**MINUTES - REGULAR MEETING**
**BOONE TOWN COUNCIL**
**AUGUST 17, 2010**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Tuesday, August 17, 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, Human Resources Director Peri Moretz, Assistant to the Manager Jim Byrne, Finance Director Amy Davis, Fire Chief Jimmy Isaacs, Public Utilities Director Rick Miller, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Police Chief Dana Crawford and Planning Director Bill Bailey.

## ANNOUNCEMENTS

Mayor Clawson asked for a moment of silence in memory of Randy Cox, the seven year old boy that drowned in Boone last week.

Police Chief Dana Crawford recognized Sergeant Randy Brown for his 26 years of service to the Boone Police Department. Sgt. Brown is retiring effective September 1, 2010.

Mayor Clawson announced that in conjunction with the statewide Fall Litter Sweep 2010 campaign issued by Governor Beverly Perdue for September 18th through October 2nd, 2010, the Town of Boone will hold a "Fall Boone Clean©Up Day" on Saturday, September 18th, 2010. Interested participants may come by the Town of Boone Public Works Department located at 321 East King Street between 9:00am – 2:00pm to pick up cleaning supplies. For more information, contact Shannon Isaacs at (828)268-6230.

## TENTATIVE AGENDA ADOPTION

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

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: July 14, 2010 - Special Meeting.
July 20/22, 2010 - Regular Meeting

Adoption of Resolution: Sergeant Randy L. Brown

**RESOLUTION**

The members of the Boone Town Council, meeting in regular session on August 17, 2010, do hereby adopt and pass the following resolution:

WHEREAS, the following person has served the citizens of Boone for a number of years:

**Randy L. Brown, Sergeant, 26 years**

WHEREAS, Sergeant Brown will be retiring on September 1, 2010, after serving as a leader in the Boone Police Department in an exemplary fashion; and

WHEREAS, his contribution in the service of Boone and it's citizens will always be appreciated;

NOW, THEREFORE, BE IT RESOLVED, that Sergeant Brown shall be awarded his Police badge and service weapon as follows:

Randy L. Brown Glock 22 Serial #PLK626

Furthermore, a copy of this Resolution shall be given to Sergeant Brown.

Adopted this the 17th day of August, 2010.

Loretta Clawson, Mayor

ATTEST:

Freida Van Allen, Town Clerk

**(TO BE TYPED IN RESOLUTION BOOK 3, PAGE 144)**

Approval of Encroachment Agreement - Casey & Casey Law Offices.

STATE OF NORTH CAROLINA ENCROACHMENT AGREEMENT
COUNTY OF WATAUGA
TOWN OF BOONE

THIS ENCROACHMENT AGREEMENT is made and entered into this the 19th day of August, 2010, by and between the TOWN OF BOONE, party of the first part; and Casey & Casey Law Offices, 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 891 West King Street with the following: timber framed with metal roof canopies (2) (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, **(the lowest portion of the timber/metal awning to be 9'6" above the sidewalk),** 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.

VOTE: Aye-All
Nay-None

**PUBLIC COMMENT**

Ms. Janet Pepin, facilitator for the upcoming Historic Preservation Charrette invited the public to attend the event being held at the Post Office in downtown Boone at 4:00 p.m. on Wednesday, August 18, 2010.

Mr. Joseph Cox, father to Randy Cox, drowning victim, made the following statement:

8/17/2010

Hello,

My name is Joseph Cox. I am a Watauga County resident and visitor to the Town of Boone. I am presenting to you a copy of my son's obituary, Bryson Alexander Cox, who died in the town of Boone, NC on Friday the 13th of August, 2010. I want you all to put a beautiful child's face to what I consider a senseless death that occurred in the Town of Boone. His death specifically occurred at a dangerous unmarked and unprotected culvert that can be found on the premises of the Red Carpet Inn in the Town of Boone.

I am here with a heavy heart and anger to find that the town's water drainage system has been an ongoing dangerous issue for years. It is my understanding that an ASU student was sucked into the same culvert my son was sucked into in 1993. Luckily, the ASU student survived.

Since we do not live in town, we live in Deep Gap, we had no idea that the culvert that my child was sucked into was at the edge of the pavement at the Red Carpet Inn. The water was up over the culvert at the same level of the pavement. My child was having fun walking and splashing in the water. Unknown to us, the culvert was completely hidden. Unknown to my child and the adults supervising him, it dropped 7 feet. He was whisked away approximately ½ mile through an underground makeshift system of drainage pipes and other attached culverts. I can only pray he died quickly, otherwise I can only imagine the terror he felt as he may have tried to hold his breath.

The area my son fell in was not posted and there was inadequate safety mechanisms put in place to protect him. Another child was with him at the time. He also could have easily fallen in and been killed. This is in an area where many children play and pedestrians pass.

Going back to the area the day after my child's death to attempt to make some sense of it, I noticed that the drainage pipe was clogged and this may have led to the water overflowing and hiding the culvert. It is now my understanding that this area floods almost daily during the rainy season and sometimes many times daily whether or not it rains in that particular spot. I later witnessed flooding on a sunny day at the spot my son fell in. The water rose 6 feet within a matter of 5 minutes. I then spent 20 minutes following and determining the underground passage that my son's badly broken, deeply cut up, and lifeless body took.

It took me a matter of minutes to come to the realization that there was not structured planning to the patchwork of drainage pipes and culvert systems that the state, town, county, and private businesses all tie into. The town calls this a "creek". I use the term creek loosely as it no longer resembles a creek in most areas of the town due to population growth, highway, and business expansion. Much of the "creek" is a piecemeal system of drainage pipes and culverts and not what I consider a typical creek.

I called various news stations to attempt to get some action taken to fix the area where my child got sucked into. I told the reporters that I would like to see someone put up appropriate fencing through this public corridor as well as to mark the area a flood zone so no other children die.

The Town has stated it is the responsibility of the business owners to take care of culvert areas and drainage pipes on private property. The owner of the Red Carpet Inn states it is the Town's responsibility. I do not care whose responsibility it is as long as it gets fixed and no other children die needlessly.

