

REPORT ON INFORMATION RECEIVED REGARDING THE PROPOSED COOPER FARM CONDEMNATION BY THE TOWN OF BOONE

**Watauga County Voluntary Farmland Preservation Program Advisory Board
July 24, 2015**

The purpose of the Watauga County Voluntary Farmland Preservation Program, as stated in the program ordinance, is :
“to promote the health, safety, rural agricultural values, and general welfare of the county, and more specifically, increase identity and pride in the agricultural community and its way of life; encourage the economic and financial health of farming; increase protection from undesirable, non-farm development; and increase the protection of farms from nuisance suits and other negative impacts on properly managed farms.”

With this purpose in mind, the Agricultural Advisory Board has produced the following report and recommendation.

Public Hearing Request

Pursuant to Article X, Section 1000 of the Watauga County Voluntary Farmland Preservation Program Ordinance, the Town of Boone, through its attorney, sent to the Agricultural Advisory Board the attached letter stating in part, “On behalf of the Town of Boone, I hereby request that a public hearing be scheduled ...with respect to the Town’s plan to condemn a permanent easement on part of the parcel owned by Isaac Cooper, Ronald Sidney Cooper and Donald Cooper.”

Public Hearing

Consequently, the Board held a public hearing on July 14, 2015 at 7:00 pm in the large courtroom of the Watauga County Courthouse, following the publication and posting of a notice. Approximately 100 persons attended. At the hearing, the Board received information and comments from three Town of Boone representatives and approximately 15 Watauga County citizens. In addition, the Board received written comments and information from citizens at various times before and after the hearing. The Advisory Board thanks everyone who spoke and submitted written comments. The information has been vital in compiling this report.

Findings

As required by the ordinance, the Agricultural Advisory Board has produced the following report containing our findings and recommendations regarding the proposed condemnation, specifically addressing the three issues stated in the ordinance as follows:

1. Has the need for the project requiring the condemnation been satisfactorily shown by the agency requesting the action?

The Town’s explanation of the need for the project is not compelling. Future use projections used to justify the project have been challenged with seemingly credible information and statistics that refute the purported need. Evidence that existing resources have been maximally utilized was not presented. The resource on Winkler’s Creek has frequently been mentioned as an example, as well as the need to repair leaks in existing waterlines. The infeasibility of alternatives to the project (discussed below) is doubtful.

2. Has a financial impact analysis been conducted by the agency seeking the action?

A financial impact analysis should evaluate how the project financially impacts the ability to operate the farm profitably, however much or little that impact may be. The Town of Boone presented a real estate appraisal as the financial impact analysis, which only partially addresses the issue. Therefore, a complete financial impact analysis has not been conducted.

3. Have alternatives been considered to the proposed action that are less disruptive to the agricultural activities and farmland base of the voluntary agricultural district within which the proposed action is to take place?

The Town of Boone stated that 27 different options to augment their existing water supply needs were studied, and the proposed project- which affects the Cooper property- was the only one determined to be feasible. Without a technical explanation from an engineer, and given such a large number of options, we feel that this determination is questionable. In addition, study of a combination of two or more options together would multiple the number of alternatives beyond 27. In short, alternatives have been considered by the Town- both to the project in general and on the Cooper farm specifically- but the conclusion drawn from the study of those 27 options does not convince us that the proposed project is the only feasible option available to the Town. Further, the amount of consideration given to each option's effect on agricultural activities and the affected farmland base was not presented.

Recommendation

Evidence of the need for the project presented by the Town of Boone is not convincing, in terms of future use projections, the maximum utilization of existing resources, and alternatives to the proposed project. The financial impact analysis is incomplete. The infeasibility of options to the project has not been proven satisfactorily, and the effect of each option on agricultural activities and the affected farmland base has not been explained. Based on the information we have received, we recommend that the Town of Boone reconsider, reevaluate, or discontinue the proposed action.

