, Quarterly Public Hearing
 - H. Community Appearance Commission Request - Send UDO Modification to November Quarterly Public Hearing
 - I. Approval of Unveiling Ceremony for NCDOT Ginseng Marker
 - J. Approval of Encroachment Agreement - Omega Tees Projecting Sign
 - K. Approval of Encroachment Agreement - VPC Builders Projecting Sign
 - L. Approval of Encroachment Agreement - Greenway Baptist Church
 - M. Approval of Bid from White's International Trucks - Purchase of Dump Truck with Snowplow and Spreader



- N. Approval of Budget Amendment - Police Department Vehicle Emergency Equipment and Specialized Training
- O. Approval of Budget Amendment - Repairs following a Vehicle Accident
- P. Request for Permission to Place Temporary Signs in Town for National Hospice Awareness Month

7. (6:05 PM) Council Matters

- A. (6:05 PM) Community Appearance Commission Request - Scheduling of Workshop
- B. (6:10 PM) Discussion regarding Traffic Impact to Beverly Heights Drive Neighborhood
- C. (6:15 PM) Request for Direction Regarding a Requirement for Warning Signs in Flood Prone Areas
- D. (6:20 PM) Consideration of Appalachian Ski Mountain Tent Sale Categorization as Commercial Community Event
- E. (6:25 PM) Consideration of Revisions to Ordinance #11-01
- F. (6:35 PM) Approval of Howard Street Scope of Services and Engineering Design Fees
- G. (6:45 PM) Adoption of Resolutions - Water Intake Project
- H. (6:55 PM) Town Manager Update
- I. (7:00 PM) Announcement of Board Vacancies
- J. (7:05 PM) Appointment of Member to Planning Commission
- K. (7:10 PM) Appointment of Member to Sustainability, Economics and Environment Committee

8. (7:15 PM) Closed Session

- A. Pursuant to N.C.G.S. 143-318.11(a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and consider and give instructions to the attorney concerning a potential claim involving the Town of Boone.
- B. Pursuant to N.C.G.S. 143-318.11(a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and consider and give instructions to the attorney concerning a claim involving the Town of Boone and Ronald S. Cooper, et al.

- C. Pursuant to N.C.G.S. 143-318.11(a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged, for legal advice concerning the unsealing of closed session minutes of the Boone Town Council.
- D. Pursuant to N.C.G.S. 143-318.11(a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and consider and give instructions to the attorney concerning the claim involving the Town of Boone and the State of North Carolina.
- E. Pursuant to N.C.G.S. 143-318.11(a)(3) and (a)(5), 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 terms of possible acquisition of property.
- F. Pursuant to N.C.G.S. 143-318.11(a)(3), to discuss with the Town Attorney the condemnation actions filed as 15 CVS 462 through 476, Watauga County Superior Court.

9. Possible Action Following Closed Session

10. Adjournment



**Town of Boone
AGENDA ITEM ACTION REQUEST FORM**

This form must be completed and attached to all supporting documentation for items to be included in the Town of Boone Council agenda. One (1) form per agenda item.

Submitted By: Allison Meade

Department: Town Attorney

Contact Phone # 828-865-5555

Date Submitted: Oct. 2, 2015

Email: ameade@meade-law.com

Date of Council Meeting to Consider this item: October 15, 2015

Council Action Requested: For Action

Adoption of Resolutions - Water Intake Project

Summary of Information:

Council is asked to consider and vote on the attached two resolutions related to the water intake project.

**RESOLUTION BY THE TOWN COUNCIL OF THE TOWN
OF BOONE, NORTH CAROLINA, AUTHORIZING EXECUTION OF DOCUMENTS
REQUIRED TO OBTAIN FINANNCIAL ASSISTANCE FROM THE USDA WITH
RESPECT TO IMPROVING AND ENLARGING ITS WATER SUPPLY SYSTEM**

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

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

WHEREAS, the Town Council has previously authorized certain contracts, project plans, property acquisition, condemnations, and other activities and efforts to enable planning, financing and construction of certain improvements and enlargements to its public water supply system, for which funding is to be received in large part by means of a loan from the USDA;