By the news report that was on Channel 11 in Tennessee it is obvious that the town planning office is aware of the problem areas, but rely on private business owners to keep them safe. This is unacceptable to me and down right negligent on the town's part to not enforce some kind of rules and regulations concerning the safety of its citizens and visitors.

I will let the Town know that the various news stations and newspapers I have spoken to have asked me to keep them abreast of the situation as a follow up. I plan to do so as I feel I must in order to keep other people safe and other families to not have to suffer through the horror, shock, and grief that my family is going through. I could not live with myself if another child is killed and I stood by and did nothing about it.

My child's death could have easily been prevented by an inexpensive chain-link fence and a warning sign. It is my understanding that the laws of North Carolina provide a provision for any town to condemn dangerous areas such as this within its borders and take eminent domain of the property in order to and fix problem areas for the safety of its citizens.

In closing, I am not here at this time to place blame of my child's death on the Town of Boone. I am here so my child's death is not in vain and beg that the Town of Boone to take charge of what is not longer a creek, but the town's major drainage system and fix and/or rebuild problem areas, or have private owners do the same so no other deaths or injuries occur.

Thank you for your time and consideration.

Joseph Cox

## ADOPTION OF ZONING MAP & TEXT AMENDMENTS

**Case 20100320 - Michael Henning Properties** - Michael Henning has filed a general use district map amendment request to rezone property located at 1087 West King Street from B-3 General Business to B-1 Central Business. Development Coordinator David Graham said the Planning Commission unanimously recommend approval of this rezoning request. On a motion by Council member Mason, seconded by Council member Ball, Council moved that the proposed amendment to the Town's zoning map is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because this rezoning request is consistent with the 2030 plan and extends the B-1 district in a logical manner.

VOTE: Aye-All
Nay-None

On a motion by Council member Mason, seconded by Council member Ball, Council members moved to approve the proposed amendment to the Town's zoning map and believe approval is reasonable and in the public interest because it is a natural continuation of the B-1 district.

VOTE: Aye-All
Nay-None

**Case 20100333 - First Baptist Church/Hospitality House** - First Baptist Church Board of Trust, First Baptist Church and Hospitality House of the Boone Area have filed a general use map amendment request to rezone properties located at 316 and 302 West King Street from B-2 Neighborhood Business to B-1 Central Business. On a motion by Council member Ball, seconded by Council member Brantz, Council moved to excuse Council member Mason from discussion and voting on this matter since she is an employee of Hospitality House. Planner Jane Shook explained that the Planning Commission, with a 9-1 vote, moved to approve the request; however the Planning Commission did have a concern about parking as a permitted use in B-1. Council members Leigh and Ball agreed that they both had concerns about potential uses in B-1 and could support the request if the revisions to the table of permissible uses were complete or if it were a conditional use zoning request. On a motion by Council member Phillips, seconded by Council member Brantz, Council moved that the proposed amendment to the Town's zoning map is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because this is an area proposed for greater density and infill in the Boone 2030 Land Use Plan; furthermore, the amendment promotes the principles of Smart Growth for the greater good of community enabling a more walkable, non-sprawling development pattern. Also extending the B-1 district to Hardin Street is suggested by the Boone 2030 plan. Because the vote was tied, Mayor Clawson cast a vote.

Aye-2 (Brantz, Phillips)
Nay-3 (Ball, Clawson, Leigh)
Excused-1 (Mason)

On a motion by Council member Phillips, seconded by Council member Brantz, Council members moved to approve the proposed amendment to the Town's zoning map and believe

approval is reasonable and in the public interest because this is an area proposed for greater density and infill in the Boone 2030 Land Use Plan; furthermore, the amendment promotes the principles of Smart Growth for the greater good of community enabling a more walkable, non-sprawling development pattern. Also extending the B-1 district to Hardin Street is suggested by the Boone 2030 plan. Because the vote was tied Mayor Clawson cast a vote.

Aye-2 (Brantz, Phillips)
Nay-3 (Ball, Clawson, Leigh)
Excused-1 (Mason)

**Case 20100335 - Highland Wood Apartments Rezoning** - Jack and Wanda Morgan are requesting a Conditional District Zoning Map amendment to rezone properties located at 1173 and 1175 Highland Hall Drive and a portion of an adjoining parcel from B-3 General Business to CDR-3 Conditional District Multi-Family for the purpose of developing a two-phase multi-family residential development. The project as proposed will consist of 45 two-bedroom units within four separate buildings and associated parking. The applicant is requesting vesting for five years. Development Coordinator David Graham said the Planning Commission recommended denial of the request by a 9-1 vote. Mr. Graham noted that the Planning Commission was concerned about additional traffic, access, site distance and no provisions for alternative transportation. Council member Mason noted that the Planning Commission is not so concerned about the apartments but mostly about the access to the apartment. Council member Mason suggested having the developers meet once again with the neighborhood to work out all the concerns, devise conditions for their project and talk with AppalCART representatives about service to the project. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to send this request to the Planning Commission in order to provide the applicant/developers the opportunity to work with the neighbors and the Planning Commission to address such concerns as access, site distance, traffic, phasing of the project, density reduction, public transit option, possible turning lane on Highway 321/421, more detailed landcaping plans and buffering issues.

VOTE: Aye-All
Nay-None

On a motion by Council member Mason, seconded by Council member Brantz, Council moved to table this request until the September 21, 2010 Council meeting.

VOTE: Aye-All
Nay-None

**Case 20100341 - Parking Modifications** - This text amendment includes modification of standards for parking lots and parking garages utilized as a principal use and also modified Section 346 parking for Use 1.300 multi-family residences. Planner Jane Shook said the Planning Commission unanimously recommended approval of the text amendment. Council member Mason felt that the three-foot minimum height requirement in the B-1 district will be a detriment to pedestrian access. Council member Leigh thought Town officials want to block the light from parking lots, thus the purpose of the text amendment. Planning Director Bill Bailey said he thought that blocking the headlights from parking lots is the purpose of the text amendment. Council discussed the three-foot height requirement at great length. On a motion by Council member Leigh, seconded by Council member Phillips, Council moved that the proposed amendment (including typographic error and Exhibit 1) to the Town's zoning ordinance is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because it is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to the application because per section 2.3.1a of the comp plan it improves the effectiveness of landscaping and buffering standards for new and existing developments and per Section 2.3.1.C of the comprehensive plan it protects the image and quality of major roadway entrance so Boone using landscape and other visual improvement techniques.

