MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL JULY
20, 2010

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Tuesday, July 20, 2010, in the Council Chambers, 1500 Blowing Rock Road. Mayor Pro-Tem Lynne Mason presided. Council members present were Andy Ball, Jamie Leigh, Rennie Brantz, and Stephen Phillips. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Deputy Town Clerk Kim Brown, Assistant to the Town Manager Jim Byrne, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, Development Services Director Bill Bailey, Planner Jane Shook, Development Coordinator David Graham, and Human Resources Director Peri Moretz.

ANNOUNCEMENTS

Mayor Pro-Tem Mason called the meeting to order, welcomed all in attendance and stated that any persons wishing to address the Council should sign in to speak during the Public Comment period.

TENTATIVE AGENDA ADOPTION

Town Manager Greg Young noted the following changes to the agenda:

1. Request to move Item 7.N. Adoption of DBDA Interim Contract to July 22, 2010 meeting agenda.
2. Request to table Item 14.B. Multicom Development Company Water & Sewer request.

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

VOTE: Aye - All
Nay - None

Town Manager Greg Young reminded the Council that the Town Attorney has created a draft contract for review and that a proposal for the facilitation of the Special MSD Task Force has been submitted by Janet Pepin for consideration. Furthermore, he noted that consideration of a budget and work plan for the DBDA will also be part of the discussion of the interim contract at the July 22nd meeting.

CONSENT AGENDA ADOPTION

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to adopt the following consent agenda items:

Minutes: June 8/10, 2010 - Budget Workshops.
June 9, 2010 - Water Use Committee.
June 17/21, 2010 - Regular Meetings.
June 21, 2010 - Special Public Hearing.

Correction to May 18/20 Town Council Minutes.

Adoption of Tax Releases & Refunds: May 2010:

TAX RELEASES
MAY 2010

Taxpayer	Year	Amount	Description
WILSON, JASON ALLEN WILSON, SHANNON ROCHELLE	2009	19.64	OVER LAP PLATES

KIRK, CYNTHIA WILEY KIRK, MICHAEL DAVIS	2009	28.83	ADJ FOR BILL OF SALE
MCGILL, PAUL STEWART	2009	83.47	INCORRECT SITUS
SCANTILIN, WILLIAM BRETT	2009	13.02	TURNED IN PLATE
MCANALLEN, SARAH ROSE	2009	13.02	TURN IN TAG
		167.30	

TAX REFUNDS
MAY 2010

Taxpayer	**Year**	**Amount**	**Description**
DUGGER, JAMES A	2009	54.91	TURN IN TAG
		54.91	

Approval of Encroachment Agreement - Under the Sun.

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA
TOWN OF BOONE

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the 20th day of July, 2010, by and between the TOWN OF BOONE, party of the first part; and Under the Sun, party of the second part.

W-I-T-N-E-S-S-E-T-H

THAT WHEREAS, the party of the second part desires to encroach on public land designated as sidewalk located at 603 West King Street with the following: a projecting sign (hereinafter referred to as “the facilities”).

WHEREAS, it is to the material advantage of the party of the second part to effect this encroachment, and the party of the first part, in the exercise of authority conferred upon it by statute, is willing to permit the encroachment on public land, subject to the conditions of this agreement.

NOW, THEREFORE, IT IS AGREED that the party of the first part hereby grants to the party of the second part the right and privilege to make this encroachment upon the following conditions, to wit:

That the said party of the second part binds and obligates itself, and its successors and assigns, to install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said public land, nor obstruct nor interfere with the proper maintenance thereof, to reimburse the party of the first part for the cost incurred for any repairs or maintenance to its roadways, sidewalks and other structures necessary due to the installation and existence of the facilities of the party of the second part, and if at any time the party of the first part shall require the removal of or changes in the location of the encroaching facilities, that the said party of the second part binds itself, its successors and assigns, to promptly remove or alter the said facilities in order to conform to the said requirements, without any cost to the party of the first part.

That the party of the second part agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and other warning devices for the protection of the public and in the case of encroachment into a street right of way, in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and amendments or supplements thereto. Information as to the above rules and regulations may be obtained from the party of the first part.

To the extent permitted by law, the party of the second part shall be responsible for all liability associated with the encroaching facility. The party of the second part agrees to indemnify and hold harmless the party of the first part from and against all claims based upon actions or omissions occurring during construction and maintenance, damages, losses and expenses, including court costs and attorney fees, arising out of or in any way related to the encroaching facility. The party of the second part shall cause its contractors to name the party of the first part as an additional insured on general liability insurance policies applicable to the project contemplated by this agreement.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such facilities in carrying out its construction and maintenance operations.

The party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; silting or pollution to the rivers, streams, lakes, reservoirs, other water impoundments; ground surfaces or other property; or pollution of the air. There shall be compliance with applicable all rules and regulations of the North Carolina Sedimentation Control Commission, and all other applicable laws and regulations relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover, the party of the second part agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the satisfaction of the party of the first part. The party of the second part shall comply with all pertinent ordinances, rule, regulations and laws, and failure to do so shall be a basis for revocation of this encroachment agreement by the party of the first part.

That the party of the second part agrees to assume the actual cost of any inspection of the work considered to be necessary by the party of the first part.

That the party of the second part agrees to have available at the encroaching site, at all times during construction, a copy of this agreement showing evidence of approval by the party of the first part. The party of the first part reserves the right to stop all work unless evidence of approval can be shown.

Provided the work referred to in this agreement is being performed on a completed public street open to traffic; the party of the second part agrees to give written notice of when work will begin to the party of the first part.

That in the case of noncompliance with the terms of this agreement by the party of the second part, the party of the first part reserves the right to stop all work until the facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

That it is agreed by both parties that this agreement shall become void if actual construction of the work contemplated herein is not begun and completed within 1 year(s) from the date of this agreement unless written waiver is secured by the party of the second part from the party of the first part.

The party of the first part expressly reserves the unrestricted right to require the party of the second part to change the location of the encroachments described herein at no expense to the party of the first part.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed as of the day and year first above written.

TOWN OF BOONE

BY:______________________
Mayor

ATTEST:

____
Town Clerk

BY:_________________________
President/Member-Manager/Owner

____
Printed Name: Party of the Second Part

ATTEST:

____
Secretary/Witness

Adoption of Agreement: NC DOT Bicycle & Pedestrian Grant. **(Copy of agreement permanently on file in the Clerk's office.)**

Adoption of Resolution - Support for revised Watauga County Solid Waste Management Plan.

RESOLUTION

RESOLUTION ACCEPTING AND ENDORSING THE WATAUGA COUNTY REVISED SOLID WASTE MANAGEMENT PLAN UPDATE OF 2009 FOR THE TOWN OF BOONE

WHEREAS, it is a priority of this community to protect human health and the environment through safe and effective management of municipal solid waste; and

WHEREAS, the reduction of the amount and toxicity of the local waste stream is a goal of this community; and

WHEREAS, equitable and efficient delivery of solid waste management services is an essential characteristic of the local solid waste management system; and

WHEREAS, it is a goal of the community to maintain and improve its physical appearance and to reduce the adverse effects of illegal disposal and littering; and

WHEREAS, the Town of Boone recognizes its role in the encouragement of recycling markets by purchasing recycled products; and

WHEREAS, involvement and education of the citizenry is critical to the establishment of an effective local solid waste program; and

WHEREAS, the State of North Carolina has placed planning responsibility on local government for the management of solid waste; and

WHEREAS, NC General Statute 130A-309.09A(b) requires each unit of local government, either individually or in cooperation with other units of local government, to update the Ten Year Comprehensive Solid Waste Management Plan at least every three years; and

WHEREAS, the Town of Boone has undertaken and completed a long-range planning effort to evaluate the appropriate technologies and strategies available to manage solid waste effectively;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TOWN OF BOONE:

That Watauga County's Revised 2009 Ten Year Comprehensive Solid Waste Management Plan Update is accepted, endorsed, and placed on file with the Town Clerk on this day, July 20, 2010.

ATTEST: Mayor

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3 , PAGE(S) 142)

Repeal of Chapter 111 of Title XI of Code of Ordinances - Cable TV.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to amend the agenda to consider a letter of appreciation for the members of the Cable TV Advisory Committee.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to forward a letter of appreciation to the members of the Cable TV Advisory Committee for their service.

VOTE: Aye - All
Nay - None

PUBLIC HEARING

Mayor Pro-Tem Mason opened a public hearing at 6:37 p.m. to hear public comment on the Ecologic Development Annexation. Planner Jane Shook stated that this is the final step in the annexation process for this request. With no public comment, Mayor Pro-Tem Mason closed the public hearing at 6:37 p.m.

PUBLIC COMMENT

There was no one signed up to speak during the public comment period.

ADOPTION OF ORDINANCE - ECOLOGIC DEVELOPMENT ANNEXATION

Council Member Leigh asked to be recused from this item since Ecologic Development Corporation and Andrew Saldino are clients of her business. Upon a motion by Council Member Ball, seconded by Council Member Brantz, Council moved to recuse Council Member Leigh from consideration of this item.

