

**MINUTES - REGULAR MEETING  
BOONE TOWN COUNCIL APRIL  
15, 2010**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m. in the Council Chambers, 1500 Blowing Rock Road. 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, Planner Jane Shook, Finance Director Amy Davis, Fire Chief Reggie Hassler, Assistant to the Manager Jim Byrne, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Police Chief Dana Crawford, Development Services Director Bill Bailey and Human Resources Director Peri Moretz.

**ANNOUNCEMENTS**

Mayor Clawson announced that the Boone Spring Cleanup Day is set for Saturday, April 17, 2010. Mayor Clawson encouraged all citizens to participate in this annual event. The following week is Earth Week in the Town of Boone.

Police Chief Dana Crawford thanked retired Police Lieutenant Tom Redmond for his 28 years of service to the Boone Police Department.

Mayor Clawson thanked retiring Fire Chief Reggie Hassler for his 22 years of service to the Boone Fire Department.

**TENTATIVE AGENDA ADOPTION**

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

- Item 4.C. Adoption of Code Amendment to the Consent Agenda.
- Item 6.S. Adoption of Resolution - Small Scale Wind Energy
- Item 6.T. Adoption of Ordinance 05-01 Amendments.
- Item 6.U. Water Committee Recommendations.
- Legal Advice Regarding Free Standing Sidewalks to Closed Session.
- Right-of-Way Acquisition-Howard Street to Closed Session.

On a motion by Council member Brantz, seconded by Council member Leigh, Council moved to adopt the agenda as amended.

VOTE:Aye-All  
Nay-None

**CONSENT AGENDA ADOPTION**

On a motion by Council member Brantz, seconded by Council member Mason, Council moved to adopt the following consent agenda items:

Minutes:        March 1, 2010 - Special Meeting.  
                      March 15, 2020 - Special Meeting.  
                      March 16 & 18, 2010 - Regular Meeting.  
                      March 22, 2010 - Special Meeting.  
                      March 31, 2020 - Special Meeting.

Reassignment of Council Representative to Mountainkeepers. Council member Andy Ball is the new representative.

Adoption of Code Amendment - §30.51 Appointments.

**§30.51 APPOINTMENTS**

- (A) All appointments made by the Council shall be made in open session. ~~The Council~~

~~or committee of the Council may consider (but not make) an appointment to another body in closed session, if it follows the requirements set out in division (B) below. The Council may not consider or fill a vacancy among its own membership except in an opening meeting~~ **the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the Town Council or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.**

~~(B)——If the Council or a committee of the Council considers an appointment to another body in closed session as permitted by G.S. § 143-318.11(a)(6), the Council shall, prior to making the appointment, present at an open meeting a written list of the persons then being considered for the appointment, and on the same day shall make the list available for public inspection in the office of the Clerk. The Council shall not make the appointment in such a case before the seventh day after the day on which the list was presented.~~

~~(B)(C)~~ The Council shall use the following procedure to appoint individuals to various subordinate boards, commissions, task forces, advisory bodies, or committees but this shall not apply to the designation by the Council of one or more of its own members to participate or act as liaison to boards, commissions, task forces, advisory bodies, committee or other entities of its own creation or designation or appointment of one more of its own members to participate or act as liaison to other bodies not created by the Town:

(1) At least two months before any anticipated vacancy on any board, commission, task force, advisory body or committee (the “body”) due to the expiration of a term, the Department Head staffing the body shall notify the Town Clerk of the expected vacancy. For vacancies created by resignation or removal for failed attendance, the Department Head shall notify the Town Clerk as soon as practical.

(2) At least one month before the Town Council meeting when the action is to be taken, the Town Clerk shall cause to be published on the town’s website, and in the Watauga Democrat, the committees for which appointments are contemplated, with the date when action on the appointments is expected. To the extent practical, the Town Clerk shall also seek announcements of such vacancies on WATA radio and WASU. **So long as the advertisements soliciting interest for an appointment to a body fully and accurately describes criteria for membership that applies to multiple appointments to that body, the Town Council may fill more than one position on the body from the applications which are received, without regard to the time the vacancy occurs.**

(3) Any person seeking appointment to a body, including individuals seeking reappointment to the body and student representatives to the body, must complete and submit to the Town Clerk an “Application for Appointment to a Board, Commission, Task Force, Advisory Body or Committee” on a form approved by the Town Council and available from the town’s website and the Town Clerk.

(4) The Town Clerk shall include in the board book for the meeting where the appointment shall be considered:

- (a) A copy of each application received for the appointment;
- (b) A current roster of the membership of the body in question, with terms shown; and
- (c) A copy of the selection criteria, if any, established under State law or town ordinance, such as the Unified Development Ordinance.
- (d) Should the application be submitted too late for inclusion in the Board book, it shall be provided to Council members as part of a supplemental packet prior to the beginning of the

Council meeting. Unless a person's application is provided in the board book or supplemental packet, the person shall not be considered for the appointment, but this provision shall not prevent the Town Council from delaying appointment of the position in question until a later meeting.

(5) Unless superceded by State law or otherwise directed by other town ordinance, people who reside in the town shall generally be favored for appointment to town bodies over people who reside outside the town. Notwithstanding this provision, the Town Council shall strive to appoint at least 25% of the membership of any body from residents of the town's Extra Territorial Jurisdiction (ETJ). However, when an applicant neither resides in the town nor ETJ, but has particular skills or experience that make appointment of that applicant desirable, the applicant may nevertheless be appointed.

(6) The Town Council shall generally avoid appointment of any one person to more than two bodies. **In addition, no person other than a Town Council member shall be allowed to serve on more than three concurrently existing Town bodies, including boards, commissions, task forces, advisory bodies, committees, or other such entities. Any person inadvertently appointed to more than three such bodies shall be given an opportunity to resign from a sufficient number of bodies to meet this limit, but after notice, if the person fails to effectuate such resignations by notice to the Clerk within thirty days, the Town Council shall designate the bodies upon which the person shall continue to serve, and such designation shall operate to remove the person from all other bodies.**

(7) Any Council member may request that applicants for a body be present at the Council meeting during which the appointment is expected to be made so that the applicant may be questioned by members of the Council as to the applicant's qualifications. Even if no such request is made, it shall be proper for Council members to directly contact applicants to discuss the applicant's interest in and qualification for the appointment.

(8) At the meeting during which an appointment is to be made, the Mayor shall first open the floor to nominations. Nominations shall be made by Council members from the applicants properly before the council, but a nomination shall require no "second." Once all nominations have been made, the names of nominees shall be put forward by the members and debated. Upon the conclusion of the debate, the Mayor shall propose each name in alphabetical order, and the members shall cast their votes.

(9) Each Council member shall be entitled to one vote for each position, and when multiple appointments are made, each members cast each vote for a different nominee. Voting shall continue until a nominee received a majority of the votes cast, whereupon that person shall be appointed. If more appointments are to be made and an insufficient number of nominees receives a majority of votes, there shall be successive votes until the requisite appointments are made by majority vote. In each successive vote, and persons receiving a majority of votes in the previous round and the applicant with the fewest votes in the second vote, the applicant receiving the fewest votes in the second vote shall be excluded from further votes, and a third vote shall be taken. Unless excused from voting, each member of the Council must cast a vote in each round of voting.

(10) Members of a board, commission, task force, advisory body, committee, and other such entity (hereafter, "the body"), except in cases in which a particular term of service is specified, are appointed for the duration of the body. However, if the duration of the body is indefinite, unless the Town Council specifies a different term of membership, membership will be for three years and may be renewed for one additional three year term. Unless otherwise specified by the Town Council, no person may serve on the body for more than six consecutive years, but a person may be reappointed to the body following a one-year period of non-membership. Unless the Town Council takes specific action to excuse the absences and reappoints a member of the body after being informed by the Town Council of the member's removal, a member shall be automatically removed for failure to attend three consecutive meetings or for failure to attend three consecutive meetings or for failure to attend 50% of the meetings within any 12 month period. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not be included in the attendance

calculations nor affect the member's status on the body, except that in the event of a long illness or other such cause for prolonged absence, the members shall be replaced. The Town Clerk shall notify any member who has been removed. In addition, a member of the town Council may propose removal of a member for any cause related to the performance of official duties, but before removal on that basis, the member shall be given an opportunity to appear before the Town Council to address the issues involved.