VOTE: Aye-All

Nay-None

On a motion by Council member Leigh, seconded by Council member Ball, Council members moved to approve the proposed amendment (including the typographical error from 20 to 12% and Exhibit 1) to the Town's zoning ordinance and believe approval is reasonable and in the public interest because it protects our Corridor Districts from inappropriate parking lot development and encourages visually pleasing appearance and design.

**(This zoning text amendment can be found in the Zoning Text Amendment Book #1)**

VOTE: Aye-All
Nay-None

**Case 20100342 - Section 154 (c) Modifications -** This text amendment includes modification of Section 154 Conditional Zoning District Established. Planner Jane Shook said the Planning Commission unanimously recommended approval of the text amendment. On a motion by Council member Ball, seconded by Council member Phillips, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because it removes ambiguity and inconsistency in the UDO related to the rezoning of property in conditional use districts.

VOTE: Aye-All
Nay-None

On a motion by Council member Ball, seconded by Council member Brantz, Council members moved to approve the proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because it clarifies what proceedings are required when zoning applications fail to move forward, simplifying the process for both developers and Town staff.

**(This zoning text amendment can be found in the Zoning Text Amendment Book #1)**

VOTE: Aye-All
Nay-None

**Case 20100343 - Sidewalk Modification** - This text amendment modifies Section 243 Pedestrian Circulation and Sidewalk Requirements. Planner Jane Shook said the Planning Commission unanimously recommended approval of the text amendment. On a motion by Council member Phillips, seconded by Council member Ball, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because it promotes pedestrian safety and enables a comprehensive network of linked sidewalk. It also helps target sidewalks for high priority areas as listed by the Town.

VOTE: Aye-All
Nay-None

On a motion by Council member Phillips, seconded by Council member Ball, Council members moved to approve the proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because it promotes pedestrian safety and enables a comprehensive network of linked sidewalk. It also helps target sidewalks for high priority areas as listed by the Town.

**(This zoning text amendment can be found in the Zoning Text Amendment Book #1)**

VOTE: Aye-All
Nay-None

**Case 20100354 - Application Modification** - This text amendment includes modification of

Article 4 in regard to Permits/Applications. Planner Jane Shook said the Planning Commission unanimously recommended approval of the text amendment. On a motion by Council member Ball, seconded by Council member Brantz, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because it addresses the fairness of the permit application process, easing the process for both applicants and staff.

VOTE: Aye-All
Nay-None

On a motion by Council member Ball, seconded by Council member Leigh, Council members moved to approve the proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because it assures that development decisions are made in a fair, predictable and cost-effective manner.

**(This zoning text amendment can be found in the Zoning Text Amendment Book #1)**

VOTE: Aye-All
Nay-None

**Case 20100355 - Accessory Uses Modification** - This text amendment includes modification of Article 10 in regard to accessory uses. Planner Jane Shook said the Planning Commission unanimously recommended approval of the text amendment. On a motion by Council member Phillips, seconded by Council member Mason, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because the amended language clarifies inconsistencies and procedural issues within the UDO and makes decisions involving the UDO more fair, predictable and cost effective as prescribed by general smart growth principles and the Boone 2030 land use plan.

VOTE: Aye-All
Nay-None

On a motion by Council member Phillips, seconded by Council member Ball, Council members moved to approve the proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because it clarifies language in the UDO and helps makes decisions fair, predictable and cost effective.

**(This zoning text amendment can be found in the Zoning Text Amendment Book #1)**

VOTE: Aye-All
Nay-None

**Case 20100377 - Section 179 Modification** - This text amendment to Section 179 mixed use districts was established regarding greenspace/landscaped courtyards and maximum street setbacks. Planning Jane Shook said the Planning Commission, with a 9-1 vote, recommended approval of the text amendment. Council member Leigh questioned why the Town is reversing the density subcommittee recommendation in that a development may have the same setbacks as before with the exception that parking can not be in the front. Council discussed at length the proposed text amendment. On a motion by Council member Mason, seconded by Council member Ball, Council moved to accept the recommendations from the Planning Commission as described in Exhibit 2 with the following changes:

1. No change to the text amendment adopted by Council in June regarding the B-1 district.
2. In the B-2 and B-3 districts that the **landscape/greenspace** be added and that the phrase **"In which case the maximum setback shall not exceed 20 feet"** come after other pedestrian oriented amenities in both B-2 and B-3.

VOTE: Aye-All
Nay-None

On a motion by Council member Mason, seconded by Council member Ball, Council moved that

the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because this proposed amendment with adding the greenspace and designating the setback for the B-2 and B-3 areas is consistent. Council further moved that this amended language further clarifies the direction the Town wants to go with the Boone 2030 land use plan and creates a more walkable community with diverse streetscape and landscape options for developers.

VOTE: Aye-All
Nay-None

On a motion by Council member Mason, seconded by Council member Ball, Council members moved to approve the proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because this moves the Town forward with implementation of the Boone 2030 land use plan, an action which will make the Town more walkable and pedestrian oriented.

**(This zoning text amendment can be found in the Zoning Text Amendment Book #1)**

VOTE: Aye-All
Nay-None

Mayor Clawson declared a break at 8:48 p.m. Council reconvened at 8:58 p.m.