VOTE: Aye - All
Nay - None

Planner Jane Shook explained that the request for voluntary non-contiguous annexation had been submitted by Andrew Saldino and Victoria Morehouse for Ecologic Development Corporation. The property contains .216 acres, is located off Junaluska Road and is further identified by

Watauga County PIN 2901-81-7919-000. Ms. Shook noted three grammatical errors that will be corrected in the staff report regarding the advertising, meeting, and effective date for the request. Upon a motion by Council Member Ball, seconded by Council Member Phillips, Council moved to adopt the following ordinance:

Ordinance #10-07
AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE TOWN OF BOONE, NORTH CAROLINA
(Ecologic Development/Saldino)

WHEREAS, the Town Council has been petitioned under G.S. 160A-58.1 to annex the area described below; and

WHEREAS, the Town Council has by resolution directed the Town Clerk to investigate the sufficiency of the petition; and

WHEREAS, the Town Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at Council Chambers at 1500 Blowing Rock Road at 6:30 p.m. on July 20, 2010 after due notice by Watauga Democrat on July 7, 2010; and

WHEREAS, the Town Council finds that the area described therein meets the standards of G.S. 160A-58.1(b), to wit:

$ The nearest point on the proposed satellite corporate limits is not more than three (3) miles from the corporate limits of the Town;
$ No point on the proposed satellite corporate limits is closer to another municipality than to the Town;
$ The area described is so situated that the Town will be able to provide the same services within the proposed satellite corporate limits that it provides within the primary corporate limits;
$ No subdivision, as defined in G.S. 160A-376, will be fragmented by this proposed annexation;
$ The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, does not exceed ten percent (10%) of the area within the primary corporate limits of the Town, and

WHEREAS, the Town Council further finds that the petition has been signed by all owners of real property in the area who are required by law to sign; and

WHEREAS, the Town Council further finds that the petition is otherwise valid, and that the public health, safety and welfare of the Town and of the area proposed for annexation will be best served by annexing the area described;

NOW, THEREFORE BE IT ORDAINED by the Town Council of the Town of Boone, North Carolina that:

Section 1. By virtue of the authority granted by G.S. 160A-58.2, the following described non-contiguous territory is hereby annexed and made part of the Town of Boone, as of December 31, 2010.

BEGINNING at a 3/4" conduit found, the Eastern corner of Lot 4, Plat Book 21, Page 495 *(said 3/4" conduit being located N 23°26'24" W a distance of 10.51 feet from a 5/8″ rebar found)*; thence N 43°11'19" W a distance of 104.22 feet to a 3/4" conduit found; thence N 54°48'08" E a distance of 81.60 feet to a 3/4" conduit found *(said 3/4" conduit being located S 35°16'46" E a distance of 11.88 feet from a 3/4" conduit found, the Eastern corner to Lot 3, Plat Book 21, Page 495)*; thence S 57°11'19" E a distance of 103.29 feet to a point; thence S 50°46'50" W a distance of 53.05 feet to a 1/2" rebar set; thence S 50°46'50" W a distance of 53.00 feet to a 3/4" conduit found, the point of BEGINNING. Survey was performed without the benefit of a title search which may reveal additional conveyances, easements, rights-of-ways, covenants restrictions or building set back lines. Bearings are relative to NC Grid North NAD 83 (86). For source of title, see Record Book 1481, Page 307; Watauga County Register of Deeds Office. Area by coordinate computation. Job No. 090106A.

Section 2. Upon and after December 31, 2010 the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Boone and shall be entitled to the same privileges and benefits as other parts of the Town of Boone. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the Town of Boone shall cause to be recorded in the office of the Register of Deeds of Watauga County and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described herein in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the County Board of Elections as required by G.S. 163-288.1.

		Attest:
Loretta Clawson, Mayor		Freida Van Allen, Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGE(S) 415-416)

VOTE: Aye - All
Nay - None

Town Manager Greg Young stated that the applicant will need to be notified of the pro-ration of taxes for the property due to the December 31, 2010 effective date. Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to reseat Council Member Leigh.

VOTE: Aye - All
Nay - None

APPROVAL TO SEND TO QUARTERLY PUBLIC HEARING - MAP AMENDMENTS

Development Coordinator David Graham presented each request to the Council:

Case 20100320 Michael Henning Properties LLC - Request for a General Use Rezoning of property located at 1087 & 1089 West King Street from B-3 General Business to B-1 Central Business. Upon a motion by Council Member Ball, seconded by Council Member Phillips, Council moved to place the request on the August 2, 2010 Quarterly Public Hearing agenda.

VOTE: Aye - All
Nay - None

Case 20100335 Jack and Wanda Morgan - Request for a Conditional District Rezoning of properties located at 1171 & 1173 Highland Hall Road and a portion of an adjoining parcel (Watauga County PIN 2901-21-3367-000) from B-3 General Business to Conditional District R-3. Upon a motion by Council Member Ball, seconded by Council Member Phillips, Council moved to place the request on the August 2, 2010 Quarterly Public Hearing agenda.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to recuse Mayor Pro-Tem Mason from consideration of the next case since she is employed by the Hospitality House of Boone.

VOTE: Aye - All
Nay - None

Case 20100333 First Baptist Church, First Baptist Church Board of Trust, and Hospitality House of the Boone Area - Request a General Use Rezoning of properties located at 316 & 302 West King Street from B-2 Neighborhood Business to B-1 Central Business. Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to place the request on the August 2, 2010 Quarterly Public Hearing agenda.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to reseat Mayor Pro-Tem Mason.

VOTE: Aye - All
Nay - None

APPROVAL TO SEND TO QUARTERLY PUBLIC HEARING - UDO TEXT AMENDMENTS

Planner Jane Shook presented the following requests to the Council:

Case 20100341 Parking/Parking Garage Modifications Text Amendment - Text amendment includes modification of standards for parking lots and parking garages utilized as a principal use. Amendment also modifies Section 346 in regard to parking for Use 1.300 multi-family residences. Upon a motion by Council Member Leigh, seconded by Council Member Ball, Council moved to place the proposed text amendment on the August 2, 2010 Quarterly Public Hearing agenda.

VOTE: Aye - All
Nay - None

Case 20100342 UDO Section 154 [c] Modification Text Amendment - Text amendment includes modification of Section 154 Conditional Zoning District Established. Upon a motion by Council Member Brantz, seconded by Council Member Leigh, Council moved to place the proposed text amendment (with minor grammatical change) on the August 2, 2010 Quarterly Public Hearing agenda.

VOTE: Aye - All
Nay - None

Case 20100343 Sidewalk Modifications Text Amendment - Text amendment includes modification of Section 243 Pedestrian Circulation and Sidewalk Requirements. Upon a motion by Council Member Ball, seconded by Council Member Phillips, Council moved to place the proposed text amendment, as revised by the Town Attorney and Planning Staff, on the August 2, 2010 Quarterly Public Hearing agenda.

VOTE: Aye - All
Nay - None

Case 201003554 "Applications" Text Amendment - Text amendment includes modification of Article 4 in regard to Permits/Applications. Upon a motion by Council Member Ball, seconded by Council Member Brantz, Council moved to place the proposed amendment on the August 2, 2010 Quarterly Public Hearing agenda.

VOTE: Aye - All
Nay - None

Case 20100355 Accessory Uses/Split Zoned Property Text Amendment - Text amendment includes modification of Article 10 in regard to accessory uses. Upon a motion by Council

Member Ball, seconded by Council Member Leigh, Council moved to place the proposed text amendment on the August 2, 2010 Quarterly Public Hearing agenda.

VOTE: Aye - All
Nay - None

APPROVAL TO SEND TO QUARTERLY PUBLIC HEARING - UDO TEXT AMENDMENT TO MIXED USE DISTRICT

Mayor Pro-Tem Mason explained the request to amend the recently adopted UDO text for Mixed Use Districts to include “landscaped courtyards or greenspace” in the following sections: [b][9], [c][6], [d][1][A] iv., [d][1][B] ii.f., and [d][2] iv.6. She stated that this change would provide more flexibility and options. Council Member Leigh asked that a setback limit be included in the draft. She repeatedly questioned why the Council is now considering allowing the frontage of buildings to be set back further than was recommended and actively endorsed by the Planning Commission’s Density Subcommittee, and what has changed regarding the recommendation. After lengthy discussion, Council agreed that the definition of the term “greenspace” be included in the draft. Upon a motion by Council Member Ball, seconded by Mayor Pro-Tem Mason, Council moved to place the proposed text amendment to Mixed-Use Districts, as presented by Mayor Pro-Tem Mason, on the August 2, 2010 Quarterly Public Hearing agenda; to direct the Town Attorney and Planning Staff to draft language creating a maximum setback for the B-1 and B-2 districts of 10 feet and a maximum setback for the B-3 district of 20 feet; and to include a definition for the term, “greenspace” in the proposed text.

VOTE: Aye - All
Nay - None

REQUEST FOR FUNDING - HISTORIC PRESERVATION CHARRETTE

Council Member Brantz requested funding in the amount of $1,000 for a Historic Preservation Charrette scheduled for Wednesday, August 18, 2010, from 4:00-8:00 p.m. He explained that approximately $650 will be used for the facilitator, Janet Pepin, and that the remainder of the funds will be paid to materials and mailing expenses. He stated that the events will be held in the Watauga County Library, the Jones House, the Downtown Post Office, and the High Country Press office. Council Member Brantz stated the purpose of the charrette will be to gain public feedback about historic preservation, to educate the public, and to garner new ideas. He invited all to attend. Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to appropriate $1,000 from the fund balance for the purpose of a historic preservation charrette on August 18, 2010.