Agricultural Advisory Board Members



Kelly Coffey, Chairman

Andrew Ellis

Joe McNeil

Jennifer Miller

Johnny Moretz



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ALLISON M. MEADE, *Attorney and Counselor at Law & NCDRC Certified Superior Court Mediator*

June 16, 2015

Via Personal Delivery and Email

Agricultural Advisory Board of Watauga County ✓
c/o Watauga County Soil and Water Conservation District
Attn: Brian Chatham
971 West King Street
Boone, NC 28607
brian.chatham@watgov.org

Watauga County Clerk Anita Fogle
842 West King Street, Suite 13
Boone, NC 28607

Dear Mr. Chatham and Ms. Fogle:

On behalf of the Town of Boone (the "Town"), I hereby request that a public hearing be scheduled by the Agricultural Advisory Board of Watauga County pursuant to North Carolina General Statutes §106-740 and the Watauga County Voluntary Farmland Preservation Program Ordinance, Article X, with respect to the Town's plan to condemn a permanent easement on part of the parcel owned by Isaac Cooper, Ronald Sidney Cooper and Donald L. Cooper, Watauga County Parcel Identification Number 2942-87-1802-000. The nature of the easement to be obtained is described in the attached Notice of Condemnation.

Thank you for your assistance, and please feel free to call me with any questions.

Sincerely,

Allison M. Meade

*Town Attorney
Town of Boone, North Carolina*

AMM/ksl
cc (via email):

John Ward, Town Manager
Rick Miller, Director of Public Works

read 6/16/15

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

May 14, 2015

TO Property Owner(s):

I.S. Cooper
3124 CRANBERRY SPRINGS RD
FLEETWOOD, NC 28626

Ronald Sidney Cooper
Donald Lee Cooper
2850 CRANBERRY SPRINGS RD
FLEETWOOD, NC 2862

NOTICE OF CONDEMNATION

This is official NOTICE OF CONDEMNATION under Chapter 40A-40 of the North Carolina General Statutes that the Town of Boone, a North Carolina municipal corporation (hereinafter, "the Town"), intends to institute an action to condemn property described below in which you have or claim an interest.

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 construct, install, repair, maintain, and/or improve such supply and system to meet future needs for water of Town residents and water customers. Specifically, the Town intends to condemn the property in question in order to construct, install, maintain, repair and improve as necessary a water line from a new water intake facility to the Town's water distribution system.

The property to be taken is a permanent easement over, under, and across approximately 1.81 acres, for the purpose of installing, inspecting, operating, maintaining, repairing and reconstructing water lines and such pipes, manholes, fittings, fixtures and other accessories (collectively, "the facilities"), as from time to time may be required, together with full right of access to and egress from said easement.

Other than while the facilities are under actual construction, maintenance, repair or improvement, the property owners shall have the right to use the easement area provided such use is not inconsistent with and does not interfere with the Town's use of the easement area as described above. Prohibited uses of the easement by the property owner include, but are not limited to, the following: the erection of a shed, building, structure or other permanent obstruction within the easement; the planting of trees within the easement; and the construction or installation of culverts or other utility lines (including but not limited to, electric, gas, telephone, cable, or water lines) in a manner that

obstructs access to the Town's facilities, except with the prior written approval of Town. Any utility lines currently existing within the easement area shall either remain where they are or shall be relocated at the expense of Town.

Following installation of the facilities, the property owner may continue to use, install, repair, improve and maintain driveways, grass, gardens, crops and/or landscaping in the easement area, and may place fill and other materials (including gravel, asphalt, and concrete pavement) over the easement for such purposes. The Town will restore and repair damage it may cause to the property owners' property while installing, repairing, improving or maintaining its facilities. The Town shall have the right, but not the obligation, to keep the easement clear at all times, and the right to remove from the permanent easement all trees and other obstructions of any kind, and to go upon said easement whenever necessary for the purpose of removing the same.

The aforesaid permanent easement to be taken is located on a portion of the parcel acquired by the property owners and described in that instrument recorded at Book of Records 1288, Page 634 of the Watauga County Registry of Deeds, identified for tax purposes by the Watauga County Tax Administrator by Parcel Identification Number 2942-87-1802-000, and is more fully described in the attached description labeled "Exhibit A" and incorporated by reference herein, and is shown on the attached exhibit plat attached as Exhibit "B" to this notice and incorporated by reference herein. The shaded area in the attached Exhibit B represents the portion of the parcel to be taken. The amount estimated by the Town to be just compensation for the property to be condemned is \$23,700, based upon an estimate provided by a certified North Carolina appraiser.

The Town intends to file the action in condemnation to acquire this property on or about thirty days from the date of this notice, or June 14, 2015. However, unforeseen circumstances may delay or preclude the institution of the condemnation action and the exercise of possession of the property. You are advised that you have the right to commence an action for injunctive relief and you have the right to answer the complaint after it has been filed. You are advised to consult with an attorney regarding your rights.