## PRESENTATION OF P & I MONTHLY REPORT

Planning Director Bill Bailey presented a monthly report on departmental activities.
**(Permanently on file in the August, 2010 Boone Town Council packet.)**

## CONFIRMATION OF TOP PLANNING AND INSPECTIONS DEPARTMENTAL PRIORITIES

On a motion by Council member Ball, seconded by Council member Mason, Council moved to confirm the following priorities for the Planning and Inspections Department:

1. Review and possibly revise the Table of Permissible Uses.
2. Review and revise buffering requirements.
3. Review Density subcommittee recommendations and propose UDO amendments to include stormwater protection, B-1 parking, enhancement and protection of tree canopies in B-1 and two-story minimum requirements in B-1.
4. Review and revise the "definitions" section of the UDO.
5. Prepare UDO text amendment requiring recycling.

VOTE: Aye-All
Nay-None

## APPROVAL OF INTERIM DBDA CONTRACT

Town Attorney Sam Furgiuele pointed out that after Council adopted the interim contract last month, the DBDA had some concerns regarding it, specifically Article XIII and " Lobbying and Disparaging Statements". After some discussion, Council agreed to delete the disparaging statements from within the article. Council member Leigh noted that contract does not address the fact that Council agreed that 30% of the MSD funds should be spent on infrastructure. Council member Ball agreed that this item should be a part of the contract. After a lengthy discussion between the DBDA President Dempsey Wilcox and Council, the DBDA members agreed that they could work with the 30% MSD tax fund/infrastructure provision. On a motion by Council member Brantz, seconded by Council member Mason, Council moved to adopt the following revised 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 19th day of August, 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. <u>Responsibilities of the DBDA</u>:** 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. **<u>Before</u>** 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 the area of service with MSD funds, 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 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 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 and proposed minutes from the prior meeting by e-mail or regular mail to the Town Manager and the Town Council.

9. 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.

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

11. 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.

12. 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 is required to apply at least 30% of MSD funds to infrastructure expenditures, which may include funds distributed as part of MSD authorized grant funds.** Subject to said limitation, 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. **In addition, the DBDA may, once it has complied with Article III(B)(9), administer a facade or sign grant program.**

D. **The DBDA is required to apply at least 30% of MSD funds to infrastructure expenditures, which may include funds distributed as part of MSD authorized grant funds.** Consistent with said limitation, 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**: 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.

**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: Dempsey Wilcox, President
The Downtown Boone Development Association, Inc.
PO Box 362 DTS
Boone, NC 28607

**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.

VOTE: Aye-All
Nay-None

**SELECTION OF MSD FACILITATOR**

Town Manager Greg Young said he had solicited proposals from several facilitators; however, none are available with the exception of Janet Pepin's. Town Manager Young said Ms. Pepin is available to start immediately. Council member Mason questioned if Ms. Pepin could be objective on this matter. Council member Brantz said she could as she is currently facilitating the Historical Preservation Charrette. On a motion by Council member Leigh, seconded by Council member Mason, Council moved to accept the proposal of Janet Pepin in the amount of $50 per hour for approximately 40 hours to facilitate the MSD Special Task Force Meetings and that Ms. Pepin plan and attend the first scheduled meeting and communicate with the task force members prior to that first task force meeting, if necessary.

VOTE: Aye-All
Nay-None

**SCHEDULE INITIAL MSD TASK FORCE MEETING**

On a motion by Council member Leigh, seconded by Council member Ball, Council moved to schedule the initial MSD special task force meeting for Thursday, August 26, 2010 at 5:30 p.m. and to include on that agenda the scheduling of subsequent meetings through November 1, 2010 and discussion of the task force's plan of action.

VOTE: Aye-All
Nay-None

**UPDATE ON NEW WATAUGA HIGH SCHOOL OPENING**

Public Works Director Blake Brown showed Council where signage was placed in order to facilitate the Watauga High School opening, plus signage that protects the neighborhoods. Police Chief Dana Crawford felt traffic on the first day of the Watauga High opening was not as problematic as he had expected. He also indicated that there were some concerns regarding the traffic signal across from the Industrial Park, but that DOT has resolved the issues and now traffic is moving smoothly in the area.

**UPDATE ON DOWNTOWN PARKING PLAN**

Town Manager Greg Young updated Council regarding the implementation of Saturday parking enforcement and gameday parking. Town Manager Young said Saturday parking enforcement will begin on Saturday, August 28th and the game-day parking rules will begin on Saturday, September 11th. Town Manager Young indicated that in order for both plans to be implemented, a code amendment regarding Saturday enforcement and an amendment to the McLaurin Parking contract are needed. Council member Mason said the DBDA is pleased that the Town is implementing a portion of the parking recommendations; however, the DBDA would also like to see the implementation of the other recommendations. Town Manager Young agreed to prepare a press release regarding both parking changes.

On a motion by Council member Mason, seconded by Council member Brantz, Council moved

to amend the agenda to include **Adoption of Code Amendment - Saturday Parking Enforcement** and **Amendment to the McLaurin Parking Contract**.

VOTE: Aye-All
Nay-None

**ADOPTION OF CODE AMENDMENT - SATURDAY PARKING ENFORCEMENT**

On a motion by Council member Mason, seconded by Council member Brantz, Council moved to adopt the following code amendment:

**SCHEDULE II. PARKING TIME LIMITED.**

The Administrator shall install no-parking signs, yellow curb markings, or traffic-control devices to indicate that parking and standing are prohibited under the following circumstances at the following locations:

| ***Street*** | ***Side*** | ***Location*** | ***Time Limit*** |
|---|---|---|---|
| Cherry Drive | | From King Street to Council Street | One hour |
| College Street | | From King Street to the alley between the First Baptist Church and Whitener Hall | One hour |
| Depot Street | south and north | From Rivers Street to Queen Street | One hour |
| King Street | north | Between Linney Street and Post Office Drive | 30 minutes |
| King Street | north | From Straight Street to College Street | One hour |
| King Street | south | From Straight Street to Appalachian Street | One hour |
| King Street | south | From Coffey Street to Hardin Street | One hour |
| Linney Street | east | From King Street to Queen Street | 30 minutes |
| Vance Lot | | Corner of Depot and Queen Streets | One hour |
| West Howard Street | north | From South Depot Street to alleyway | One hour |

**Parking enforcement is Monday through Saturday. Where one-hour parking is permitted Monday through Friday, two-hour parking is allowed on Saturday.**

VOTE: Aye-All
Nay-None

**AMENDMENT TO THE MCLAURIN PARKING CONTRACT**

On a motion by Council member Mason, seconded by Council member Leigh, Council moved to amend the McLaurin Parking Contract as follows:

**ADDENDUM TO PARKING MANAGEMENT AGREEMENT**
**(Between the Town of Boone and McLaurin Parking Company)**

1. The operating hours for hourly parking facilities shall be from 7:30 a.m. to 5:30 p.m., Monday through Friday, and on Saturdays, the existing parking facilities will be enforced on a 2-hour limit. On-street monitoring shall be conducted from 8:00 a.m. to 4:00 p.m. Monday through Saturday.