VOTE: Aye - All
Nay - None

REQUEST FOR MONTHLY REPORT FROM PLANNING & INSPECTIONS

Council Member Leigh requested that Council receive a report from the Planning and Inspections Director at each regular monthly Council meeting. She explained that the purpose of the report is to serve as a reminder of the specific projects and priorities Council has directed the Planning and Inspections staff to undertake. She stated that the monthly report will update the Council on progress made during the previous month, allow for Council to re-prioritize and integrate new projects as necessary and give the Planning Staff clear direction on Council priorities. Upon a motion by Council Member Leigh, seconded by Council Member Ball, Council moved to direct the Planning Director to present a monthly report to update the Council on various projects, including text amendments and priorities.

VOTE: Aye - All
Nay - None

REQUEST FOR UPDATES WHEN PLANS CHANGE

Council Member Leigh requested that a mechanism be developed through which the Planning Department would notify the Council of changes in plans for projects granted water allocations.

She stated that Council should be notified when an applicant makes changes to the plans submitted during the water allocation hearings or deviates from commitments agreed to during for water and sewer allocation. Lengthy discussion ensued. Upon a motion by Council Member Leigh, seconded by Council Member Ball, Council moved to amend the agenda for the July 22, 2010 meeting to include further consideration of this issue.

VOTE: Aye - All
Nay - None

PROHIBIT ADDING AGENDA ITEMS - AFTER AGENDA HAS BEEN PUBLISHED - TOWN-APPOINTED COMMITTEES

Council Member Leigh presented a request to prohibit Town-appointed boards, committees, and task forces from adding agenda items after meeting agendas have already been published. She stated that her reasons for the request are to ensure that citizens of Boone and the general public are not inadvertently omitted from hearing any committee discussions about topics that may arise suddenly and to ensure that all committee members have adequate notice and time to read, study, and/or prepare for any and all topics to be discussed at the meeting so that the member can intelligently and actively participate. Town Attorney Sam Furgiuele pointed out that agenda and publishing deadlines for some boards and commissions are dictated by regulations contained in the UDO. He stated that the Council could consider amending the Town Code to address this issue for other boards, committees, and task forces. Public Works Director Blake Brown suggested that items stipulated during "new business" on agendas could be discussed but that no action could be taken. Upon a motion by Council Member Leigh, seconded by Council Member Ball, Council moved to direct the Town Attorney to draft an amendment to the Town Code to prohibit boards, committees, and/or task forces to take action on any "new business" agenda item and to prohibit items from being added to an agenda after 72 hours prior to the meeting date and time.

VOTE: Aye - All
Nay - None

Mayor Pro-Tem Mason declared a break at 9:07 p.m. Council reconvened at 9:15 p.m.

TRANSPORTATION COMMITTEE RECOMMENDATIONS

Public Works Director Blake Brown presented the recommendations for sidewalk priorities from the Transportation Committee. He stated that the priorities had been established utilizing the Sidewalk Prioritization Model Composite Map and the Sidewalk Priorities for Fee-in-Lieu, while also taking into consideration existing, as well as planned and funded, sidewalks.

Immediate Priorities based on the availability of funding:

1. Highway 105
   a. Sections of sidewalk necessary for the completion of a sidewalk from High School Drive to the old High Country Inn property along Highway 105
2. State Farm Road
   a. Deerfield Road to Boone Heights Drive (Fire Department side)
   b. Boone Heights Drive to Shadowline Drive (Dental office side)
   c. Cross walks at the State Farm and Boone Heights intersection
3. Hunting Hills Lane
   a. From State Farm Road to the Greenway Trail (playground side)
4. Boone Heights Drive
   a. Blowing Rock Road to State Farm Road (Dental office side)

Future Priorities dependent on funding:

5. Highway 194
   a. Highway 421 to New Market Boulevard (Hardin Park Elementary side)
6. State Farm Road to Blairmont Road
7. Meadowview Road
   a. Greenway to Blowing Rock Road

8. Highway 105
   a. Continued development of sidewalks from the old High Country Inn site to the 105 By-Pass light
   b. Blowing Rock Road to Highway 421 (Subaru side)
   c. Highland Avenue to Highway 105 By-Pass (car dealership side)

Projects to continue to pursue:

9. Poplar Grove Road
   a. Water Street to Poplar Grove Road Ext.
   b. Continue to work with DOT and engineers on plans
   c. Once plans available, need to pursue right-of-way, easements, and encroachment agreements.
10. Greenway connector to Wellness Center (awaiting letter of intent from Boone Optimist)
11. Greenway Road greenway connector project

Council Member Leigh voiced concern about the lack of sidewalk along Perkinsville Drive. She pointed out that a large apartment complex is located on that roadway with a number of disabled and income-limited tenants who travel the roadway to access the nearby shopping center. Upon a motion by Council Member Ball, seconded by Council Member Phillips, Council moved to endorse the recommendations from the Transportation Committee as presented and to direct the Transportation Committee to reconsider Perkinsville Drive for inclusion in the sidewalk priority listing.

VOTE: Aye - All
Nay - None

ANNOUNCEMENT OF BOARD VACANCY

Mayor Pro-Tem Mason announced a vacant position on the Local Firemen's Relief Board due to the recent passing of Mr. Paul Smith.

BOARD APPOINTMENT - AFFORDABLE HOUSING TASK FORCE

Mayor Pro-Tem Mason stated that the following positions are open on this task force:

$ Community member - Neighborhood advocate
$ Community member - Qualifies for affordable housing.

There were no applications for consideration for appointment. The Clerk was directed to continue advertising for the open positions.

BOARD APPOINTMENT - BOARD OF ADJUSTMENT

Mayor Pro-Tem Mason stated that the following positions are open on this board:

$ One ETJ position (term will expire June 30, 2013)
$ One ETJ Alternate position (term will expire June 30, 2012).

She pointed out that although an application from Jim Marsh had been received, the Watauga County Commissioners have asked that two nominations for each ETJ position be forwarded from the Council for consideration. It was the consensus of the Council to defer action on the nomination until further applications are received. The Clerk was directed to continue advertising for the open positions.

BOARD APPOINTMENT - COMMUNITY APPEARANCE COMMISSION

Mayor Pro-Tem Mason stated that there is one vacant resident position open on the commission. There being no applications for consideration for appointment, the Clerk was directed to continue advertising for the open position.

BOARD APPOINTMENT - GREENWAY, PARKS & GARDENS COMMITTEE

Mayor Pro-Tem Mason stated that there are two expiring positions on this committee. She pointed out that an application had been received from Bunk Spann and Emily McCoy. With no other applications for consideration, Mayor Pro-Tem Mason called for nominations for the position. Council Member Phillips nominated Bunk Spann. Council Member Leigh nominated Emily McCoy. There being no other nominations, Mayor Pro-Tem Mason called for a vote on each nominee:

Bunk Spann: Aye - All
Nay - None

Emily McCoy: Aye - All
Nay - None

Terms for these positions will expire on July 31, 2013.

BOARD APPOINTMENT - HISTORIC PRESERVATION COMMISSION

Mayor Pro-Tem Mason stated that there are two ETJ positions open on this commission. There being no applications submitted, the Clerk was directed to continue advertising for these vacant positions.

BOARD APPOINTMENT - MUNICIPAL SERVICE DISTRICT SPECIAL TASK FORCE

Mayor Pro-Tem Mason stated that four applications had been received for consideration. Upon a motion by Council Member Ball, seconded by Council Member Brantz, Council moved to table this item and to schedule a special meeting for August 2, 2010, at 6:30 p.m. in the Council Chambers during which this item will be considered.

VOTE: Aye - All
Nay - None

BOARD APPOINTMENT - OUTSIDE AGENCY FUNDING COMMITTEE

Mayor Pro-Tem Mason stated that there are three positions open on this committee:

$ Resident - Financial expert
$ Resident - General public
$ Resident - General public.

There were no applications for consideration for these appointments. The Clerk was directed to continue advertising for the open positions.

BOARD APPOINTMENT - PLANNING COMMISSION

Mayor Pro-Tem Mason stated that an ETJ position is open on the Planning Commission. There being no applications for consideration, the Clerk was directed to continue advertising for the open position.

TRANSPORTATION COMMITTEE APPOINTMENT

Public Works Director explained that Bunk Spann resigned his position on this committee recently and stated that Mr. Spann had continued serving on the committee after his term on the Town Council had ended. Since this board now has 18 members, Mr. Brown recommended eliminating the vacant position left by Mr. Spann’s resignation. Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to eliminate a position on the Transportation Committee, thereby leaving the committee with 17 members.

VOTE: Aye - All
Nay - None

CONFIRMATION OF PLANNING COMMISSION REPRESENTATIVES - SERVE ON VARIOUS BOARDS

Planning Director Bill Bailey presented the recommendations from the Planning Commission for representatives to the Downtown Parking Task Force and the Water Study Committee:

Thomas Purpur - Downtown Parking Task Force
Shawna Rhyne - Water Study Committee.

Upon a motion by Council Member Ball, seconded by Council Member Brantz, Council moved to approve the recommendation of appointing Thomas Purpur to the Downtown Parking Task Force as the Planning Commission representative.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Ball, seconded by Council Member Brantz, Council moved to approve the recommendation of appointing Shawna Rhyne to the Water Study Committee as the Planning Commission representative.