NOW THEREFORE, BE IT RESOLVED THAT:

The Town Council of the Town of Boone hereby authorizes the Mayor (or Mayor Pro Tem) and Town Clerk to accept and execute as necessary, on its behalf, the following items from USDA-Rural Housing Service:

1. A "Letter of Conditions" that has not changed substantially from the "draft" Letter of Conditions, with amendments, previously reviewed by the Council;
2. The "Environmental Assessment" with any accompanying mitigating measures;
3. The "Letter of Intent to Meet Conditions";
4. Form AD 1049, Certification Regarding Drug Free Workplace; and
5. Any and all other submissions or forms required by the USDA as part of its plan approval and loan application process.

It is understood that the Town of Boone is not obligated to accept such financial assistance as may be offered by the USDA.

This resolution was passed by a vote of _____ for and _____ against, at the regularly scheduled monthly meeting of the Town Council on October 15, 2015.

Adopted this 15th day of October , 2015.

ATTEST:

Christine Pope, Town Clerk

Rennie Brantz, Mayor Pro Tem

Attachment: Resolution_1.pdf (1056 : Water Project Item)

Resolution # _____

**RESOLUTION BY THE TOWN COUNCIL OF THE TOWN
OF BOONE, NORTH CAROLINA RELATING TO CONDEMNATIONS AND
RELATED PROCEEDINGS TO ACQUIRE PROPERTY INTERESTS FOR
CONSTRUCTION, INSTALLATION, MAINTENANCE, REPAIR AND
IMPROVEMENT OF A NEW WATER LINE**

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

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

WHEREAS, the Town Council has previously authorized certain contracts, project plans, property acquisition, and other activities and efforts to enable planning, financing and construction of a new water intake facility on the New River and a water line from that new intake to the Town's existing water system (said water line, together with such pipes, manholes, fittings, fixtures and other accessories as from time to time may be required, being collectively referred to herein as the "new water line"); and,

WHEREAS, the Town is entitled to exercise the power of eminent domain through condemnation of property for those purposes described in N.C. Gen. Stat. § 40A-3(b) and relevant provisions of Chapter 160A of the North Carolina General Statutes, including for purposes of improving, extending, or enlarging its water supply system;

WHEREAS, the Town was able to acquire most of the property interests necessary for construction (and subsequent maintenance, repair, improvement and/or enlargement) of the new water line by voluntary agreement with affected property owners, but was unable to reach voluntary agreements with a minority of property owners; and,

WHEREAS, the Town Council has, in closed sessions, previously authorized and directed town staff and the Town Attorney, as applicable, to acquire the property interests necessary for the new water line and, in the event voluntary agreements to purchase such property interests could not be achieved, to proceed with condemnation of such property interests;

AND WHEREAS, pursuant to said prior authorization given in closed session, the Town Attorney did file sixteen condemnation actions in Watauga Superior Court, file numbers 15 CVS 461 through 15 CVS 476 on September 16, 2015;

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Boone,

Attachment: Resolution_2.pdf (1056 : Water Project Item)

North Carolina, hereby affirms and ratifies its prior authorization of the filing of the aforesaid condemnation actions as necessary and in the public interest so that the Town may acquire such remaining real property interests (including but not limited to permanent easements and temporary construction easements) as are reasonably necessary or useful to construct, install, maintain, repair and/or improve the new water line;

AND BE IT FURTHER RESOLVED, that the Town Council authorizes and directs the Town Attorney to proceed with prosecution of said condemnation actions and related proceedings as such may be deemed reasonably necessary;

AND BE IT FURTHER RESOLVED, that the Town Council authorizes and directs Town officials, employees, representatives, contractors and agents, including but not limited to the Director of Public Works, the Town Manager, the Town Clerk, the Mayor and the Mayor Pro Tem, to execute such documents and provide such testimony or other evidence as may be required for the prosecution of such condemnation actions and related proceedings.

Adopted this 15th day of October, 2015.

ATTEST:

Christine Pope, Town Clerk

Rennie Brantz, Mayor Pro Tem