2. The Town of Boone shall be responsible for providing signage adjustments for the on-street parking time limitations for Saturdays.

3. Saturday parking enforcement operational costs shall be $410.00 per Saturday.

4. Saturday Home Game Day parking enforcement operational costs shall be $990.00 per home game on Saturday.

5. McLaurin Parking Company shall provide the following services for Saturday Home Game Day parking enforcement:

a. Place signage at appropriate locations to advise game day parkers arriving in Downtown Boone of the available parking site for all-day parking activity.

b. Place staff assigned to serve as ambassadors on each of the east and west entries into Downtown advising motorists of parking opportunities and of on-street enforcement for overtime parking.

c. Set-up a parking fee collection operation in the Queen Street Parking Lot with a fee of $20.00 collected upon entry for all-day Game Day Parking.

d. Station staff at the entrance of the Town Hall Lot to deter entry by Game Day Parkers thus reserving this parking lot for retail visitors to Downtown Boone.

e. Continue On-Street Enforcement for Home Game Days with overtime parking violators eligible to receive multiple citations on a two-hour basis.

f. The total number of parking staff will be three (3) staff members for normal Saturday Operations and seven (7) for Home Game Day Operations.

This Addendum is effective August 17, 2010.

VOTE: Aye-All
Nay-None

**UPDATE ON U-4020 PROJECT**

Public Work Director Blake Brown reported that the U-4020 project is 64% complete and at this time ahead of schedule. Mr. Brown said the completion date is set for August 2011. Council member Mason asked if bike lanes are included in the project. Mr. Brown said yes, that bike lanes are planned for the outside lanes which are two feet wider than the remaining 12' lanes. Council member Leigh expressed her concern about the two left lanes turning onto Highway 194. Council member Mason explained why the utility lines were not buried: cost factors and time delay.

**APPROVAL OF FUNDING ALLOCATION - ORNAMENTAL FENCING**

Town Manager Greg Young explained the DOT has agreed to place ornamental fencing along the U-4020 project from Hwy. 194 to New Market Boulevard (both sides of the road) and in front of the Kingswood condos. In order to use ornamental fencing an additional $60,842.40 in funding is needed. On a motion by Council member Brantz, seconded by Council member Mason, Council moved to allocate $60,842.40 for ornamental fencing from the fund balance.

VOTE: Aye-All
Nay-None

**APPROVAL OF MAIN STREET GRANT APPLICATION**

Town Manager Greg Young said the Town submitted an application on August 13, 2010 for $115,000 for post office renovations, mainly to the heating and cooling systems. Town Manager Young explained that if the grant funds are awarded, the Town will be committed to completing the entire $1.3 million renovation project. On a motion by Council member Ball, seconded by Council member Mason, Council moved to confirm submission of the Main Street grant application.

VOTE: Aye-All
Nay-None

**PERMISSION TO ALLOW NCDOT INSPECTION OF MUNICIPAL BRIDGES**

Public Works Director Blake Brown said that the NCDOT will inspect the foundation of all Town bridges at a cost of $3,000 per bridge. The Town, however, will be assessed only 20% of that cost or about $600 per bridge. On a motion by Council member Leigh, seconded by Council member Brantz, Council moved to grant permission to the NCDOT to inspect all five Town bridges.

VOTE: Aye-All
Nay-None

**APPROVAL OF AGREEMENT - PEDESTRIAN PLANNING SERVICES**

Public Works Director Blake Brown said that several months ago the Town was awarded a pedestrian planning grant and, as a part of the grant, the Town will need to hire a consultant to help with the preparation of the Pedestrian Transportation Plan. Town Attorney Sam Furgiuele said he had a few minor changes to the contract. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to authorize the Mayor to sign the following contract: **EXHIBIT A**

VOTE: Aye-All
Nay-None

**DISCUSSION OF PROPOSED CODE AMENDMENT - BOARD/COMMITTEE ADVERTISING REQUIREMENTS**

Council member Leigh felt that requiring advertisement in the local media is proving to be cost ineffective since the number of board vacancies have remained the same or increased. Council member Leigh suggested sending a list of the board vacancies to local civic groups, as well as posting them on the Town website. Council member Leigh said the Town should also change the 30-day board vacancy notice to 20-day in order to better reflect what actually happens. On a motion by Council member Leigh, seconded by Council member Mason, Council moved to adopt the following code amendment:

**30.51 APPOINTMENTS.**
(A) All appointments made by the Council shall be made in open session. The Council may not consider 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) 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, committees 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~~ **20 days** 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 Mountain Times and the High Country Press~~ notice of the vacancies on town boards, commissions, task forces, advisory bodies and 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 describe 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.

VOTE: Aye-All
Nay-None

**DISCUSSION OF APPOINTMENT CRITERIA - MSD TASK FORCE MEMBERS**

Council member Leigh requested that Council amend the appointment criteria for MSD Special Task Force members in order to receive more applicantions. On a motion by Council member Mason, seconded by Council member Brantz, Council approved the following change to the MSD Special Task Force appointment criteria:

Composition of Special Task Force:
Six Special Task Force members will represent the diversity of MSD taxpayers. Two will represent retail business, two non-retail business, one will represent property owners living inside Boone, and one property owner living outside of town. To ensure diversity and representation from MSD taxpayers outside the "Traditional Downtown Boone," three of the six business owners or property owners should come from the east of the King Street-Depot Street intersection, and three from the west side of this intersection. ~~In addition, one representative should come from east of Appalachian Street and one from west of Waters Street. Finally, three of the six MSD representatives should have been business or property owners for at least five years, and three less than five years~~

VOTE: Aye-All
Nay-None

**ANNOUNCEMENT OF BOARD VACANCIES**

Town Clerk Freida Van Allen announced that Bob DeCamara, Alternate ETJ member of the Board of Adjustment, has resigned and that she will advertise the vacancy as directed by Council.