Sincerely,

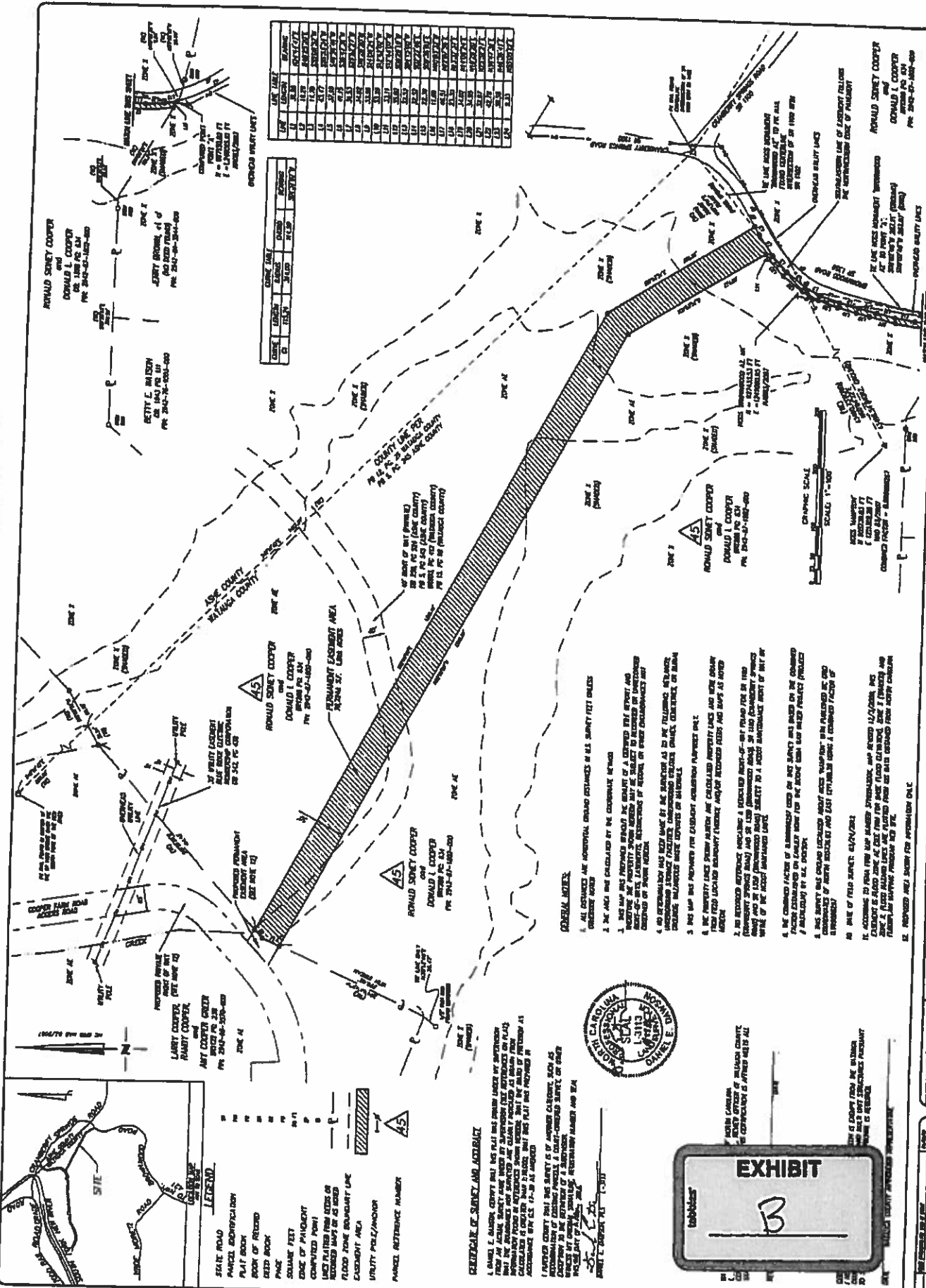


Allison M. Meade, Esq.
Town Attorney, Town of Boone
P.O. Box 292, Boone, NC 28607
(828) 865-5555 ameade@meade-law.com