Council Member Leigh voiced her concern about attendance issues since Ms. Rhyne has missed five of the past eleven meetings. She also suggested that the Planning Commission representative to the Water Study Committee be a resident.

VOTE: Aye - 1 (Brantz)
Nay - 4 (Phillips, Leigh, Mason, Ball)

Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council directed the Planning Commission to reconsider the representative to the Water Study Committee and that the recommendation be a town resident.

VOTE: Aye - All
Nay - None

ADOPTION OF RESOLUTION - GHSP GRANT

Police Chief Dana Crawford presented a resolution for adoption of a grant by the Governor's Highway Safety Program. He explained that the grant will include funding for safety items, such as flashlights, traffic cones, safety vests, and lighting. Chief Crawford stated that although the grant is approved for 100% funding, an up-front amount of $13,848.00 is required. He stated that the up-front funding will be reimbursed to the Town. Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to adopt the following resolution:

RESOLUTION

WHEREAS, the Boone Police Department, (herein called the "Agency"), has completed an application contract for traffic safety funding (flashlights, traffic cones, safety vests, and lighting); and that the Town of Boone, (herein called the "Governing Body"), has thoroughly considered the problem identified and has reviewed the project as described in the contract;

THEREFORE, NOW BE IT RESOLVED BY THE TOWN OF BOONE IN OPEN MEETING ASSEMBLED IN THE TOWN OF BOONE, NORTH CAROLINA, THIS 20TH DAY OF JULY, 2010, AS FOLLOWS:

1. That the project referenced above is in the best interest of the Governing Body and the general public; and
2. That Sergeant Scott Mackler is authorized to file, on behalf of the Governing Body, an application contract in the form prescribed by the Governor's Highway Safety Program for federal funding in the amount of $13,848.00 to be made to the Governing Body to assist in defraying the cost of the project described in the contract application; and

3. That the Governing Body has formally appropriated the cash contribution of $13,848.00 as required by the project contract; and
4. That the Project Director designated in the application contract shall furnish or make arrangement for other appropriate persons to furnish such information, data, documents and reports as required by the contract, if approved, or as may be required by the Governor's Highway Safety Program; and
5. That certified copies of this resolution be included as part of the contract referenced above; and
6. That this resolution shall take effect immediately upon its adoption.

ADOPTED this the 20th day of July, 2010.

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK _3_, PAGE(S)__143__)

VOTE: Aye - All
Nay - None

AUTHORIZATION OF U-4020 PAYMENT

Public Utilities Director Rick Miller presented a request for the payment of funds from the NC DOT for the U-4020 project. He explained that the request for $371,588.50 is for fifty percent of the estimated utility cost for the project. Mr. Miller stated that the money has been budgeted but that Council authorization is necessary for the release of funds. Upon a motion by Council Member Ball, seconded by Council Member Brantz, Council moved to authorize the release of funds in the amount of $371,588.50 for payment of fifty percent of the estimated cost of utility work for the U-4020 project.

VOTE: Aye - All
Nay - None

MONTHLY WATER STATUS REPORT

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

APPROVAL OF BUDGET AMENDMENTS

Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to approve the following budget amendments, as amended:

DESCRIPTION	ACCOUNT #	TO:	FROM:
STATION #1 BUILDING REPAIR	010-406-000-525101	$3,600.00	
BACKFLOW COMPLIANCE	010-409-000-525101	$950.00	
2 EACH-LAMP POSTS	010-409-000-525101	$500.00	
LANDSCAPE MAINTENANCE	010-409-000-525111	$1,130.00	
RAMP/REAR ENTRANCE	010-409-000-574001	$2371.00	
FLOORING	010-409-000-574001	$4,000.00	
RAMP/REAR ENTRANCE	010-409-000-574001	$2,700.00	

RAMP/REAR ENTRANCE	010-409-000-574001	$5,026.00	
GREENWAY EXPANSION	010-411-000-545100	$455,421.00	
COUNCIL CHAMBERS AUDIO/VIDEO	010-411-000-549111	$43,345.00	
LAND LINE BALANCE	010-411-000-549111	$29,898.00	
U-4020 KING STREET WIDENING	010-411-000-549121	$1,632,090.00	
HORN IN THE WEST	010-411-000-549122	$106,327.00	
CLAWSON-BURNLEY PARK	010-411-000-549123	$4,747.00	
CLAWSON-BURNLEY PARK	010-411-000-549123	$59,763.00	
CLAWSON-BURNLEY PARK	010-411-000-549123	$808.00	
CLAWSON-BURNLEY PARK	010-411-000-549123	$7,470.00	
TREE PLANTING PROJECT	010-411-000-549128	$13,249.00	
SIDEWALK EXPANSION	010-411-000-549131	$80,043.00	
STREAM BANK RESTORATION	010-411-000-549133	$10,000.00	
ARC/GIS PROGRAMMING	010-414-000-577000	$3,750.00	
STATION #2 RENOVATION PROJECT	010-415-000-574001	$3,000.00	
STATION #2 SOLAR PROJECT	010-415-000-574005	$8,000.00	
USPS BUILDING	010-417-000-574001	$212,901.00	
SITE WORK/SURVEY USPS BUILDING	010-417-000-574001	$3,000.00	
UNIFORMS	010-500-300-511201	$1,616.00	
VEST	010-500-300-511201	$560.00	
AMMUNITION	010-500-300-519200	$1,233.00	
SHIRTS	010-500-350-511201	$1,065.00	
GEAR & GLOVES	010-500-350-511201	$1,899.00	
SIGNPOSTS & HARDWARE	010-600-401-514205	$4,104.00	
PARKING LOT PAVEMENT	010-600-401-514309	$19,638.00	
CAPITAL OUTLAY-STREET LIGHTS	010-600-401-574004	$35,000.00	
DISPOSAL & MATERIALS	010-600-401-577000	$11,146.00	
SIGNS/POSTS & FRAMING-KING	010-600-405-525102	$5,885.00	
RECYCLING CENTER/KING ST	010-600-405-525102	$9,810.00	
TRASH CANS-KING STREET	010-600-405-525102	$10,476.00	
LANDFILL CHARGES-FEMA	010-600-405-525901	$100,000.00	

HANGER/HAZARDOUS TREE REMOVAL	010-600-405-577000	$10,992.00	
RENTAL OF EQUIPMENT-FEMA	010-600-405-577000	$10,000.00	
NC DOT PROJECT E-4955	010-000-000-448025		($269,985.00)
APPROPRIATED FUND BALANCE-GF	010-000-000-499900		($2,647,528.00)
GLOCK PISTOLS	012-500-303-519200	$9,844.00	
FULL SWAT VESTS	012-500-303-519900	$15,825.00	
APPROPRIATED FUND BALANCE-NARCOTICS	012-500-303-499900		($25,669.00)
ENGINEERING-CAPITAL IMPROVEMENT	030-700-801-577000	$3,600.00	
ENGINEERING-RAW WATER PROJECT	030-700-801-577000	$239,095.00	
RELOCATE FIRE HYDRANT	030-700-802-519900	$2,150.00	
SENSUS METER READING EQUIPMENT	030-700-802-574000	$3,330.00	
ORCHARD STREET	030-700-803-575000	$106,290.00	
LAB CERTIFICATION/COMPLIANC TEST	030-700-804-517202	$1,952.00	
STEEL DOORS	030-700-804-525101	$1,551.00	
REPAIR PUMP #3 SOUTH FORK NR	030-700-804-525201	$60,000.00	
COMPLIANCE WATER TESTING	030-700-804-577000	$500.00	
UCMR2 TESTING	030-700-804-577000	$760.00	
CAPITAL IMPROVEMENT GRANT	030-000-000-448026		($3,600.00)
APPROPRIATED FUND BALANCE-W&S FUND	030-000-000-499900		($425,628.00)
NC DOT U-4020 KING STREET WIDENING	010-411-000-549121	$145,220.00	
APPROPRIATED FUND BALANCE-GF	010-000-000-499900		($145,628.00)
MAINTENANCE-VEHICLES	010-500-300-525301	$540.00	
MISCELLANEOUS REVENUE	010-000-000-489900		($540.00)

VOTE: Aye - All
Nay - None

RECESS

Upon a motion by Council Member Ball, seconded by Council Member Brantz, Council moved to recess the meeting at 9:55 p.m. until Thursday, July 22, 2010 at 6:30 p.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE: Aye - All
Nay - None

A recessed meeting from the July 20, 2010 Boone Town Council meeting was called to order at 6:30 p.m., Thursday, July 22, 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 Furgiuele was also present. Staff members present were Town Manager Greg Young, Town Clerk Freida Van Allen, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Finance Director Amy Davis, Human Resources Director Peri Moretz, Public Utilities Director Rick Miller, Public Works Director Blake Brown and Assistant to the Manager Jim Byrne.

TENTATIVE AGENDA ADOPTION

There were no changes to the agenda. On a motion by Council member Ball, seconded by Council member Mason, Council moved to adopt the agenda as presented.