VOTE:Aye-All

Nay-None

### **PUBLIC COMMENT**

Ms. Mary Sue Miller of 293 Spruce Street appeared before Council to request that the green fencing currently in place around the new High School property be placed along her property line also. Ms. Miller explained that the fence currently being proposed along her property line is more expensive and much less attractive than the green fencing. Development Services Director Bill Bailey said the School Board has agreed to place evergreen trees along its property line in order for the green fencing to be extended around Ms. Miller's property.

### **SCHEDULE SPECIAL MEETING TO HEARING ZONING TEXT AMENDMENTS**

Planner Jane Shook requested permission to present zoning text amendments on internet sweepstakes and mixed-use developments in B-zones at the April 22<sup>nd</sup> joint Planning Commission and Town Council meeting. Ms. Shook suggested that Council conduct a special public hearing on the text amendments on May 10<sup>th</sup> and then the Planning Commission will meet on May 17<sup>th</sup> at 7:00 p.m. to make recommendations to the Town Council for its May 18<sup>th</sup> meeting. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to hear the zoning text amendments at the April 22<sup>nd</sup> joint meeting and to schedule a special public hearing on the text amendments for May 10, 2010.

VOTE:Aye-All

Nay-None

### **SEND ZONING MAP REQUEST TO MAY OPH - FAITH MISSIONARY BAPTIST CHURCH**

Planner Jane Shook requested permission to send a zoning map request from Faith Missionary Baptist Church to the May 3, 2010 Quarterly Public Hearing. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to send a zoning map request form Faith Missionary Baptist Church to the May 3, 2010 Quarterly Public Hearing.

VOTE:Aye-All

Nay-None

### **SEND ZONING MAP REQUEST TO MAY OPH - STUDIO WEST APARTMENTS, LLC**

Planner Jane Shook requested permission to send the Studio West Apartments LLC zoning map request to the May 3, 2010 Quarterly Public Hearing. Ms. Shook pointed out that Studio West Apartments, LLC is requesting zoning of a portion of property outside the town's limit. This request was a condition of a recent water allocation. Ms. Shook explained that the property can be zoned either B-3 or R-A and that Council should choose which zone to present at the May Quarterly Public Hearing. Council member Brantz asked about the advantages and disadvantages of both zones. Planer Shook said both are based upon density. Council member Mason suggested the R-A zoning since the property owners have indicated no plans for using the upper portion of the property. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to send the Studio West Apartments LLC zoning map request to the May 3, 2010 Quarterly Public Hearing and to advertise the zoning of the property as R-A. Before voting, Council member Leigh said she was unprepared to vote on the zoning of the property tonight.

VOTE:Aye-3 (Brantz, Mason, Phillips)

Nay-2 (Ball, Leigh)

**SEND ZONING MAP REQUEST TO MAY OPH - COURTYARD BY MARRIOTT**

Planner Jane Shook requested permission to send the Courtyard by Marriott zoning map request to the May 3, 2010 Quarterly Public Hearing. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to send the Courtyard by Marriott zoning map request to the May 3, 2010 Quarterly Public Hearing.

VOTE:Aye-All  
Nay-None

**ADOPTION OF RESOLUTION - DIRECTING CLERK TO INVESTIGATE STUDIO WEST APARTMENTS ANNEXATION PETITION**

Planner Jane Shook said this is the first step in the voluntary contiguous annexation request of 3.01 acres located directly behind the High Country Inn. Ms. Shook indicated that Studio West is requesting annexation as part of a condition of a recent water allocation and special use permit that would allow conversion of the High Country Inn into a 120 studio apartment complex. On a motion by Council member Brantz, seconded by Council member Ball, Council moved to adopt the following resolution:

**RESOLUTION DIRECTING THE CLERK TO INVESTIGATE  
A PETITION RECEIVED UNDER G.S. 160A-58.1  
(Studio West Apartment, LLC)**

WHEREAS, a petition requesting annexation of an area described in said petition was received on April 13, 2010 by the Town Council; and

WHEREAS, G.S. 160A-31 provides that the sufficiency of the petition shall be investigated by the Town Clerk before further annexation proceedings may take place; and

WHEREAS, the Town Council of the Town of Boone deems it advisable to proceed in response to this request for annexation;

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

The Town Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the Town Council the result of her investigation.

|         |  |       |
|---------|--|-------|
|         |  |       |
|         |  |       |
| ATTEST: |  | Mayor |
|         |  |       |
|         |  |       |
| Clerk   |  |       |

**(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 136)**

VOTE:Aye-All  
Nay-None

**SCHEDULE SPECIAL MEETING - HALF-DAY RETREAT**

Council member Mason explained that numerous items were discussed at the recent retreat and that Council needs to provide the manager with short and long-term priorities for the upcoming fiscal year. Council member Mason also indicated that Council should prioritize a list of projects for TDA funding. On a motion by Council member Mason, seconded by Council member Ball, Council moved to schedule a half-day retreat for Wednesday, May 5, 2010 at 10:00 a.m. at the

Council Chambers.

VOTE:Aye-All

Nay-None

#### **UPDATE OF SISTER CITY PROJECT**

Council member Brantz noted that the Town of Boone has joined the Sister Cities International organization. Mr. Galib Abbazade updated Council on progress made stating that last month was very productive and that future plans include meeting with Chamber Director Dan Meyer. Dr. Bob Ellison spoke about the beauty of Azerbaijan and felt the partnership will be a tremendous, mutual asset. Council agreed.

#### **APPROVAL OF AGREEMENT - MEAC**

Town Manager Greg Young presented an agreement from the NC League of Municipalities (NCLM) to become a member of the Municipal Environmental Assessment Coalition (MEAC). Mr. Young explained that the NC Department of Environment and Natural Resources (NCDENR) is preparing to release the “triennial review” for state surface water quality. Mr. Young said the new state rules will likely affect wastewater treatment processes, require implementation of stormwater programs, mandate development rules and further regulate the land application of biosolids. Mr. Young said the NCLM predicts the costs of these new regulations to be significant and is soliciting bids for an engineering analysis of the proposed regulations. The analysis will assess the extent of the impact of the new rules and provide policy suggestions that can be used to inform and influence state regulators. Mr. Young said by signing the agreement the Town is agreeing to participate in the cost of hiring an engineering firm to prepare the analysis. The cost is \$1,000. Council member Brantz expressed his concern regarding the perception of joining an organization that may be perceived to be fighting tougher water quality standards. Council member Brantz asked if the new rules will be implemented regardless of the engineering analysis. Mr. Young said yes, that the new regulations could be implemented regardless, but hoped that NCDENR would consider the engineering analysis. Council member Mason felt this analysis will provide more information to all municipalities. On a motion by Council member Brantz, seconded by Council member Ball, Council moved to adopt the following contract:

#### **NCLM MUNICIPAL ENVIRONMENTAL ASSESSMENT COALITION PROJECT PARTICIPATION AGREEMENT**

This Agreement is made and entered into this 15<sup>th</sup> day of April, 2010, by and between the Town of Boone (sometimes hereinafter referred to as the “Town” and the North Carolina League of Municipalities (sometimes hereinafter referred to as the “League”).

#### **RECITALS**

WHEREAS, in accordance with a mandate of the U.S. Environmental Protection Agency (“EPA”), the N.C. Department of Environment and Natural Resources Division of Water Quality (“DWQ”) has initiated a review and modification of existing surface water quality standards, proposing to lower the standards for various metals and the nutrient chlorophyll-a; and

WHEREAS, the DWQ proposed standards are extremely complex expressions of national scientific studies which will cause, when enacted, municipalities statewide to undertake expensive upgrades to wastewater treatment plants, implement stormwater programs, enact development regulations such as riparian buffers, and restrict further land application of biosolids practices; and

WHEREAS, members of the League’s Planning & Services Technical Advisory Committee recognized the potential burdens of the proposed standards and related rules and identified the need for a coordinated statewide analysis of the impacts of those rules in order to obtain accurate, science-based knowledge to be used in efforts to promote the adoption of rules that will protect water quality while having the least negative impact upon municipalities; and

WHEREAS, the Committee further recognized that specialized professional expertise would be required to conduct the analysis and suggested that the League, as an additional service

to its members, engage an engineering firm to perform that work with the costs thereof to be funded by members of the League desiring to participate; and

WHEREAS, the League, through a subcommittee of the Planning & Services Technical Advisory Committee, will recommend that an engineering firm (“Consultant”) be selected to conduct the analysis and perform the work desired; and

WHEREAS, the League is prepared to move forward and contract with the Consultant, once selected, and the Town desires to participate in funding the costs of the work as herein specified;

NOW, THEREFORE, in consideration of the mutual promises herein set forth, the League and the Town agree as follows:

## **1. Definitions**

The following terms, except where the context clearly indicates otherwise, shall have within this Agreement the respective meanings set forth below.