**AFFORDABLE HOUSING TASK FORCE APPOINTMENT**
There were not applications for the two vacant positions.

**BOARD OF ADJUSTMENT APPOINTMENT**

Planning Director Bill Bailey explained that the County Clerk has suggested submitting one application for ETJ positions since soliciting more applications is not feasible at this time. Council member Ball nominated James Marsh to serve as the ETJ representative on the Board of Adjustment. All the Council agreed except for Council member Leigh. This nomination will be sent to the County Commissioners for final appointment. There were no applications for the remaining alternate ETJ position.

**COMMUNITY APPEARANCE COMMISSION APPOINTMENT**

Council member Ball nominated Chad Michael fill to the ETJ position on the Community Appearance Commission. Council agreed. This nomination will be sent to the County Commissioners for final appointment.

**HISTORIC PRESERVATION COMMISSION APPOINTMENT**

Council member Ball nominated Bill Dixon to fill one of the two vacant positions on the Historic Preservation Commission. Council agreed. Mr. Dixon's term will expire 6/30/14.

**LOCAL FIREMEN'S RELIEF FUND BOARD APPOINTMENT**

Council member Mason nominated Bobby Sherrill to the Local Firemen's Relief Fund Board. Council agreed.

**MUNICIPAL SERVICE DISTRICT SPECIAL TASK FORCE APPOINTMENT**

Council appointed Jill Reeves and Andy Stalling to the Municipal Service District Special Task Force.

**OUTSIDE AGENCY FUNDING COMMITTEE APPOINTMENT**

There were no applications for the three vacant positions.

**PLANNING COMMISSION APPOINTMENT**

There were no applications for the one vacant ETJ position.

**REQUEST TO PIGGYBACK FIRE TRUCK PURCHASE**

Fire Chief Jimmy Isaacs requested permission to piggyback with an existing contract for the replacement of Engine 5. The final bid award and contract will be discussed at the September 14th meeting. On a motion by Council member Brantz, seconded by Council member Mason, Council moved to grant permission to utilize an existing contract for the replacement of Engine #5.

VOTE: Aye-All
Nay-None

**SCHEDULE WATER STUDY COMMITTEE MEETING**

On a motion by Council member Leigh, seconded by Council member Mason, Council moved to schedule a Water Study Committee meeting for Wednesday, September 15, 2010 at 5:30 p.m. Included on the agenda is a status report on the toilet rebate proposal, review of usage figures, revision of Ordinance 05-01 and drought triggers.

VOTE: Aye-All
Nay-None

**MONTHLY WATER USE STATUS REPORT**

Public Utilities Director Rick Miller presented the monthly water use status report. **(Permanently on file in the August, 2010 Boone Town Council packet.)**

**APPROVAL OF BUDGET AMENDMENTS**

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

| DESCRIPTION | ACCOUNT # | TO: | FROM: |
|---|---|---|---|
| Professional Services - Governing Body | 010-400-000-509100 | $1,000. | |
| Appropriated Fund Balance - GF | 010-000-000-499000 | | $1,000. |
| Traffic Safety Supplies -GHSP | 010-500-300-519904 | $13,848. | |
| Appropriated Fund Balance - GF | 010-000-000-499000 | | $13,848. |
| Maint. & Repair-Vehicles - PD | 010-500-300-525301 | $5,190. | |
| Misc. Revenue- GF | 010-000-000-489900 | | $5,190. |

VOTE : Aye-All
Nay-None

**RECESS**

On a motion by Council member Mason, seconded by Council member Ball, Council moved to recess the meeting at 11:55 p.m. until Thursday, August 19, 2010 at 6:30 p.m. in the Council Chambers.

VOTE: Aye-All
Nay-None

**CALL TO RECONVENE**

A recessed meeting from Tuesday, August 17, 2010 was called to order at 6:30 p.m., Thursday, August 19, 2010, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, 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 Kimberly 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, Human Resources Director Peri Moretz, and Development Services Director Bill Bailey.

**ANNOUNCEMENTS**

Mayor Clawson recognized the following group of artists that participated in a photo contest as part of the 75th Anniversary of the Blue Ridge Parkway: Dennis Visdan, Raney Rogers, Kent Paulette (Derfla), Pat Grant, Terry Anders, Tim Larsen, Dale Forrest, Trudy Muegel, Frank Young, Kyle Keeter, William Bake, and Carole Eagle. She pointed out the contest winning photographs that will be displayed along the back wall of the Council Chambers through the end of the year.
Mayor Clawson 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 announced the following changes to the agenda:
1. Deletion of Item 13.B. - Multicom Development Corporation.
2. Additions to Closed Session:
   -Update on NOV's - Storm Drainage.
   -Legal Advice - Raw Water Intake.

Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to adopt the agenda, as amended.