VOTE: Aye-All
Nay-None

PUBLIC COMMENT

Mr. Greg Simmons of 310 Delmar Street, speaking on behalf of 30 residents, requested that the Town provide signage and traffic control in the neighborhoods adjacent to the new Watauga High School before the grand opening of the new school. Mr. Simmons also requested clarification of contact information if the neighborhood does incur problems. Council directed the Town Manager to contact various Town departments to provide the necessary signage and enforcement and to receive an update at the August 2, 2010 special meeting.

REQUESTED APPEARANCE - GARY HICKS

Mr. Gary Hicks appeared before Council to request approval of the 2010 Free to Breathe 5K special events permit. Mr. Hicks said the event raised over $25,000 last year for the American Lung Association. The event will begin and end on the ASU campus and will be held on Sunday, October 17, 2010 from 2:00 to 3:00 p.m. After little discussion, on a motion by Council member Mason, seconded by Council member Ball, Council moved to grant approval of the special events permit contingent upon the $250 fee being paid and a certificate of insurance being provided to the Town.

VOTE: Aye-All
Nay-None

REQUESTED APPEARANCE - SHEILA OSTROFF

Mr. Sheila Ostroff appeared before Council to request support in her fund-raising efforts so that she can attend the Oxfam International Youth Partnerships Kaleidoscope 2010 in New Delhi, India. Ms. Ostroff explained that by attending the conference she hopes to bring back to Boone skills to help teach youth about vital environmental issues our community is facing. After little discussion, on a motion by Council member Mason, seconded by Council member Ball, Council moved to have staff prepare a letter of support in hopes that it will encourage the Boone community to support Ms. Ostroff's fund-raising goals.

VOTE: Aye-All
Nay-None

REQUEST FOR UPDATES WHEN PLANS CHANGE

Council Member Leigh requested that a mechanism be developed through which the Planning Department would notify the Council of changes in plans for projects granted water allocations. She stated that Council should be notified when an applicant makes changes to the plans submitted during the water allocation hearings or deviates from commitments agreed to during water and sewer allocation. Council member Leigh said when special use permits or conditional use zoning is requested, the Planning and Inspections Director will be able to inform Council if the plans have changed since water was allocated. Council can then state its position to the Board of Adjustment or consider the change before the conditional zoning hearing. Council member Leigh said if a development is permitted by rights and plans have changed since the water allocation, a trigger is needed that would automatically send the project to the Board of Adjustment. Town Attorney Sam Furgiuele presented a proposed text amendment to Article X, Section 167 of the UDO that would allow the Planning and Inspections Director to consider a development that has "material difference," which is defined in Section 81 of the UDO, from the water allocation development plans to treat the development application as a special use permit, thereby sending the development application to the Board of Adjustment. Again, Council can then state its position on the development to the Board of Adjustment. After some discussion, on a motion by Council member Leigh, seconded by Council member Phillips, Council moved to send the draft text amendment to the August 2, 2010 Quarterly Public Hearing.

VOTE: Aye-All
Nay-None

ADOPTION OF DBDA INTERIM CONTRACT

Town Attorney Sam Furgiuele explained in depth how he drafted the DBDA interim contract. Mr. Furgiuele said the contract is from July 20, 2010 until December 31, 2010. Council member Mason commented that the DBDA has worked in good faith to try to remedy some of its problems. Council member Mason also pointed out that the DBDA has administered the MSD tax funds since 1993. Council member Mason said that many of positive comments were received at the June meeting and that the Town needs to be a better partner with downtown businesses and merchants. Council member Brantz agreed and said the special MSD task force will provide a way for better communication. Council member Mason suggested allocating one-half of the MSD tax funds and commented that the Town should not ask the DBDA to deplete its fund balance. Council member Leigh agreed to allocate one-half of the MSD tax funds only if the DBDA takes action to properly separate its current fund balance and begin to utilize fund accounting from this day forward. Council member Leigh also felt the Town should move forward and work to make a better DBDA organization. Council member Phillips agreed that the Town should allocate one-half of the MSD tax funds since the DBDA will most likely need to hire part-time personnel to help with all the new requirements of the contract. Council member Phillips felt the DBDA may need to utilize a portion of its fund balance anyway. A lengthy discussion also ensued about the importance of using fund accounting because MSD tax funds can legally only be used for the benefit of the MSD. Council member Leigh expressed her concern that the DBDA has been improperly using MSD funds and she intends to be sure that, from this day forward, to monitor the situation to be sure they are fully complying. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to allocate one-half of the MSD tax funds to the DBDA, which will be included in the interim contract. Before voting, Council member Leigh requested that MSD tax funds be separated from other funds, a new accounting system be implemented and an that an independent party make an estimate of how the existing fund balance should be separated (MSD tax money vs. other money). Town Attorney Furgiuele suggested that a "first-in-first-out" method might be most appropriate. Council members Mason and Brantz accepted the amendment.

VOTE: Aye-All
Nay-None

Council then reviewed the proposed contract in depth. Council discussed the need for accounting to be prepared per fund, per activity and the need for clarifying language to differentiate between the Main Street program and the MSD. Council member Leigh asked if the contract is to administer the Main Street program or the MSD funds. Town Attorney Sam Furgiuele said the contract addresses both programs. A lengthy discussion ensued about the legal use of MSD tax fundsDBDA Director Mary Baker requested clarification for the time allowed to update the

DBDA website and downtown signage. Council agreed that updating both the website and signs quarterly would be sufficient.

On a motion by Council member Brantz, seconded by Council member Phillips, Council moved to adopt the following interim contract:

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

INTERIM AGREEMENT BETWEEN
TOWN OF BOONE
AND THE DOWNTOWN BOONE DEVELOPMENT ASSOCIATION, INC.

THIS INTERIM Agreement ("Agreement") is entered into this **22nd** day of **July** , 2010, by and between the TOWN OF BOONE, a North Carolina municipality (hereafter referred to as "the Town") and the DOWNTOWN BOONE DEVELOPMENT ASSOCIATION, INC., a North Carolina non-profit membership corporation (hereafter referred to as "the DBDA"), collectively referred to as "the Parties."

W I T N E S S E T H:

THAT, WHEREAS, the Town is a municipal corporation organized pursuant to the laws of the State of North Carolina and located in Watauga County, North Carolina; and

WHEREAS, the Town has established a Municipal Service District pursuant to N.C. Gen. Stat. § 160A-535, et seq., (hereafter, the "MSD") from which it collects a Municipal Service District tax the authorized purposes of which are identified under State law; and

WHEREAS, pursuant to N.C. Gen. Stat. § 160A-536(d), the Town is authorized to enter into contracts to administer, in whole or in part, the Municipal Service District tax; and

WHEREAS, the Town is a participant in the North Carolina Main Street Program administered by the North Carolina Department of Commerce (hereafter, "the Main Street Program"); and

WHEREAS, the DBDA is a North Carolina Non-Profit Corporation, duly organized pursuant to the laws of the State of North Carolina and authorized by law to enter into agreements for the purposes for which it was created, including the promotion, encouragement and assistance in the revitalization and economic health and stability of the Town's Municipal Service District (the "MSD"); and

WHEREAS, the Town Council of the Town of Boone has voted not to renew its contract with the DBDA, but while it is studying the most effective means by which it may benefit the MSD with MSD tax funds wishes to enter an interim Agreement with the DBDA for the provision of certain activities for which the expenditure of Municipal Service District taxes are authorized and for the continued participation in the Main Street Program, while initiating safeguards to enhance the Town's ability to ensure the expenditure of MSD funds in accordance with its wishes and with the law; and

WHEREAS, the parties wish to confirm this Agreement in writing;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration passing from each party to the other, the receipt of which is hereby respectively acknowledged by each of the parties hereto, the parties agree and contract as follows:

ARTICLE I. Term: This in an interim Agreement and recognized by each party as thus. The term of this Interim Agreement shall be six (6) months, commencing on July 1, 2010 and ending December 31, 2010. No continuation or renewal of the Agreement shall be inferred following its expiration, nor shall any further commitment by either party exist without specific action by each of the parties to authorize, create and adopt a new contract.

ARTICLE II. Consideration: In consideration of the DBDA's performance of the duties and responsibilities set out herein, the Town will pay the DBDA **Fifty-Five Thousand,Two Hundred and Fifty-Five and no/hundredths dollars ($55,255.00)** (hereafter, "MSD funds"**), representing one-half of the 2010-2011 MSD tax revenues, when those revenues become available.** Each party recognizes and confirms that all MSD funds are derived from MSD taxes and are subject to all relevant restrictions for MSD tax funds set out in the North Carolina General Statutes.

ARTICLE III. Responsibilities of the DBDA: The DBDA shall utilize the MSD funds solely for purposes authorized by this Agreement, but may expend funds from other sources for other purposes so long as: (1) they are fully segregated from MSD funds; (2) they are accounted for using methods which satisfactorily assure that they are not commingled with MSD funds; (3) no MSD funds are used, either directly or indirectly, to support any activities which are not appropriate for the use of MSD funds; and (4) such other funds are expended in accordance with pertinent law and the DBDA's own by-laws.

A. **Before** any funds are paid by the Town to the DBDA pursuant to this Agreement, the DBDA will complete the following actions:

1. Update its registration information with the North Carolina Secretary of State, designating as its registered agent for service of process a current staff or board member of the organization;
2. Amend its website so that all businesses of whatever type and character within the MSD are listed there with correct and current information, and businesses outside the MSD are removed.