- A. “Agreement” means this NCLM Municipal Environmental Assessment Coalition Project Participation Agreement.
- B. “Consulting Services Agreement” shall mean that agreement entered into between the League and the Consultant pursuant to which the Services will be performed.
- C. “MEAC” means the Municipal Environmental Assessment Coalition which is the group of League members that agree to participate in the Project Cost. A “MEAC Participant” is a member of the group.
- D. “Participant Cost” means the portion of the Project Cost paid to the League by an individual MEAC Participant.
- E. “Project Cost” means the cost for the Services as provided by the Consultant pursuant to the Consulting Services Agreement.
- F. “Project Fund” means the separate fund held by the League consisting of the total amount of Participant Costs received from MEAC Participants and applied in accordance with this Agreement.
- G. “Services” means the work to be performed by the Consultant to include conducting a fiscal analysis of the statewide impacts and benefits of the proposed DWQ rules; explaining the areas of state policy that affect implementation of the proposed rules; and suggesting modifications or alternatives to those rules that will lessen the impacts or increase the benefits of the proposed rules.

## **2. Project Administration**

The League, subject to the provisions of Section 5 below, shall enter into the Consulting Services Agreement. The League will administer the Consulting Services Agreement and, in consultation with members of the League’s Planning & Services Technical Advisory Committee, supervise the work of the Consultant. The League shall pay sums due to the Consultant under the Consulting Services Agreement from the Project Fund.

## **3. Participant Cost**

The amount of the Participant Cost to be paid by the Town is One Thousand Dollars (\$1000.00). The Participant Cost shall be paid in two installments due as follows: one-half at such times as this Agreement is executed by the Town and it is submitted to the League for execution; and, one-half on or before July 31, 2010 upon submission of an invoice by the League, such invoice to be submitted subsequent to July 1, 2010.

## **4. Use of Project Results**

The results of the work performed by the Consultant will be available for use by the League and MEAC Participants.

## **5. Conditions Precedent to League’s Performance**

The League's obligation under this Agreement to enter into the Consulting Services Agreement is conditioned upon a sufficient number of municipalities entering into similar agreements with the League (obligating such municipalities to provide funds to pay the Project Cost) to fund the full amount of the Project Cost. The town acknowledges that, in reliance upon this Agreement, the League will enter into the Consulting Services Agreement and thereby incur monetary obligations which will be paid, in part, by payment of the Participant Cost. In the event that the League does not enter into the Consulting Service Agreement, the League will refund to the Town the portion of the Participant Cost paid by it.

## **6. Miscellaneous**

- A. This Agreement shall be dated as of the date it is executed by the Town.
- B. This Agreement shall be execute din two counterparts, each of which shall constitute an original. This Agreement and its counterpart shall be deemed to be one and the same instrument.

IN WITNESS THEREOF, the parties have executed this Agreement as of the day and year first above written.

VOTE:Aye-All  
Nay-None

## **APPROVAL OF GRANT REQUESTS - POLICE DEPARTMENT**

Police Chief Dana Crawford requested permission to apply for two Governor Highway Safety Program grants. Mr. Crawford explained that the first grant is for checkpoint equipment, such as flashlights, traffic cones, reflective safety vests and lighting equipment. Mr. Crawford said this grant is awarded at 100% and no match is required by the Town. Mr. Crawford said the second grant is also an equipment grant, such as mobile data terminals, in-car cameras and antenna radars. This grant application will also include a four-wheel drive vehicle. Mr. Crawford said this grant is for \$60,350 and, if funded, the Town must provide a 15% match that equals \$10,650. After little discussion on a motion by Council member Mason, seconded by Council member Phillips, Council moved to allow the Police Department to apply for the two grants mentioned above.

VOTE:Aye-All  
Nay-None

## **DISCUSSION OF OFFICIAL MEETING SCHEDULE**

Council member Ball felt the two-meeting-per-week schedule is working great with the exception of the months that the 3<sup>rd</sup> Thursday and Tuesday fall in different weeks. Council member Ball suggested that Council reword the official meeting schedule to reflect that Council will meet the 3<sup>rd</sup> Tuesday of each month and the subsequent Thursday. Council agreed. On a motion by Council member Ball, seconded by Council member Mason, Council moved to direct the Clerk to amend the official meeting schedule and to schedule the second Tuesday and subsequent Thursday in December as the Council meetings.

VOTE:Aye-All  
Nay-None

Mayor Clawson declared a break at 7:44 p.m. Council reconvened at 7:52 p.m.

## **SCHEDULE SPECIAL MEETINGS - BUDGET WORKSHOPS & PUBLIC HEARING**

Council scheduled the budget workshops for Tuesday, June 8, 2010 and Thursday, June 10, 2010 at 8:30 a.m. in the Council Chambers. The budget public hearing will be held on Thursday, June 15, 2010 at 6:30 p.m.

## **ANNOUNCEMENT OF BOARD VACANCIES**

Mayor Clawson announced one vacancy on the Greenway Parks and Gardens Committee and two ETJ vacancies on the Historic Preservation Commission.

#### **BOARD APPOINTMENTS - AFFORDABLE HOUSING TASK FORCE**

There were no applications presented for this vacancy. The Clerk was directed to re-advertise for the vacant position.

#### **BOARD APPOINTMENTS - BOONE ABC BOARD**

Council member Ball nominated Candy Winebarger for the open position on the ABC Board. There being no further nominations, Council appointed Candy Winebarger to the ABC Board. Her term will expire April 30, 2013. Council also directed the Clerk to place appointment of the ABC Board chair position on the May Council meeting.

#### **BOARD APPOINTMENTS - CABLE TV ADVISORY COMMITTEE**

There were no applications presented for this vacancy. The Clerk was directed to re-advertise for the vacant position. Town Attorney Sam Furgiuele said he plans to investigate whether or not the Town can dissolve this committee since the State of NC now holds the franchise.

#### **BOARD APPOINTMENTS - COMMUNITY APPEARANCE COMMISSION**

Council member Leigh nominated Brian Williams for the open position on the Community Appearance Commission. There being no further nominations, Council appointed Brian Williams to the Community Appearance Commission. His term will expire June 30, 2011.

#### **BOARD APPOINTMENTS - GREENWAY PARKS & GARDENS COMMITTEE**

Council member Mason nominated Jack Reeves for an open position. Council member Brantz nominated Emily McCoy for another open position. There being no further nominations, Council appointed Jack Reeves and Emily McCoy to the Greenway Parks and Gardens Committee. Mr. Reeves' term will expire July 31, 2013. Ms. McCoy's term will expire July 31, 2010.

#### **BOARD APPOINTMENTS - OUTSIDE AGENCY FUNDING COMMITTEE**

Council member Brantz nominated Denica Joyce to an open position on the Outside Agency Funding Committee. There being no further nominations, Council appointed Denica Joyce to the Outside Agency Funding Committee. Her term will expire July 31, 2013.

#### **BOARD APPOINTMENTS - WATER STUDY COMMITTEE/WATER SUB-COMMITTEE**

Town Clerk Freida Van Allen presented an application from Janet Pepin to serve on the Water Study Committee. Town Attorney Sam Furgiuele explained that since there is not an open position Council may expand the committee and advertise for the vacancy. On a motion by Council member Ball, seconded by Council member Leigh, Council moved to expand the Water Study Committee by one position and to advertise for the vacant position.