EXHIBIT A
Permanent Easement Acquisition

Being located in Stony Fork Township, Watauga County, North Carolina and more accurately described as follows: commencing at a concrete monument found along the western side of Brownwood Road (S.R. 1359) said monument being North Carolina Geodetic Survey monument 'Brownwood AZ MK' which has North Carolina grid coordinates (NAD 1983/2007) of North: 927433.5323 and East: 1249060.9468 and a scale factor of 0.999866297, thence the following course and distance; S 09° 40' 36" W 278.07' to a point at the western edge of pavement of Brownwood Road, said point being in the southern line of the Ronald Sidney Cooper and Donald L. Cooper tract (Book of Record 1288, Page 634) and the northern line of the Jerry Brown, et al tract, Parcel Identification Number 2942-84-3544-000 said point being the point of beginning, thence from said point of beginning N 60° 03' 32" W 11.69' to a point, thence with a curve to the right having a radius of 314.00' an arc length of 115.24' and a chord of N 01° 37' 07" E 114.59' to a point, thence N 12° 07' 56" E 46.51' to a point, thence N 13° 37' 37" E 23.30' to a point, thence N 14° 06' 24" E 34.02' to a point, thence N 18° 28' 20" E 34.95' to a point, thence N 25° 52' 27" E 32.97' to a point, thence N 36° 47' 31" E 42.78' to a point, thence N 46° 36' 41" E 38.58' to a point, thence N 55° 08' 12" E 9.33' to a point, thence N 31° 53' 34" W 274.60' to a point, thence N 62° 00' 00" W 1209.89' to a point in the common property line of Ronald Sidney Cooper and Donald L. Cooper, (Book of Record 1288, Page 634) and Larry Cooper, Randy Cooper, and Amy Cooper Greer, (Book of Record 1122, Page 238), thence along said property line N 24° 44' 47" E 31.98' to a point, thence N 48° 25' 20" E 19.29' to a point, thence leaving said property line S 62° 00' 00" E 1218.42' to a point, thence S 31° 53' 34" E 295.56' to a point at the northwestern edge of pavement of Brownwood Road, thence along and with said edge of pavement the following thirteen calls: S 58° 09' 52" W 14.78, S 55° 33' 34" W 43.47, S 46° 36' 41" W 37.10', S 36° 47' 31" W 41.15', S 25° 52' 27" W 31.53', S 18° 28' 20" W 34.02', S 14° 06' 24" W 33.56', S 12° 42' 02" W 33.29', S 12° 44' 07" W 33.11', S 08° 29' 19" W 35.02', S 04° 15' 00" W 32.52', S 02° 22' 46" E 32.52', and S 09° 36' 03" E 22.39 to a point, said point being the point and place of beginning, containing 1.81 acres more or less as shown on a map prepared by WK Dickson entitled "Easement Crossing Property of Ronald Sidney Cooper & Donald L. Cooper", dated April 29, 2015.

The above described permanent easement is of a portion of the parcel owned by Ronald Sidney Cooper and Donald L. Cooper, Parcel Identification Number 2942-87-1802-000 and recorded in Book of Record 1288, Page 634 in Watauga County Register of Deeds office, Watauga County, North Carolina.



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EASTWEST CROSSING PROPERTY OF
RONALD SIDNEY COOPER & DONALD L. COOPER
TOWN OF BOONE, BOONE COUNTY, NORTH CAROLINA

TOWN OF BOONE
567 WEST KING STREET
BOONE, NORTH CAROLINA 28607

<p>DATE: 11/11/2011</p> <p>PROJECT: 11/11/2011</p> <p>BY: [Signature]</p> <p>FOR: [Signature]</p> <p>SCALE: 1"=100'</p>	<p>RECEIVED FOR: [Signature]</p> <p>DATE: 11/11/2011</p> <p>BY: [Signature]</p> <p>SCALE: 1"=100'</p>
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WK DICKSON
SURVEYING & ENGINEERING

1. ALL DISTANCES ARE APPROXIMATE AND SHOWN IN U.S. SURVEY FEET UNLESS OTHERWISE NOTED.

2. THE AREA HAS BEEN CALCULATED BY THE COOPERATIVE METHOD.

3. THIS MAP AND INSTRUMENT SHOULD BE KEPT IN A SAFE PLACE AND SHOULD BE PROTECTED FROM DAMAGE AND SHOULD BE KEPT IN A SAFE PLACE AND SHOULD BE PROTECTED FROM DAMAGE.

4. THE INSTRUMENT HAS BEEN KEPT IN A SAFE PLACE AND SHOULD BE PROTECTED FROM DAMAGE.

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