3. Correct all business directional signs installed by the Town at the request of the DBDA so that they reflect all current businesses of every type and character within the MSD and so that the names of businesses which are no longer in existence within the MSD or are located in the downtown but outside the MSD are removed.

4. Amend its bylaws to re-define its area of service from “Boone’s traditional downtown area” to Boone’s “downtown area, comprised and coextensive with the Town’s Municipal Service District,” and limit its promotional activities to promotion of businesses within the MSD.

5. Amend its bylaws:

a. To require that every decision of the DBDA regarding the expenditure of MSD funds be approved, in advance, by the DBDA’s 3 Board of Directors; and

b. To make clear that the DBDA’s “organizational committee” can only exercise the authority of the Board of Directors in the management of the DBDA pursuant to policies hereafter adopted by the full board and that any action authorized by the organizational committee shall be fully disclosed to the full board at the first opportunity and ratified by the full board.

6. Establish and post on its website, and begin keeping in accordance with the posted schedule, regular and full public office hours, in amounts and at times authorized by the DBDA’s board of directors.

7. Adopt a personnel policy which requires all DBDA staff to maintain time sheets accounting for all time spent in the pursuit of DBDA business in increments no greater than **.25** hours, referenced and designated by the source of funds which are paying for the activity, and providing sufficient detail regarding the actual work conducted during the time reported so that a person reviewing the records will be able to discern exactly and specifically what activities were undertaken during the time reported.

8. Provide the Town Manager with a complete accounting of all funds currently on hand, with the source of funds fully explained so that it can be determined which funds have derived from activities partially or fully underwritten with MSD taxes, which funds have been raised from private contributions, which funds have been raised from dues, which funds have been raised by charging for DBDA activities, which funds have been raised by foundation grant, and so on.

9. Arrange for any employee or officer of the DBDA having access to the funds of the DBDA to be bonded in an amount sufficient to cover the full amount of all MSD funds currently or potentially in the control of the DBDA, and provide a copy of the bond to the Town Manager.

B. **After** funds are paid by the Town to the DBDA, the DBDA will:

1. Update its website and MSD directory signage at least on a **quarterly** basis.

2. Maintain regular office hours in accordance with the hours reflected on the website and approved by the DBDA's full board of directors.

3. Provide copies of staff time sheets showing activities and time spent and recorded with the adopted aforesaid personnel policy, by e-mail to the Town Council and Town Manager, **or their individual designees,** on a monthly basis, no later than five days following the end of each calendar month.

4. Adopt and provide to the Town Manager a comprehensive personnel policy which addresses and ensures the proper performance of staff and expenditure of MSD funds, and which includes procedures for the supervision of staff and 4 the discipline of staff, with personnel actions up to and including dismissal authorized.

5. Provide a detailed general ledger by e-mail or hard copy within ten days of the end of each calendar quarter to the Town Manager and Town Council, **or their individual designees.**

6. By September 1, 2010, provide the Town Manager and Town Council a full copy of an annual audit prepared by an independent auditing firm having no conflicts of interest and selected by the DBDA board of directors after a general solicitation to appropriate accounting firms in the region, including an Audited Income Statement with detailed expense categories, not just one generic "downtown redevelopment" expense item. The audit must disclose itemized expenditures by funding source, including such things as expenditures for each specific fringe benefit, rent, capital expenditure, activity, etc., **and it must determine and disclose what portion and amount of the DBDA's fund balance is comprised of MSD funds.**

7. **At least five days before each meeting of the DBDA board of directors, post on its website and provide by e-mail to those who have provided an e-mail address, or regular mail to those who have paid a reasonable fee, established by the DBDA board of directors, an agenda for the meeting and a copy of the draft minutes of the previous meeting to each MSD taxpayer and each business within the MSD which has provided the necessary contact information. The DBDA shall notify every MSD property owner and every MSD business owner at least once annually of the availability of the agenda and minutes, and it shall offer each an opportunity to provide an e-mail address or fee to cover the costs of mailing these materials.**

8. At least five days before each meeting of the DBDA board of directors or membership, provide an agenda for the meeting by e-mail or regular mail to the Town Manager and the Town Council.

9. Within five days after each meeting of the DBDA board of directors or membership, provide a copy of the draft minutes of the previous meeting by e-mail or regular mail to the Town Manager and the Town Council.

10. Adopt a comprehensive policy for the administration of facade and sign grants to be awarded by the DBDA during the term of the interim Agreement, which includes directives for advance notification to all MSD taxpayers and businesses of every kind within the MSD of the grant application process and award criteria in sufficient time to allow all eligible property owners and businesses to apply, and which specifically lists the criteria which will be used to award the grants.

11. Provide the Town Manager and Town Council with a copy of the organization's Form 990 as soon as it is prepared.

12. **Adopt a written policy which requires that a fund accounting system is created and maintained which ensures that MSD funds are used only in accordance with the purposes authorized under State law and this contract.**

13. Adopt written policies ensuring that MSD funds are used to benefit only the MSD area, are used to benefit the entire range of stakeholder categories (i.e. including service providers and other non-retail establishments) and all MSD locations (e.g. less traveled streets and outer boundary edges), and prohibiting the use of MSD funds, in whole or in part, to promote businesses or activities outside the MSD.

C. The DBDA may use the MSD funds to create, coordinate and administer District revitalization projects which provide for services or functions, such as additional garbage pick up, which are in addition to or to a greater extent than those provided or maintained by the Town for the entire town, but such expenditures shall be subject to advance review and permission by the Town's Town Manager. However, this shall not prohibit the DBDA from committing MSD funds back to the Town for use in any duly adopted plan by the Town aimed at improving the MSD, which is specifically authorized herein;

D. The DBDA shall use MSD funds to create, coordinate and administer District revitalization projects which at a minimum include:

1. Promotion and developmental activities, such as sponsoring festivals and markets in the MSD, promoting business investment in the MSD, helping to coordinate public and private actions in the MSD, and developing and issuing publications on the MSD designed to improve the economic well-being of the MSD;
2. Administration of any MSD revitalization project specifically requested by the Town;

3. Creation, maintenance and administration of a clearinghouse for information concerning the availability of properties within the MSD for purchase or rent, by creating, maintaining and administering a repository of such information to which MSD property owners may contribute, as they may wish, and which shall be in a format which will make it broadly available to the public and to persons potentially interested in investment in the MSD;

4. Without limiting the right of the Town to directly participate therein, participating in all activities requested or required by or of the Town and by the North Carolina Department of Commerce in order for the Town to continue to participate in good standing in the North Carolina Main Street Program and for the Town to derive all available benefits from its continued participation in the Main Street program;

5. Without limiting the right of the Town to directly participate therein, maintaining all information requested or required by or of the Town in order for the Town to continue to participate in good standing in the North Carolina Main Street Program and for the Town to derive all available benefits from its continued participation in the Main Street program;

6. Without limiting the right of the Town to directly participate therein, timely submitting all information requested or required by or of the Town and by the North Carolina Department of Commerce to the Town and to the North Carolina Department of Commerce in order for the Town to continue to participate in good standing in the North Carolina Main Street Program and for the Town to derive all available benefits from its continued participation in the Main Street program; and

7. Reporting to the Town Council the duly adopted collective views of its full membership and its Board of Directors as to those actions and policies which the Town may consider within the District to improve the District's economic well-being.

ARTICLE IV. Activities to Serve entire Municipal Service District without Charge: All activities of the DBDA with MSD funds shall be undertaken in such manner, insofar as possible, as to provide benefits to and throughout the entire District. The DBDA shall not charge any business a fee for participating in any of its activities which are supported in whole or in part by MSD funds.

ARTICLE V. Compliance with Laws: The DBDA shall comply with all pertinent federal, State, county and Town laws, regulations and ordinances, including but not limited to all North Carolina and federal laws relating to the operation of non-profit membership corporations, including but not limited to those laws which govern the conduct of the annual meetings of its membership and the selection of its directors and officers. In addition, and not by way of exclusion, in any and all its actions and activities, the DBDA shall comply with and hereby certifies its compliance with the Americans with Disabilities Act, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Fair Labor Standards Act, as amended, the Occupational and Health Safety Act, as amended, the North Carolina Employment Security Act, as amended, and the North Carolina Worker's Compensation Act, as amended, to the extent each such law applies to the DBDA or any of its activities.

ARTICLE VI. Compliance with it's By-laws and Organizational Reporting to the Town: The DBDA will operate and act in accordance with its duly adopted by-laws, including but not limited to the provisions which govern the conduct of the annual meetings of its membership, the notice and quorum requirements for meetings of its board of directors, the selection of its directors and officers, and its prohibition against legislative advocacy. Contemporaneous with the execution of this Agreement, the DBDA shall provide the Town with its current by-laws and a roster of its current board of directors and officers, including their names, addresses, terms, and class of membership, and it shall seasonably notify and provide a copy to the Town of any changes in its by-laws or in its board of directors or officers. So long as the DBDA receives MSD funds, its by-laws shall provide that two members of the Town Council, appointed by the Town Council for one year terms, shall serve as ex-officio members of its Board of Directors. In addition, so long as it receives MSD funds, the DBDA shall invite and include in its membership all property owners and businesses within the Municipal Service District. Should the DBDA's corporate status be revoked by the North Carolina Secretary of State, or should the DBDA's non-profit status be revoked by the United States Internal Revenue Service or otherwise, the DBDA shall immediately notify the Town, and this Agreement shall immediately terminate and any remaining MSD funds shall be immediately refunded and remitted to the Town.