VOTE:Aye-All

Nay-None

#### **APPROVAL OF PAYMENT - DESIGN AND CONSTRUCTION FEES FOR ASU/BOONE INTERCONNECT**

Public Utilities Director Rick Miller explained that the Town of Boone owes Appalachian State University \$3,355.70 for a portion of the design fees for the interconnect agreement. On a motion by Council member Brantz, seconded by Council member Mason, Council moved to

authorize payment of \$3,335.70 to Appalachian State University.

VOTE: Aye-All  
Nay-None

### **APPROVAL OF AGREEMENT - NCDOT**

Public Utilities Director Rick Miller said this agreement is for the design and relocation of a 16" water main in order to provide storm drainage and sidewalks to the Watauga High School project. Mr. Miller said the relocation will cost the Town \$49,579.20. On a motion by Council member Mason, seconded by Council member Phillips, Council moved to adopt the following contract:

### **DOT CONSTRUCTION AGREEMENT**

NORTH CAROLINA  
WATAUGA COUNTY

DATE: 3/31/2010

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

AND

WBS Elements: 41604

TOWN OF BOONE

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department" and the Town of Boone, hereinafter referred to as the "Municipality".

### **WITNESSETH:**

WHEREAS, the Department and the Municipality propose to make certain improvements under said project in Watauga County; and,

WHEREAS, the Municipality has agreed to participate in the cost of the project as hereinafter set out.

NOW, THEREFORE, the parties hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant and agree, each with the other, as follows:

### **Scope of the Project**

1. The Project consists of adjustments and/or relocations of the municipally owned water lines located on SR 1665 (Old US 421) in Boone.

### **Phases of Work**

2. The Department shall be responsible for all phases of the project including planning, design, right of way, utilities, construction and contract administration. All work shall be done in accordance with the Departmental standards, specifications, policies, and procedures.

### **Funding**

3. The Municipality shall reimburse the Department one hundred percent (100%) of the relocation of the water line. Based on the estimated cost of \$49,679.20, the Municipality shall submit a check to the Department's Division Engineer upon execution of this Agreement by the Municipality. Upon completion of the project, if the relocation costs exceed the amount of payment, the Municipality shall reimburse the Department any underpayment within sixty (60) days of invoicing by the Department. If the actual cost of the work is less than \$49,679.20, the Department shall reimburse the Municipality any

overpayment. The Department shall charge a late payment penalty and interest on any unpaid balance due in accordance with G.S. 147-86.23.

4. In the event the Municipality fails for any reason to pay the Department in accordance with the provisions for payment herein above provided, North Carolina General Statute 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to said Municipality by the General Statutes of North Carolina, Section 136-41.1 until such time as the Department has received payment in full under the reimbursement terms set forth in this Agreement. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23.

#### **Maintenance**

5. Upon completion of the Project, only those improvements within the state owned right of way shall be considered on the State Highway System and owned and maintained by the Department.

#### **Additional Provisions**

6. It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency. By execution of this Agreement, the Municipality certifies, that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by a governmental department or agency.
7. The Municipality will indemnify and hold harmless the Department and the State of North Carolina, their respective officers, directors, principals, employees, agents, successors, and assigns from and against any and all claims for damage and/or liability in connection with the Project activities performed pursuant to this Agreement including construction of the Project. The Department shall not be responsible for any damages claims, which may be initiated by third parties.
8. By Executive Order 24, issued by Governor Perdue, and N.C.G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Correction, Crime Control, Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to the conditions of this Agreement and that no expenditure of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

VOTE: Aye-All  
Nay-None

#### **MONTHLY WATER USE STATUS REPORT**

Public Utilities Director Rick Miller presented the monthly water-use status report (**copy permanently on file in the April 2010 Town Council meeting packet.**)

#### **APPROVAL OF BUDGET AMENDMENTS**

On a motion by Council member Brantz, seconded by Council member Leigh, Council moved to adopt the following budget amendments:

| DESCRIPTION | ACCOUNT # | TO: | FROM: |
|-------------|-----------|-----|-------|
|-------------|-----------|-----|-------|

|                                                 |                    |          |            |
|-------------------------------------------------|--------------------|----------|------------|
| MAINTENANCE-VEHICLES<br>(POLICE DEPARTMENT)     | 010-500-300-525301 | \$2,644  |            |
| MISCELLANEOUS REVENUE<br>(GENERAL FUND)         | 010-000-000-489900 |          | (\$2,644)  |
| MAINTENANCE-VEHICLES<br>(POLICE DEPARTMENT)     | 010-500-300-525301 | \$5,044  |            |
| MISCELLANEOUS REVENUE<br>(GENERAL FUND)         | 010-000-000-489900 |          | (\$5,044)  |
| CONTRACTED SERVICES<br>(FACILITIES MAINTENANCE) | 010-600-405-577000 | \$22,560 |            |
| APPROPRIATED FUND BALANCE<br>(GENERAL FUND)     | 010-000-000-499900 |          | (\$22,560) |
| CONTRACTED SERVICES<br>(FACILITIES MAINTENANCE) | 010-600-405-577000 | \$22,000 |            |
| APPROPRIATED FUND BALANCE<br>(GENERAL FUND)     | 010-000-000-499900 |          | (\$22,000) |
| MISCELLANEOUS SUPPLIES<br>(NARCOTICS)           | 012-500-303-519900 | \$20,325 |            |
| CAPITAL OUTLAY-AUTOMOBILES<br>(NARCOTICS)       | 012-500-303-573100 | \$33,974 |            |
| APPROPRIATED FUND BALANCE<br>(NARCOTICS)        | 012-500-303-499900 |          | (\$54,299) |

VOTE:Aye-All  
Nay-None

**REQUEST PERMISSION TO DEVELOP A BOONE HISTORICAL AND CULTURAL CHARRETTE**

Council member Ball said there is a need for more community input about ways to preserve and promote area history and culture. Council member Ball said members of the Historic Preservation Commission hope to conduct the charrette at the County Library. Council member Brantz indicated that the charrette will be held in mid-June and that the cost should be less than \$1,000. On a motion by Council member Mason, seconded by Council member Phillips, Council moved to endorse the charrette with the understanding that the Historic Preservation Commission will recommend a facilitator, date and cost at a later date.

VOTE:Aye-All  
Nay-None

**ADOPTION OF ORDINANCE 05-01 AMENDMENTS**

Town Attorney Sam Furguele explained the latest amendments to Ordinance 05-01. After a lengthy discussion, on a motion by Council member Leigh, seconded by Council member Mason, Council moved to adopt the following ordinance amendments:

**ORDINANCE 05-01**

WHEREAS, the Town of Boone has adopted a water system hydraulic analysis and master plan completed by W.K. Dickson; and

WHEREAS, the water system hydraulic analysis and master plan has revealed that the Town of Boone has a very limited remaining capacity in its water distribution system; and

WHEREAS, the Town of Boone has begun planning for alternative raw water sources and

possible water treatment plant expansion, but at this time does not know whether, to what extent, and within what time frame the Town may be able to add to its raw water sources; and

WHEREAS, The Town of Boone Water and Sewer Use Ordinance provides for the provision by the Town of water and sewer services both within the corporate limits and outside the corporate limits, including with the extra-territorial jurisdiction (ETJ) of the Town and beyond the boundaries of the Town and its ETJ; and

WHEREAS, during its planning process and until new sources for raw water are developed, the Town must closely monitor and prioritize the distribution of water to new applicants for water service; and

WHEREAS, the Town of Boone's water system was designed to provide water service only in the primary pressure zone, but through *ad hoc* decisions made with respect to individual requests, water service has at times been extended into the secondary pressure zone without the Town having studied the overall effects and costs of the general extension of water services into the secondary pressure zone, and those extensions have caused unexpected construction, engineering and fire protection problems; and

WHEREAS, during the administration of this Ordinance since it was first adopted in 2005, a number of issues have arisen relating to the applicants reserving water for extended periods without following through on proposed projects; and

WHEREAS, the Boone Town Council desires to amend the existing policies in the Town of Boone Water and Sewer Use Ordinance so as to establish priorities for the availability of water to new customers and to afford itself the necessary time within which to determine the future ability of the Town to serve the needs of its citizens and to assess the desirability of permanently amending the Water and Sewer Code to prioritize the future distribution of services; and