VOTE: Aye - All
Nay - None

**PUBLIC COMMENT**

Ashok Patel presented the following statement into record:

*Hello, my name is Ashok Patel, I write to you today as the previous owner of the Red Carpet Inn and current owner of the vacant piece of land behind McDonalds on Faculty Street.*

*I have been asked to emphasize that I am not speaking on behalf of the current owner of the Red Carpet Inn except by saying we will never forget Friday, August 13, 2010. We are very saddened by the death of Bryson Cox, a 7 year old boy who will not see his dreams fulfilled. Our deepest condolences go out to Bryson's family and friends. We can categorically say that had there not been a flash flood earlier that day there would not have been water in the parking lot*

*for him and his friend to be playing in. The culvert entrance that Bryan got sucked into is located across two pieces of property, one property owned by Joe Robinson, Sr. and one property owned by A. M. P. Enterprises, Inc. who operates the Winkler Apartments and the Red Carpet Inn.*

*Obviously, the culvert that runs under the Red Carpet Inn parking lot cannot handle the sheer volume of water that comes when there is a flash flood caused by excessive rain and runoff from all the development upstream of the Red Carpet Inn. It is a well known fact from all the flood studies that have been conducted over the years by the Town that the two areas that are always prone to flooding are the Red Carpet Inn and the Boone Mall.*

*Here is a brief history lesson on how this situation has worsened over the years.*

*Back in the 1950's Boone Creek used to run alongside Faculty Street and two lane roads used to come to Boone from all directions, ASU was a small teaching institution with less than 1,500 students and Boone was a small town. Mr. Gordon Winkler straightened the creek and moved its creek bed to where it flows now. W. R. Winkler, Gordon Winkler's brother purchased the property and in the fall of 1963 Mr. W. R. Winkler installed a 6 foot culvert which ran from Mr. Joe Robinson's property and across Mr. Winkler's property until it reached the edge of his property where the McDonalds lot starts now. Because Mr. Winkler had doubts that this engineered culvert could handle the 100 year storm waters, he made sure the parking lot had a swale through the middle to handle any runoff that did not make it through the culvert.*

*In 1973 there was a big flood that hit Boone and the storm waters went in the swimming pool and the downstairs rooms on the backside of the front building of the motel that Carl Fidler operated and it was several weeks before the rooms were rentable and pool could be reopened. To avoid having this happening again, Mr. Fidler using Greene Construction installed a 4 foot culvert and extended the 6 foot culvert approximately 80 feet to the end of the McDonalds property. He also removed the center flowerbed island and sloped the parking lot towards the 4ft culvert, another swale was placed above the culvert in case the 100 year flood came and the culverts could not handle the storm water. Mr. W. R. Winkler purchased this property from Gordon Winkler as well.*

I *bought this hotel in 1983 and after a few years renamed it the Red Carpet Inn. In 1993 McDonalds was built and the storm water picture changed again. The Town approved McDonalds to dump its storm water onto the Red Carpet Inn property and then allowed McDonalds to build a detention area for the water with a concrete wall on two sides, rip rock on one side and culverts going towards First Union Bank on the other side. On the concrete wall facing upstream the wall had a circular opening cut out of it that was approximately 18" wide and it was located in the center of the wall. This had been designed by an engineer and approved by the Town. After the first heavy rain and resulting flash flood it was obvious that this design could not handle the surface water during normal flash floods, so the Town forced the McDonalds engineers to remove the hole and cut the wall down by a few inches and install a barrier over the top of the wall. Unfortunately this structure has acted like a dam ever since and every time it floods, the surface water hits the wall and goes around the wall to the side without concrete where the rip-rock was put and erodes more of the bank away causing a larger and larger sink hole. If this continues McDonalds will eventually lose a large portion of the parking lot it uses. If I obstruct the flow of this water with a wall or a fence, I will cause flooding upstream because when the creek floods it invariably brings debris from upstream and the fence or wall will get clogged and form a dam.*

*I purchased the lot behind McDonalds three years ago, I have no development planned for this lot and I generate very little runoff or income from my property. My problem is that when the Red Carpet Inn lot floods and the overflow culvert cannot handle the surface water, the overflow water comes onto my property and is eroding my asphalt parking lot as well as the retention area between McDonalds and the Wachovia Bank culverts. The damage is getting worse, barriers are non functional and a large sink hole has formed because the mad rush of water has worked its way around the dam and has undermined the barriers. Flooding has become a regular occurrence nowadays because of the increased development upstream, ASU now boasts 15,000 students, roads are five and six lanes coming into Boone and we have one culvert that is 47 years old and one that is 37 years old running under my property. These culverts are seriously undersized based on current requirements these culverts were not designed to carry the amount of storm water entering our properties from upstream.*

*When I, and Carl Fidler before me, owned the motel we spent many a sleepless night either wading through the flooded parking lot making sure debris did not block a culvert or praying that the rains through the night would not be heavy enough to flood our motel rooms, rip up our parking lot, wash out our swimming pool or flood our boilers and electrical panels in my basement or wash away our customers cars. In the years we have owned the motel, Carl Fidler raised four children and I raised three. I have many times watched an 80 foot wide river flow through my parking lot and look like a white water rafting river and I have seen the enormous eroding power this river has but over the years I have realized I cannot stop it or control the damage it can do, all I can do is fix the damage it does every time it floods. I invite of you to see this parking lot during a heavy rain storm when the Boone Mall is flooding and watch this amazing rush of water.*

*The fact is just like roads need to be widened when traffic gets congested, and water and sewer plants have to be expanded as the town grows, so should storm water drainage systems as development takes place upstream. It should not be the property owners responsibility to widen culverts that need widening because of increasing runoffs they do not cause. The State of North Carolina and the Town of Boone needs to help property owners deal with this problem. I nor you can control all the development upstream but some entity has to address the excess runoffs these developments create. Watauga County is one of only five counties in North Carolina that have had close to ten Presidential disaster area declarations since 1965. We have a problem and we need to address it. There is no way to stop the thunderous flow of water, it intends to go downstream and it will get there. All you can do is make it easier for it to get there.*

*Just imagine a convoy of tractor trailers traveling down to Lenoir at 55 MPH with no brakes, no speed limit and no traffic lights on a single lane road. That is how the water travels when it gets to Red Carpet Inn and my property line. The more development that happens upstream the longer and faster this convoy is getting.*

*I am asking for help. We need to investigate all funding and grant sources out there to solve these issues, I believe FEMA has some Flood Mitigation grants and Hazard Mitigation grants that are available to you as municipalities, I as an individual property owner cannot get them. I really need the council to exhaust all areas to see what can be done to fix the undersized culverts problems throughout the town. Federal monies, State monies it really doesn't matter where it comes from, but these creeks may go over private property but they carry State, County, and Town storm water. There has to be some Town and State and Federal responsibility here. I have read that towns like Johnson City, TN are dealing with their flash flooding issues, maybe we can research how they are fiscally doing it and copy its methods, if we cannot get it elsewhere.*

*Thank you for your time.*

Ralph Lerch, owner of the McDonald's restaurant property, appeared before the Council to request that action be taken by either the Town of Boone or the State of North Carolina to correct drainage and flooding issues in the area adjacent to his property. He voiced agreement with the statement presented by Mr. Patel.