ARTICLE VII. Reporting on its Activities: At least once during the term of the interim contract and no later than the October 2010 regular meeting of the Town Council, and at such additional times as may be requested by the Town, the DBDA shall report to the Town Council on its expenditure of MSD funds and shall submit its proposed work plan for its ongoing utilization of MSD funds. Said report shall include at a minimum descriptions of activities of the DBDA which have taken place during the period of time from July 1, 2010 to the date of the report and those activities which are planned for the remainder of the term. In addition, the report shall disclose all measurable outcomes from the activities of the DBDA which have been supported by the expenditure of MSD funds from July 1, 2010 through the date of the report, and the measurable outcomes anticipated during the remainder of the term.

ARTICLE VIII. Financial Reporting: In addition to providing the annual audit, as provided in Article 3(B)(6), the DBDA shall operate in accordance with generally accepted accounting principles. Financial information shall be provided in a form acceptable to the Town and shall include, among other things, a detailed accounting for all funds from all sources received or collected by the DBDA during the reporting period. In addition, the DBDA shall provide such records, verification of the expenditure of the funds, and other such information as requested by the Town. Should the DBDA at any time be advised by a funding, taxing or other governmental entity, or by its accountants, of any misappropriation of funds from any source or of any malfeasance or misfeasance, it shall immediately report such advice to the Town. Should the DBDA itself discover or determine any wrong doing, misappropriation, malfeasance or misfeasance, it shall immediately report such matter to the Town. The DBDA will notify the Town in writing within five days if any member of its staff is charged with or convicted of any crime involving malfeasance or misfeasance, or honesty in the use or handling of any DBDA funds, whatever the source, or if the DBDA itself is accused of any wrongdoing. Should the DBDA become aware of or suspicious of any embezzlement, malfeasance or misfeasance by an employee, agent, officer, director or other person connected with DBDA, of any of the DBDA's funds, whether from this grant or elsewhere, whatever the source, it hereby commits that it will promptly report to and notify the appropriate law enforcement agency of such act, omission or suspicion.

ARTICLE IX. Accountability: All records of the DBDA shall be available for inspection by the Town Manager or the Town Manager's designee. The DBDA agrees that records of all disbursements of funds will be maintained by it for a period of no less than three years, and upon request such books and records will be made available to the Town or its representative for inspection. The DBDA shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement, and the accounting methods shall be satisfactory to the Town. Should the DBDA cease doing business within three years of its last receipt of MSD funds, it will turn over its financial records to the Town for storage and eventual destruction.

ARTICLE X. Information regarding Staff: Within ten days of any change, the DBDA shall notify the Town of any change in its management staff.

ARTICLE XI. Indemnity: The DBDA is responsible for the proper expenditure of all MSD funds, and it shall indemnify and reimburse the Town for any misuse of said funds. The DBDA hereby releases, acquits and forever discharges the Town, its agents, officers and employees, from any claims, demands, costs, loss of services, expenses, compensation, liabilities and obligations, suits at law or equity, including claims or suits for contribution and/or indemnity of whatever nature and all consequential damages resulting from or on account of its use of MSD funds allocated or for other Town funds for which the DBDA is the conduit, and it hereby agrees to indemnify and defend the Town from any claims brought as a result of its use or misuse of said funds.

ARTICLE XII. Insurance: The DBDA confirms that it maintains sufficient liability insurance coverage to satisfactorily compensate any person for injury to a person or property caused by the operation of DBDA's programs and/or services. Within five days of its execution of this Agreement and upon request, it will provide the Town with proof of insurance. The DBDA agrees that should the Town determine, in its sole discretion, that the DBDA does not maintain adequate liability insurance to satisfactorily protect itself and its participants, it will promptly increase its coverage to a level determined necessary by the Town.

ARTICLE XIII. Lobbying and Disparaging Statements: The DBDA will use no funds for purposes of local, state, or legislative advocacy or lobbying, or to attempt to influence the legislative process at the local, State, or federal level. Likewise, no funds will be used to carry on any religious or political activities, or to attempt to influence the outcome of any public election. The DBDA will not engage in any actions which seek to disparage the Town, its employees or officers, and no DBDA staff member wholly or partly paid with MSD funds shall make disparaging remarks about the Town or otherwise seek to caste the Town in a negative light.

ARTICLE XIV. Default: If the DBDA defaults in the performance of any of its duties under paragraph III of this Agreement, all of which are deemed material, or violates any of the terms of Article IV through XIV of this Agreement, all of which are deemed material, the Town may immediately terminate the Agreement or suspend the payment of the funds, at its choice, without prior notice or an opportunity for the DBDA to cure its violation. Should the Town provide notice of default or notice of termination by the Town for any breach of the Agreement, the provision of such notice shall not be interpreted as a waiver of the enforcement of this or any other provision of the Agreement, and it shall not create any future requirement for notice prior to suspension of payments or termination of the Agreement. On the date specified in any such notice of default or notice of termination, this Agreement shall terminate. Should this Agreement be terminated, with or without notice, prior to the full expenditure of the funds by the DBDA, any unexpended Municipal Service District funds shall be immediately and fully remitted to the Town.

ARTICLE XV. Return of Unspent Funds: At the end of the term, the DBDA shall immediately remit and refund to the Town any unspent MSD funds.

ARTICLE XVI.. **Modification of Agreement, Merger**: This Agreement contains all of the terms and conditions agreed upon by the Town and the DBDA. All discussions between them have been merged into this Agreement, and there are no oral terms or conditions agreed upon by the parties hereto which are not contained in this written Agreement. There shall be no modification of this Agreement unless the modification is in writing and signed by both parties.

ARTICLE XVII. Waiver: The Town's failure to strictly enforce any of its rights under this Agreement shall not constitute a waiver of such rights, and the parties agree that this provision may itself not be waived by the conduct of the parties, but only by a written instrument executed by each.

ARTICLE XVIII. Relationship of Parties: Each party shall be considered an independent contractor in relation to the other, and neither shall be construed to be an agent or representative of the other party except as otherwise provided herein with regard to the North Carolina Main

Street Program. Therefore, neither party shall have any liability to a third party for the acts or omissions of the other party. In addition, neither party nor any of its employees, agents, or contractors shall be deemed to be employees or agents of the other party. Neither party nor any of that party's employees, agents or contractors shall be entitled to compensation for services, worker's compensation, or employee benefits from the other party by virtue of this Agreement or actions taken in furtherance of the Agreement.

ARTICLE XIX. Assignments: The DBDA shall not assign any of its duties under this Agreement or its right to compensation from the Town to any other person or entity without the written consent of the Town, but the Town shall have no responsibility, express or implied, to approve any proposed assignment.

ARTICLE XX. Force Majeure: In the event that either party shall be interrupted or delayed in completing performance of its obligations hereunder by an act of God or any other occurrence which is wholly beyond the control of the parties hereto, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

ARTICLE XXI. Partial Invalidity: If any term, covenant, condition or provision of this Agreement shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law. Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

ARTICLE XXII. **Headings and Construction of Agreement:** The headings used in this Agreement have been prepared for the convenience of reference only and shall not control, affect the meaning, or be taken as an interpretation of any provisions of this Agreement. This Agreement has been prepared on the basis of mutual understanding of the parties and shall not be construed against either party by reason of such party being the drafter hereof.

ARTICLE XXIII. Entirety of Agreement: This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and Agreements between the parties with respect to said matter. Each party to this Agreement acknowledges that no representations, inducements, promises, or Agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, and that no other Agreement, statement, or promise not contained in this Agreement shall be valid or binding.

ARTICLE XXIV. Governing Law and Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, and venue of any dispute between the parties shall be in Watauga County, North Carolina.

ARTICLE XXV. **Execution:** Each party represents and warrants to the other that all necessary authorizations and approvals required for execution and performance of this Agreement have been given and obtained, and that the undersigned individual is duly authorized to execute this Agreement and bind the party for which it signs.

ARTICLE XXVI.. Notices: All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested; to the following addresses:

If to the Town, to:
Greg Young
Town Manager
Town of Boone
P.O. Drawer 192
Boone, NC 28607

If to the DBDA, to:
The Downtown Boone Development Association, Inc.
____
____
____

IN WITNESS WHEREOF, the **parties** have executed this Agreement in duplicate originals, and agree to all of the terms and conditions set forth above, the day and year first above written.

Town of Boone, by

____
Loretta Clawson, Mayor

Attest: ________________________________(Seal)
Town Clerk, Town of Boone

Downtown Boone Development Association, Inc., by

____
President

Attest: ________________________________(Seal)
Secretary, Downtown Boone Development Association, Inc.

VOTE: Aye-All
Nay-None

AUTHORIZATION OF MSD SPECIAL TASK FORCE FACILITATOR

On a motion by Council member Brantz, seconded by Council member Ball, Council moved to allocate $2,500 to hire an MSD special task force facilitator. Council requested that the Town Manager solicit several quotes for its consideration. Before Council voting, Mary Baker of the DBDA explained that Liz Parnham of the NC Main Street Program has agreed to speak before the special task force.