NOW, BE IT THEREFORE RESOLVED that pursuant to its police powers created under N.C. Gen. Stat. ' 160A-174, in order to provide for the health and welfare of the citizens of Boone, and pursuant to N.C. Gen. Stat. ' 160A-312, which confers upon the Town the authority to protect and regulate its water distribution system through the adoption of reasonable rules, the Boone Town Council hereby amends the following policy concerning the provision of water service to new customers. For its stated duration, unless extended, to the extent the following creates any conflict with the Town of Boone Water and Sewer Ordinance, the following provisions supercede and control the provision of water by the Town of Boone:

1. To the extent feasible and during the term of this Resolution, the Town shall allocate its remaining water usage gallons, evenly in yearly increments of 50,000 gallons for a four year period beginning January 1, 2008, along with any unused allocation from a prior calendar year made available in the following calendar year. In addition, through and including December 31, 2011, the Town shall reserve an allocation of 10,000 gallons per day from its available water supply for possible allocation to existing vacant lots within the corporate limits of the Town. However, when either a Stage II or Stage III water shortage is declared pursuant to Article VII of the Town of Boone Water and Sewer Code, or imposed on the Town by the State of North Carolina, the Town Council may suspend its consideration and approval of any new water applications. Likewise, the Town Council may direct the Public Utilities Department to suspend its consideration of any new water allocations until further action by the Council. Any approval of water service in a particular calendar year shall ordinarily be attributed to the available allocation for that same calendar year; however, the Town Council may designate that a particular approval of water service shall be attributed to the available allocation from any year within the term of this resolution, but the periods of time established in paragraph 5 herein for the expiration of rights shall be measured from the date of the Town Council's approval.
2. Beginning November 2008, and no less than annually thereafter, the Town shall review actual water usage records to determine whether changes should be made to the allocation allotments for subsequent years. The Council may adjust any yearly allocation based on actual usage as it can be determined and/or new information concerning remaining capacity.

3. An applicant for water service shall designate the location of the property to be served, the owner of the property, and if the applicant is not the owner of the property, the legal right of the applicant to apply for and obtain service. In addition, each applicant must describe a site specific development plan for the property in sufficient detail to enable the Town to assess the factors which may be considered under this ordinance. Any vesting of water rights which is obtained through a successful application during the term of this ordinance vests to the property itself for the specific project rather than to the applicant personally. Therefore, any change in ownership or change in legal rights subsequent to approval shall not affect the vesting of the water rights, the time periods described herein, or the payment of required fees; water rights may not be transferred from the property designated in the application to a different piece of property, even for the same or a similar site specific development plan; and substantial changes may not be made in the site specific development plan on the property designated in the application without a new application and appropriate payment of fees. A “substantial change” is one for which a different type of principal zoning use is proposed, e.g. multi-family to commercial, or there is more than a ten percent (10%) change, plus or minus, in the predicted water use for the site specific development plan, as determined by the calculations prescribed in paragraph 5, provided that a reduction in predicted use which is the result of a change to a site specific development plan initiated and mandated by the Board of Adjustment in a special use permit proceeding, or one which is the result of conditions agreed upon by the Town Council in a conditional district zoning proceeding shall not be considered a “substantial change” for purposes of this ordinance.<sup>1</sup> No new application may be approved for a property on which water rights are currently vested without the written relinquishment of previously granted water rights by the owner or other person with legal authority to do so.
4. Within thirty days of the time an application is approved and at the applicant’s option, the applicant must pay either ten percent (10%) or twenty percent (20%) of the availability fee for the approved site specific development plan. Such fee is non-refundable, but will be credited against the availability fee charged at the time of the actual connection to the Town’s system if the site specific plan is constructed as proposed. Such fee may not be transferred from one property to another property, and it may not be transferred from one site specific development plan to another, even if both are on the same property, if the subsequent plan is substantially changed, as defined in paragraph 3, above, from the plan which has been approved. If an applicant pays ten percent (10%), the applicant shall be entitled to a one year initial vesting period; if an applicant pays twenty percent (20%), the applicant shall be entitled to a two year initial vesting period.
5. Within the aforesaid limits, the Town of Boone shall ordinarily provide water service to future customers within the corporate limits on a first-come, first served, basis. The water usage predicted as to each application shall be determined by multiplying the usage predicted by the North Carolina Discharge Rate (NCDRS) Schedule by .60. Except for requests for service outside the corporate limits and extra-territorial jurisdiction of the of the Town (“ETJ”), any request for water service which involves predicted usage, as thus calculated, of over 3,000 gallons per day shall only be approved upon action, by majority vote, of the Boone Town Council acting in its *quasi* judicial capacity. Likewise, in each calendar year in which the Town has allocated two-thirds (2/3) of the water allotted for that year, all subsequent requests for water connection for which there is a predicted usage of more than five hundred (500) gallons per day must be approved by the Boone Town Council, without regard to the predicted usage resulting from the granting of the request. Any request for service outside the corporate limits and ETJ of the Town, without regard to the amount of the request, must be approved by a two-thirds super-majority of the Town Council members present and not excused from the vote. In determining the desirability of approving a connection for water service, the Council shall consider the following:
  - a. Any factor which may make the predicted actual use different from the NCDRS predicted use;

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<sup>1</sup>

- b. The amount of water usage in gallons per day previously approved during the calendar year;
  - c. The amount of water usage in gallons per day predicted to be used by the applicant, ordinarily with small requests preferred over large requests;
  - d. Whether in its opinion the application is for a land use which is consistent with the Town's adopted policies concerning growth and development; and
  - e. Such other factors as may be identified by the Town Council in its deliberations which either suggest that a particular project promotes or undermines the public health or safety, or the general welfare of the Town.
6. During the term of this Resolution, ordinarily only requests for service connections to property which is in the corporate limits will be granted. Any request for service outside the corporate limits and ETJ of the Town, without regard to the amount of the request, must be approved by a two-thirds super-majority of the Town Council members present and not excused from the vote. An applicant whose property is partly or wholly outside the Town limits may petition the Town for annexation, and if the property is annexed, in accordance with the requirements of North Carolina General Statutes and the Town of Boone's ordinances, water services may be extended to such property, in accordance with the provisions of this Resolution.
7. During the term of this Resolution, no service extensions into the secondary pressure zone shall be considered for approval unless the requesting property was located inside the Boone corporate limits on or before March 8, 2007, and applicant is willing to adhere to Town of Boone secondary pressure zone specifications, including, but are not limited to: eight-inch minimum pipe diameter; booster pumping stations of EFI design with fire pumping capabilities; minimum 100,000 gallon welded joint steel storage tank; pressure protection provided for each individual water service; and Dataflow Systems radio telemetry compatible with existing Town of Boone system. In addition, no portion of a proposed extension may exceed 3,620 feet in elevation. For purposes of this paragraph, an "extension" refers to the continuation of a water main beyond its currently existing limits.
8. During the term of this Resolution, a connection to an existing water main in a secondary pressure zone may be approved by the Town Council where such connection creates no negative impact on the Town's distribution system, allows adequate pressure to be maintained as may be necessary to comply with the requirements of the Boone Fire Department and applicable fire codes, results in no additional costs to the Town, and otherwise complies with the requirements of the Town of Boone Water and Sewer Code for connection to the Town's water system. For purposes of this paragraph, a "connection" is defined as the linking of pipes serving a single customer to an existing water main.
9. Any applicant granted the right to connect to the Town's water distribution system, without regard to the calendar year to which the applicant's predicted water usage is attributed, must obtain all needed development permits within the initial vesting period, dated from the approval by the Town Council or Public Utilities Department of the water application, or said approval will expire and the allocated water usage shall return into the overall water census for redistribution. Upon subsequent action by the Boone Town Council payment made prior to the expiration of the initial vesting period of the full remainder of the availability fee predicted for the site specific development plan for which approval has been granted, the approval of a water application will be extended for an additional period matching the vesting period of approved development permits for the site specific development plan, but not less than one additional year from the expiration of the initial vesting period, and any additional vesting of development permits which is obtained during the additional vesting period shall automatically extend the water rights to match that vesting period. The payment of the full remainder of the availability fee is non-refundable, but will be credited against the availability fee charged at the time of the actual connection to the Town's system if the site specific plan is constructed as proposed. Such fee may not be transferred from one property to another property, and it may not be transferred from one site specific development plan to another, even if both are on the same property, if the subsequent plan is substantially changed, as defined in paragraph 3, above, from the approved plan. If the required availability fee at the time of

the connection to the Town's system is more than the amount which has been previously paid, the remainder of the then current fee must be paid before a connection will be allowed; if the required availability fee at the time of the connection to the Town's system is less than the amount which has been previously paid, no refund shall be due. Without regard to the foregoing, should any applicant whose development project requires a special use permit or zoning permit allow the special use permit or zoning permit to expire, the applicant's water rights will also immediately expire. Likewise, should any applicant whose development project acquires a building permit allow the building permit to expire, the applicant's water rights will also immediately expire.

10. For purposes of this Ordinance, the term "development permits," as referred to in paragraph 9 above, shall mean the following:
  - a. In the case of applicants for water service for a minor subdivision, the minor subdivision plat approval and recording of the approved plat with the Watauga County Register of Deeds, and any associated zoning and grading compliance certificates;
  - b. In the case of applicants for water service for a major subdivision, a special use permit, and associated zoning and grading compliance certificates;
  - c. In the case of commercial development projects, all permits required for the physical development of the land, plus those permits necessary for the building. These may include some or all of the following: special use permits, zoning permits and building permits.
11. Whenever the Town Council approves an application for water service to either a proposed minor or major residential subdivision, the Director of Public Utilities shall subtract an amount of water from the available water calculations which reflects the projected amount of water which will be consumed when all residences in the proposed subdivision are fully constructed.
12. During the term of this Resolution, Section 3-10(G) of the Town of Boone Water and Sewer Code, which prohibits the connection into the Town's sanitary sewer system of the discharge from private water systems, other than the system of Appalachian State University, is suspended as to those applicants whose application for both water and sewer connections cannot be granted because the request for water service has been denied by the action of the Town Council in applying this Resolution. However, in order to be granted the right to connect to the sanitary sewer system, along with such other conditions as may be placed upon the applicant in accordance with the Town of Boone Water and Sewer Code, the applicant must agree to connect into the Town's water system, should the Town later request that such a connection be made, and the applicant must sign a statement of commitment to that effect, which will remain on file with the Town's Public Utilities Department.
13. Any request for water services from the Town must comply with all requirements of the Town of Boone Water and Sewer Code which are not superceded by this Resolution .
14. The Town of Boone Water and Sewer Department shall provide a monthly report to the Boone Town Council concerning the number and predicted volume of each water connection request approved during the term of this Resolution.
15. This resolution shall expire December 31, 2011, unless specifically extended by action of the Boone Town Council, and it may be modified by the Boone Town Council upon majority vote of the Council.
16. This policy shall become effective upon the adoption of this Resolution.

Amended and effective this the 27th day of June, 2005.

Amended and effective this the 21<sup>st</sup> day of July, 2005.

Amended and effective this the 15<sup>th</sup> day of December, 2005.

Amended and effective this the 16<sup>th</sup> day of February, 2006.

Amended and effective this the 20<sup>th</sup> day of December, 2007.  
Amended and effective this the 21<sup>st</sup> day of February, 2008.  
Amended and effective this the 18<sup>th</sup> day of September, 2008.  
Amended and effective this the 18<sup>th</sup> day of December, 2008.  
Amended and effective this the 15<sup>th</sup> day of April, 2010.

VOTE: Aye-All  
Nay-None

### **WATER COMMITTEE RECOMMENDATIONS**

Public Utilities Director Rick Miller said the Water Study Committee recommended, at its last meeting, that Council not accept any water applications that are prohibited during the multi-family in B zones moratorium. On a motion by Council member Mason, seconded by Council member Ball, Council accepted the recommendation not to accept any water applications that are prohibited during the multi-family in B zones moratorium.

VOTE: Aye-All  
Nay-None

### **ADOPTION OF RESOLUTION - SMALL SCALE WIND ENERGY**

Council member Ball introduced the resolution of support for small scale wind energy projects. Council member Ball summarized that the resolution is requesting that the General Assembly modify SB 1068 to include a permitting process for small scale wind energy projects rather than the de facto ban that is currently in place. Mr. Austin Hall of Appalachian Voices spoke in favor of the resolution and said passage sends a clear message that banning renewable energy is wrong. After some discussion, on a motion by Council member Phillips, seconded by Council member Mason, Council moved to adopt the following resolution:

#### **RESOLUTION**

WHEREAS, the development of wind power will increase local tax bases and create green jobs; and

WHEREAS, responsible permitting will prevent undesirable wind development projects while encouraging responsible, appropriate wind development; and

WHEREAS, wind energy will reduce fuel import costs, keep energy dollars in our troubled rural economies, and reduce energy costs in the long term; and

WHEREAS, local authorities have the capacity to ensure responsible permitting of wind energy facilities, and local authorities ought to have a say in their energy matters so that landowners in mountain communities will retain the fair and beneficial use of their land and the public's rightful interest and support for sustainable technologies may be effectuated; and

WHEREAS, the Town of Boone has a proud history of support for wind energy, as the MOD 1 Turbine was operated beginning in 1979 on Howard's Knob, serving as an important research and development model for wind energy statewide; and,

WHEREAS, the Town of Boone is proud of the Northwind 100 Wind Turbine at the Broyhill Inn at Appalachian State University, and believes it stands as a symbol of our community's commitment to renewable energy; and

WHEREAS, resident want to see more substantive wind development within Boone corporate limits; and

WHEREAS, originally, SB1068 was a good regulation which effectively addressed the potential impacts of different project scales, residential, community and utility-scale, and addressed the legitimate concerns that have been raised by those who oppose wind power as well as those who may conditionally support it; but

WHEREAS, through various amendments SB1068 was passed in a form that effectively prevents and prohibits the development of any wind energy in the Town of Boone and Watauga County; SB1068 as passed in the North Carolina Senate in the 2009 legislative session clarifies the 1983 Mountain Ridge Protection Act to allow wind turbines that are only 100 feet tall from the ground to the hub and generate electricity for an attached residence on protected North Carolina ridges, this resulting clarification effectively bans all commercial and some community scale wind turbines on windy western North Carolina ridges;

NOW, THEREFORE, BE IT RESOLVED by the Boone Town Council requests that the North Carolina General Assembly amend SB1068 to allow County level control of the permitting of windmills, utilizing approval considerations and special procedures which balance legitimate concerns regarding possible adverse impacts of windmills with the rights of landowners and the interests of communities and the public in the positive development of wind energy; and

BE IT FURTHER RESOLVED that the Town Manager as directed by the Town Council to instruct the Town's lobbyists to communicate its interests as expressed in this resolution to the appropriate persons and agencies, and further, through appropriate means, communicate the Town's interests to the north Carolina League of Municipalities along with the Town' request that the League use its resources to promote an equitable enactment by the General Assembly that authorizes such local control as expressed in this resolution; and

BE IT FURTHER RESOLVED that the Town Clerk shall transmit a copy of this Resolution to the Governor, Senator Steve Goss, and Representative Cullie Tareleton.

ADOPTED this the 15<sup>th</sup> day of April, 2010.

ATTEST:

Loretta Clawson, Mayor

Freida Van Allen, Town Clerk

**(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 137)**

VOTE:Aye-All  
Nay-None

**CLOSED SESSION**

On a motion by Council member Brantz, seconded by Council member Leigh, Council moved to enter Closed Session at 9:15 p.m., pursuant to NCGS 143-318.11a)3) in order to hear legal advice on waiver of fees, legal advice regarding free standing sidewalks and right-of-way acquisition for Howard Street.

VOTE:Aye-All  
Nay-None

On a motion by Council member Mason, seconded by Council member Ball, Council moved to exit Closed Session at 10:50 p.m.

VOTE:Aye-All  
Nay-None

**RECESS**

On a motion by Council member Phillips, seconded by Council member Mason, Council moved to recess the meeting until Tuesday, April 20, 2010 at 6:30 p.m. in the Council Chambers.