VOTE: Aye-All
Nay-None

ADOPTION OF DBDA INTERIM BUDGET

Town Manager Greg Young said he has not received the interim budget yet since the DBDA was unsure about funding. On a motion by Council member Ball, seconded by Council member Leigh, Council directed that the DBDA and Town Manager prepare a detailed budget for the August 17, 2010 Council meeting.

VOTE: Aye-All
Nay-None

Mayor Lawson declared a break at 8:47 p.m. Council reconvened at 8:57 p.m.

Before the water allocation hearings, Council member Leigh made the following statement:
I have had no substantive contacts with any of the applicants or other interested parties; however, I would like to disclose some information relative to the Appalachian Residences II application specifically:

I live in the general vicinity of this proposed development. Last month, several days before the first water allocation hearing, I asked our Town Attorney whether my home's proximity to the proposed development site required me to recuse myself. Sam advised me that, because I have no direct or indirect financial interest in this matter, it was not required or appropriate to recuse myself, so I did not.

Also at last month's water allocation hearing for this applicant, Dr. Loren Raymond read a letter written by my husband, Bob Cherry. It never occurred to me at the time that some may not know that Bob Cherry is my husband, so now I want to be sure to mention that this evening.

With regard to this new water allocation hearing this evening, I have again been advised by our Town Attorney that I am not required to recuse myself because I have no direct or indirect financial interest in this matter. And since I have again gone to great lengths to be sure that I have had no substantive contacts with any of the applicants or other interested parties, I feel certain that I can make an unbiased decision based only on the testimony to be presented tonight. However, having said that, I am willing to recuse myself if the applicant requests that I do so.

WATER & SEWER REQUEST - JOHN WINKLER

Town Attorney Sam Furgiuele opened the public hearing at 8: 58 p.m. to hear sworn testimony from Roger Wright on a request for water and sewer service to property at 603 Blowing Rock Road. Mr. Wright requested that this matter be tabled once again in order to allow him the opportunity to review the Town's new density regulations. Mr. Wright also commented that he may have to separate the development as far as water allocations since it may be impossible to meet the requirements of Ordinance #05-01, Section 3, which only allow a 10% change in predicted water use. Town Attorney Sam Furgiuele agreed this is problematic for commercial development and said Council may want the Water Committee to review applying the 10% rule to residential development only. There being no further comments, the public hearing closed at 9:06 p.m. On a motion by Council member Ball, seconded by Council member Phillips, Council moved to table this request until the August 19, 2010 Town Council meeting.

VOTE: Aye-All
Nay-None

WATER & SEWER REQUEST - MULTICOM DEVELOPMENT COMPANY

On a motion by Council member Mason, seconded by Council member Ball, Council moved to table this request until the August 19, 2010 Town Council meeting.

VOTE: Aye-All
Nay-None

WATER & SEWER REQUEST - APPALACHIAN RESIDENCES II, LLC

Town Attorney Sam Furgiuele opened a public hearing at 9:08 p.m. to hear sworn testimony from Brent Davis, Ronald Sayles, Todd Rice, Dr. Lorans Raymond and Bob Cherry on a request for water and sewer service to property located at the corner of Highway 194 and Fieldstream Drive. Attorneys involved in the case were Ms. Chelsea Garrett and Don Watson of DiSanti, Watson, Capua & Wilson of Boone. Ms. Garrett began her opening arguments by stating that she felt that Council member Leigh can deliberate unbiased on the request; therefore, she indicated there was no reason for her to recuse herself. Ms. Garrett said the applicant, Appalachian Residences II, LLC, was requesting 16,200 gallons of water per day for a 46-unit, 108-bedroom apartment complex, located in the R-3 zone off Fieldstream Drive. Ms. Garrett pointed out that tonight's meeting was for the request for water allocation only and that all residents will be afforded the opportunity to speak before the Board of Adjustment during the special use permit process. Mr. Brent Davis, architect for the project, reviewed the plans, which changed from the last meeting; these plans include a large greenspace in the R-1 portion of the property and the re-design of the parking, dumpster and recreation areas. Ms. Garrett presented several exhibits throughout the testimony, all of which the Clerk received and are permanently on file. Mr. Davis continued his testimony stating there will be a fence separating the R-1 and R-3 zones which will include evergreen landscaping. Mr. Davis said the lighting plan will be according to UDO regulations. Mayor Clawson asked if the building will contain three stories. Mr. Davis said yes, but that it will be no higher than 35 feet. Council member Leigh asked how the greenspace will be made "permanent." Mr. Ronald Sayles responded that the greenspace will be preserved by deed restrictions. Mr. Sayles said the trees located on the R-1 property are 40 to 50 feet high and that residents from Perkins Street will not be able to see the project. Mr. Sayles explained the dimensions of the project and that an on-site manger will be employed to lease the units and to maintain the project and property. Mr. Sayles then reviewed the rules and regulations related to the project. Council member Phillips asked if he intended to sell the project once complete. Mr. Sayles responded no that he plans to hold the project for at least five years. Council member Mason asked about the project marketing campaign. Mr. Sayles said the project will not restrict students and that a 3-bedroom unit will cost about $1,600 per month. Mr. Sayles testified that AppalCart provides a stop at the corner of New Market Drive and Highway 194. Council member Leigh asked if sidewalks are planned from Fieldstream Drive to the AppalCART stop on Highway 194. Mr. Sayles said no, not at this time, since DOT is unsure of the right-of-way along Highway 194. Council member Leigh then asked for clarification of the plans submitted last month and tonight. Mr. Davis pointed out that the apartment building closest to Perkins Street is located ten feet closer to the R-1 property line than was presented at last month's meeting. Ms. Garrett interjected that additional conditions can be placed upon the project during the special use permit process. Ms. Garrett summarized that the applicant has consulted with the neighbors and has made a good effort to appease anyconcerns. Ms. Garrett again pointed out that the project is located with a R-3 zone which is allowed by special use permit. Mr. Todd Rice, realtor for the project, said he is working for both the buyers and sellers and that the project will employ many during this recession. Dr. Loren Raymond of Perkins Street read a statement (on file) thanking the developers for their effort in trying to remove many problems with the R-1 neighborhoods and in working to preserve the R-1 property adjacent to Perkins Street; however, Dr. Raymond felt that student housing will have an adverse impact on the neighborhood. He indicated that one examples is property values. Dr. Raymond said noise is a significant problem now from the Wickham Square area. Mr. Bob Cherry of Perkins Street said he lives in a nice R-1 neighborhood, the type that the Town of Boone has fought hard to protect. Mr. Cherry said having another 108 students living near the neighborhood will have an impact that will go beyond the R-3 boundary. Mr. Cherry said the Boone 2030 plan places the Perkinsville neighborhood in a G-2 sector within a T-3 Sub-Urban transect zone. The framework plan for T3 call for detached single-family houses surrounded by lawn and landscaped yards. Mr. Cherry also said he is concerned that the Town is giving limited water resources to yet another student apartment complex. Mr. Cherry asked that Council deny the request for water allocation. Mr. Don Watson, representing the property owners, asked what the property owner is to do if the allocation is denied. Mr. Watson said the Town cannot stop growth and micro-manage every project. Mr. Watson said the Town has rules to be followed and asked that the Town consider the property owners' perspective. Ms. Garrett closed her presentation by stating the property is zoned R-3 and that the developer is committed to making concessions to protect the R-1 neighborhood. There being no further comments, the public hearing closed at 10:41 p.m. Council member Leigh commented that the project can been seen because the trees to be preserved on the R-1 portion are deciduous and lose all leaves during the fall and winter seasons. Council member Leigh also said that Council should follow the guidance of the Comprehensive Plan and 2030 Plan and that she would prefer the water allocation go toward other housing options. Council member Leigh said she was concerned about the noise and light pollution and the detriment to the surrounding neighborhoods. Council member Leigh also noted that even though the developer has revised plans to preserve the R-1 portion, one apartment building is now ten feet closer to the Perkins Street neighborhood. Council member Mason agreed and said the 2030 plan calls for medium-density in this area and that the proposed project is high-density. Council member Mason also commented that the proposed rent per month is not priced for working individuals. After little discussion, on a motion by Council member Mason, seconded by Council member Leigh, Council moved to deny the water allocation request.

VOTE: Aye-All
Nay-None

CLOSED SESSION

On a motion by Council member Brantz, seconded by Council member Ball, Council moved to enter Closed Session at 10:55 p.m., pursuant to NCGS 143-318.11a)3)6) to hear legal advice on parking revenues, extension of development permits and revisions to the Minimum Housing Code. Council also received an update on an EEOC claim and discussed personnel issues.

VOTE: Aye-All
Nay-None

On a motion by Council member Mason, seconded by Council member Brantz, Council moved to exit Closed Session at 12:46 p.m.

VOTE: Aye-All
Nay-None

ACTION FOLLOWING CLOSED SESSION

Town Manager Greg Young presented cost analysis associated with the recent parking recommendations made by the Downtown Parking Task Force. Council agreed that additional directional signs are need for both long and short-term parking in the downtown area. After little discussion, on a motion by Council member Mason, seconded by Council member Ball, Council moved to implement **only** the Saturday enforcement plan in addition to the Saturday Game Day plan.

VOTE: Aye-All
Nay-None

____________________________ ____________________________
Town Clerk Mayor

____
Deputy Town Clerk