VOTE:Aye-All  
Nay-None

A recessed meeting from Thursday, April 15, 2010 was called to order at 6:32 p.m. on Tuesday, April 20, 2010 in the Council Chambers, 1500 Blowing Rock Road. 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 Furguele was also present. Staff members present were Town Manager Greg Young, Town Clerk Freida Van Allen, Finance Director Amy Davis, Fire Chief Reggie Hassler, Assistant to the Manager Jim Byrne, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Police Chief Reggie Hassler, Development Services Director Bill Bailey and Human Resources Director Peri Moretz.

### **TENTATIVE AGENDA**

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

-Ratification of Consent Order - Mountaintop Homebuilders, LLC

On a motion by Council member Brantz, seconded by Council member Mason, Council moved to adopt the agenda as amended.

VOTE:Aye-All

Nay-None

### **REQUESTED APPEARANCE - ROCKY NELSON**

Mr. Deron Geouque, Assistant County Manager for Watauga County, appeared before Council to request that in-town water rates be applied to the nine homes that were provided town water as part of the 1999 landfill settlement. Mr. Geouque explained that the Town provided water to the nine homes free of charge as part of the settlement agreement. Mr. Geouque also explained that the agreement was for ten years and that the ten-year free water period has recently expired. Council member Leigh said she did not foresee how the Town could amend the rules to provide in-town water rates to these nine homes. Town Attorney Sam Furguele agreed and said that the Water and Sewer Code must be amended and that Council must create a different class of users with their own standards in order to grant in-town rates. Town Manager Greg Young explained that the Town extended the waterline to these nine homes at no cost to the County or homeowners. Also the Town provided the taps at no charge. Questions about the actual agreement ensued. After a lengthy discussion, Council member Leigh made a motion to deny the request. Council member Ball seconded. Before voting, Council discussed the need to review the current water/sewer code and the agreement to determine if the Town can legally provide in-town rates. Council members Leigh and Ball withdrew the motion and second. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to have staff review the 1999 landfill agreement and to ask the Town Attorney review the water and sewer code to determine if the Town can provide in-town rates to the nine residences as part of a class settlement.

VOTE:Aye-All

Nay-None

### **REQUESTED APPEARANCE - ROCKY NELSON**

Mr. Deron Geouque, Assistant County Manager for Watauga County, appeared before Council to request waiver of the water and sewer availability fees in the amount of \$24,570. Mr. Geouque said Watauga County, in cooperation with ASU and the High Country Soccer, has spent over \$4,000,000 in the development of Brookshire Park. Mr. Geouque hoped that the Town would either waive the availability fees or donate that amount towards the park's development. Public Utilities Director Rick Miller explained that since the County provided the water and sewer improvements to the park, the County can apply 50% of those costs as a credit toward the availability. Once Mr. Miller explained the process Council agreed to instruct the County to apply for the off-site improvements credit as provided by the water and sewer code.

### **REQUESTED APPEARANCE - LIZ AYCOCK**

Ms. Liz Aycock, realtor from Weichert Realtors appeared before Council and made the following request:

April 20, 2010

Mayor Clawson and Town Council Members,

I am here tonight to ask for a 6 month Moratorium on the enforcement of open house directional signs in the town of Boone. I understand that the Planning Commission and the Planning Department are working on changes to the sign ordinance. I realize that drafting changes to ordinances and having them approved takes time and careful thought. I am asking for this moratorium as an interim solution to help the citizens of Boone sell their houses in a soft market. I am requesting this on behalf of the Realtors that I work with at Weichert, Realtors Weber-Hodges Group.

As we all know, these are tough economic times for everyone. The real estate market in Boone and throughout the country has suffered. Real estate sales have been the foundation for much of the success of our local economy. When property is exchanged, many other businesses benefit such as building, plumbing, electrical, painting and grading contractors, banks, insurance agents, appraisers, building supply stores, and more. When properties are sold there is a chain reaction throughout the community that helps our local economy prosper. Despite low interest rates and tax incentives available, our real estate market is in decline and foreclosures are on the rise. Real estate professionals are seeking creative ways to market and sell houses and are one of the most beneficial tools we have.

According to the NC Employment Security Commission, in February 2010, NC had 585,986 unemployed people. Watauga County had 2,189 people without jobs. Foreclosures in North Carolina for the year 2009 rose to 63,341. With unemployment and foreclosure rates rising, we need to do what we can to help sustain our economy.

The following contains current and past real estate market information for Boone and Watauga County. This information is derived from the High Country Association of Realtors Multiple Listing Service and does not include properties sold by individuals that were not listed with this service.

Currently, there are 196 active residential listings in the town limits. There are 446 active listings that include commercial, land and residential. Since January 1, 2010, there have been only 22 sales of residential property in the town of Boone.

In Watauga County there are 2,988 properties listed at this time. This includes land, residential and commercial properties.

In 2009, there were 106 residential properties sold in the Town of Boone. Of that total, 69 were sold between April 1, 2008 and October 31, 2008.

It is clear from this data that the prime time to sell a house in Boone is between April and October.

Open Houses are an effective tool for Realtors to use in selling a home. Over the past several years, my associates and I have hosted many open houses. We advertised in the paper, on our website, we did local TV advertising, we sent e-mails and mailed postcards. We were lucky if 2 or 3 people showed up. On occasion, no one showed up at all. Without property signage it is almost impossible to direct prospective buyers to the houses we have for sale.

Home buyers and sellers don't understand why we are not allowed to put open house signs at the intersections. They note that there are other signs allowed like political, yard sales and other special events. We have to tell them that under the current sign ordinance, we are not allowed to use off-premise signs to advertise the property.

By allowing directional open house signs, you will show the community that you want to help spur the economy and help the citizens of Boone have an advantage in selling their homes. Open

Houses can show the public that real estate activity is going on and help create interest in the area. Open house activity can also help to lift the spirits of the public, the real estate agents and also the homeowners.

Please consider the following:

Allow real estate professionals to apply for an open house sign permit. Have the cost be free or nominal.

Allow open house directional signs from 12:00 to 5:00 p.m., Saturday and Sunday. If signs are left out, past these times, consider fines.

I have attached the off premise open house regulations for the town of Cary, NC, an open house sign application for Redding, Connecticut, and a motion authorizing placement of open house signs in the Town of Mt. Crested Butte, Colorado, as examples.

I ask that you put your most cooperative foot forward to help facilitate any and all movement in our current local real estate market by allowing sellers as much opportunity as possible to market their properties and by providing interested buyers as much visual opportunity to visit homes having open houses. The net result will be more sales, more jobs, and an increased tax base.

Thank you for your consideration,  
Liz Aycock, Broker  
Weichert Realtors, Weber-Hodges Group

Ms. Aycock summarized her request of a six-month moratorium on enforcement of “open-house” directional real-estate signs. The signs shall be no larger than three square feet with a limit of three signs per property, only to be displayed on Saturdays and Sundays from 12-5 p.m. Council member Leigh commented this is a way that the Town can help support the local economy. After some discussion, on a motion by Council member Mason, seconded by Council member Brantz, Council moved to direct staff to prepare a 60-day moratorium ordinance on the enforcement of “open house” directional real estate signs. The public hearing and following adoption will be held on Wednesday, May 5, 2010 at 10:00 a.m., at the beginning of Council’s previously scheduled half-day retreat.

VOTE:Aye-All  
Nay-None

### **WATER AND SEWER REQUEST - AMBLING DEVELOPMENT**

Town Attorney Sam Furguiuele opened a public hearing at 7:20 p.m. to hear sworn testimony from Chelsea Garrett, Mike Trew and Public Utilities Director Rick Miller on a request for water and sewer service to property located at 421 Shadowline Drive. Ms. Chelsea Garrett of DiSanti and Watson reminded Council that this request was tabled at the February 18, 2010 meeting. Ms. Garrett reassured Council of the developers’ commitment to the project. Mr. Mike Trew of Municipal Engineering agreed and said Mr. Tauble of Ambling Development is still very much interested in constructing the project. Council member Mason asked if Ambling is willing to modify its plans to include commercial space within the project. Mr. Trew said Ambling is waiting to review the UDO text amendments regarding mixed use in B-zones. Council member Brantz asked if the development could be phased. Mr. Trew said it is more costly to construct phased developments but that Ambling may be willing to phase the project because of the water shortage. Mr. Trew felt the Shadowline property is an appropriate location for student housing since it is close to ASU parking and a retail shopping center. Council member Mason pointed out that the project was originally presented as residential housing, not student housing. Council member Mason also pointed out that Ambling has a reputation of developing property that ends being purchased by governmental entities, an action which leads to the property being tax-exempt. Mr. Trew said that was not Ambling’s intention with this project. Mayor Clawson asked Public Utilities Director Rick Miller if the Town has enough water available for the project. Public Utilities Director Rick Miller testified that the project will consume 66,338 gallons of water per day and that the Town does not have enough water remaining during 2010 and 2011 for this project. Council member Leigh asked if the proposed development is planned

as student housing. Mr. Trew testified that he misspoke earlier and that the project is actually residential housing. Ms. Garrett also testified that the project is not student housing. Council members Ball and Leigh said they were not ready to support the project at this time since there is not enough water available for allocation. Council member Mason agreed and said it will be difficult for the Town not to stifle development over the next couple of years given water availability. Ms. Garrett argued that if Council denies the water allocation, Ambling must resubmit a request for water allocation at a later date, an action which will ultimately delay the project. Ms. Garrett requested that Council table the matter until a later date rather than to deny the request outright. There being no further comments the public hearing closed at 7:55 p.m. Town Attorney Sam Furguele advised Council members that they should regard the project as a whole since the entire gallons per day must be allocated. On a motion by Council member Leigh, seconded by Council member Ball, Council moved to deny the water request because the gallons per day needed is not available at this time.

VOTE:Aye-2 (Ball, Leigh)

Nay-3 (Brantz, Mason, Phillips)

After some discussion, on a motion by Council member Brantz, seconded by Council member Phillips, Council moved to table this request until the June, 2010 Council meeting.

VOTE:Aye-3 (Brantz, Mason, Phillips)

Nay-2 (Ball, Leigh)

### **RATIFICATION OF CONSENT ORDER - MOUNTAINTOP HOMEBUILDERS, LLC**

Town Attorney Sam Furguele said this consent order was signed by the Honorable Judge Alan Thornburg in the April 19, 2010 session of Watauga County Superior Court. Town Attorney Furguele explained that this is partial settlement; however, the Town will have everything it needs to complete the water intake project. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to ratify the following consent order:

#### **CONSENT ORDER**

TOWN OF BOONE,  
Plaintiff,

vs.

MOUNTAINTOP HOME BUILDERS, LLC;  
BB&T COLLATERAL SERVICE CORP.; and  
BRANCH BANKING & TRUST COMPANY;  
Defendants.

THIS MATTER came on to be heard by the undersigned at the April 19, 2010, session of Superior Court for Watauga County, upon the plaintiff's Motion for an Order of Possession and/or Immediate Fee Simple Ownership and Motion to Consolidate. The plaintiff was represented by Samuel F. Furguele, Jr. Defendant Mountaintop Home Builders, LLC, was represented by John M. Logsdon. Defendants BB&T Collateral Service Corporation and Branch Banking & Trust Company were not present and were not represented. Based upon consent of the parties, the Court enters the following order without the necessity of full findings of fact and conclusions of law, which the parties hereby waive, as affirmed by their endorsement of this Order.

#### **FINDINGS OF FACT**

1. On March 25, 2010, defendant Mountaintop Home Builders, LLC ("Mountaintop") filed an Application Extending Time to File Complaint, obtaining an Order Extending Time to File Complaint and issuance of a Civil Summons to be Served with Order Extending Time to File Complaint, all as appears in File Number 10 CvS 213 in the Office of the Clerk of Superior Court for Watauga County.
2. Mountaintop filed a Complaint on April 14, 2010, seeking injunctive relief against the

Town, alleging that the Notice of Condemnation and Complaint in the instant action sought to condemn property that did not serve a public purpose and requesting an order limiting the extent of the taking.

3. On April 1, 2010, the Town commenced this action with the issuance of summonses and the filing of a Complaint, Declaration of Taking And Notice of Deposit, together with a Notice of Hearing. On the same day, the Town filed its Motion for Order of Possession and/or Immediate Fee Simple Ownership and its Motion to Consolidate. The defendants have been properly served with the summons, the complaint, and the motions, all as appears in the court file.
4. Counsel for the Town and Mountaintop have informed the Court that they have reached agreement as to the extent of the taking, and consent to the entry of this Order.

Based upon the foregoing Findings of Fact and Exhibit A, the Court makes the following  
**CONCLUSIONS OF LAW**

1. The Court has jurisdiction over the subject matter of this action and over the parties.
2. The Court has jurisdiction over the subject matter and the parties involved in the civil action entitled “Mountaintop Home Builders, LLC, vs. Town of Boone,” file number 10 CvS 213, Watauga County.
3. The interests of justice will be served by the consolidation of this action with the companion case, 10 CvS 213.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Court enters the following

#### **ORDER**

1. The Town’s Motion to Consolidate is GRANTED. This action is hereby consolidated with 10 CvS 213. Henceforth, all filings shall bear file number 10 CvS 232, and the Clerk of Court is directed to take all appropriate action to consolidate the Court files.
2. The following real property is hereby immediately vested in the Town of Boone in fee simple, and the Town shall have immediate possession thereof:

Tract 1: BEING all that portion of the property of Mountaintop, once the sediment has been removed, lying northeasterly of a contour line having an elevation equal to the elevation of the spillway of the dam located on the property of the Town (the “full pool elevation”).

Tract 2: BEING all that tract of land lying between Tract 1 and the line beginning on a point in the center of Winkler Creek, said point being fifty feet upstream from the intersection of the center of Winkler Creek with the full pool elevation line, and running thence generally southeasterly with a line that is at all points fifty feet from and normal to the full pool elevation, to a point in the common boundary line between the property of the Town and the property of Mountaintop, as generally shown on the attached Exhibit.

3. The Town shall have a temporary construction easement for the purpose of removing sediment and debris from Winkler’s Creek. This easement shall be limited to the area shown on the Exhibit Plat to Plaintiff’s action along Winkler’s Creek beginning at the point on Winkler’s Creek where Tract 2 ends, and extending upstream to the boundary of Mountaintop’s common border with property now or formerly owned by Donald W. Baucom. This easement shall terminate at the earlier of (a) the date of the completion of the current dredging project contemplated by the Town, or (b) one year from the date of this Order. The Town shall limit its use of the easement area to the extent practical for the stated purposes, and it shall restore said easement area at the time its use ends by repairing any damage it may cause to Mountaintop’s property, and by leaving said property in approximately the same condition as existed before this easement.
4. The Town, at its sole cost and expense, shall cause an accurate survey to be made of the areas taken in fee simple, to be filed with the Court within 45 days after the date of this Order.
5. Notwithstanding anything to the contrary contained in the Notice of Condemnation or the Complaint, Declaration of Taking and Notice of Deposit, the area taken by the Town is hereby limited as described in paragraphs 2 and 3, above.
6. Nothing contained herein shall be deemed to limit the Town’s right to enforce of its duly

adopted Uniform Development Ordinance, including any stream buffer zones affecting the property of Mountaintop.

7. Nothing contained herein shall be deemed to be a determination that the Town was not authorized to condemn the property described in the Notice of Taking for purposes of N.C. Gen. Stat. §40A-8(b) nor that Mountaintop's action for injunction would not have resulted in a more limited taking, but resolution of these issues is rendered unnecessary by this Consent Order and are thus fully resolved.
8. Issues relating to just compensation and costs are reserved for later determination, and no party shall be prejudiced by the findings herein as to that determination.

Entered on this, the 19<sup>th</sup> day of April, 2010.

VOTE: Aye-All  
Nay-None

### **ADJOURNMENT**

On a motion by Council member Mason, seconded by Council member Brantz, Council moved to adjourn at 8:10 p.m.

VOTE: Aye-All  
Nay-None

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Town Clerk

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Mayor