**REQUESTED APPEARANCES - RANDY JONES, AIA**

Architect Randy Jones presented preliminary drawings of proposed renovations to the Downtown Boone Post Office building. He pointed out changes to the structure which will include the relocation of the Planning & Inspections Department to the site, the creation of a visitors' center and public restrooms, and updating ingress/egress for the structure to meet the Americans with Disabilities Act (ADA) requirements. Betty Bond, speaking as a citizen, stated that she is excited about the upcoming changes to the building but asked that the parking spaces along King Street continue to be for persons using the post office and/or visitors' center. She also requested that the issue of providing adequate parking space for tour buses be considered as part of the changes to the site. Dr. Chuck Watkins voiced his concern that the proposed renovations to the building will adversely affect the historical integrity of the structure. Mr. Jones stated that his goal is to create a design that is the least intrusive and will maintain the historical significance of the building. He stated that any design changes must meet ADA requirements. Council members voiced concerns with preserving as much as possible the

historic elements of the building. Discussion included the placement of the entrance to the Planning & Inspections Department and proposed changes to the window wells. Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to approve the preliminary drawings with the following conditions:

1. The historical authenticity of the structure must be maintained to the greatest extent possible.
2. The comments and concerns of the Council and citizens be considered by Mr. Jones and that plans reflecting these concerns be brought back before the Council for consideration.

VOTE: Aye - All
Nay - None

Before deliberating on the water and sewer requests, Town Attorney Sam Furgiuele questioned the members of the Council regarding whether or not they had contact with any of the applicants requesting water and sewer service. All Council members stated that they had not had any significant contact with any of the applicants submitting requests for water and sewer service.

**WATER & SEWER REQUEST - JOHN WINKLER**

Town Attorney Sam Furgiuele opened a public hearing at 7:34 p.m. to hear sworn testimony from Jason Gason (Valor Engineering), John Winkler (applicant), Matt Langson, and Public Utilities Director Rick Miller regarding a request for water and sewer service to property located at 603 Blowing Rock Road. Mr. Gaston began by explaining the request for 23,652 gallons per day for a proposed mixed-use project which will include 16,000 square feet of retail space and an apartment complex containing 150 bedrooms which will be marketed to students. He stated that the property is zoned B-3, located in the G-3 corridor and is served by Appalcart. He stated that the applicant is requesting that this request be tabled until the recommendations from the Density Subcommittee are presented to the Council. In response to a question regarding the arrangement of the bedrooms, John Winkler stated that the project will include 75 two-bedroom apartments. Council Member Phillips pointed out that the previous allocation of 6,600 gpd for the property was due to expire on August 20th. Public Utilities Director Rick Miller explained that the previous allocation of 6,600 gpd was granted in the name of Matt Langston. He explained that the allocation can be extended if authorized by the Council and upon payment of the non-refundable availability fee. In regard to the calculation for usage for the retail space, Mr. Miller stated that he cannot determine an exact number as he has not been advised of the specific usage for the retail space. With no further testimony offered, Mr. Furgiuele closed the public hearing at 7:59 p.m. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to table the request made by John Winkler for 23,652 gpd for property located at the corner of Highway 321 and Clement Street until the regular Council meeting in September.

VOTE: Aye - All
Nay - None

Town Attorney Sam Furgiuele reopened the public hearing for the John Winker water and sewer request at 8:02 p.m. Matt Langston, being duly sworn, stated that the previous water allocation of 6,600 gpd for this property was granted in his name. He stated that he would provide a written statement releasing the water rights for the 6,600 gpd allocation for this location to John Winkler. Town Attorney Sam Furgiuele advised that such written release should be notarized. Council Member Mason asked if the applicant wanted to request an extension of the 6,600 gpd water allocation for this property. Mr. Gaston, on behalf of the applicant, requested that the 6,600 gpd water allocation be extended. With no other testimony offered, Mr. Furgiuele closed the public hearing at 8:11 p.m. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to allow a one-year extension of the 6,600 gpd water allocation for the property located at the corner of Highway 321 and Clement Street on the following conditions:

1. A written and notarized statement be submitted to the Town of Boone from Matt Langston releasing the water rights for the 6,600 gpd allocation to this property.
2. The non-refundable availability fee for 6,600 gpd must be paid.

VOTE: Aye - All

Nay - None

**WATER & SEWER REQUEST - JOHN COOK**

Town Attorney Sam Furgiuele opened a public hearing at 8:12 p.m. to hear sworn testimony from John Cook (applicant), Matt Langson (project engineer), Brent Davis (project architect), Mark Kadyk (adjacent property owner) and Public Utilities Director Rick Miller on a request for water and sewer service to property located on State Farm Road. Matt Langston began by explaining the request for 10,800 gpd for 33 multi-family units with 72 bedrooms. He stated that this is the second phase of a mixed-use development. He further explained that the project includes two buildings consisting of 36,700 square feet each. Mr. Langston stated that the units will be marketed to families and professionals due to the proximity to the Watauga Medical Center and other medical facilities. He indicated that the project will include 75 parking spaces and several retaining walls that will not be visible from the street. Mr. Langston entered into evidence a site plan of the property (**Exhibit A, permanently on file in the Clerk's office)**.Mr. Furgiuele questioned the property owner, John Cook, about the possibility of the transfer of water rights to Ambling Development. Mr. Cook stated that he did have a contract with the Kuester Corporation but that it had expired about three months ago. He stated that he did not have a contract or agreement with Ambling Development. Mr. Cook stated that he had purchased the property several years ago with the intention of using the property for his retirement plans. He stated that the property had previously been contaminated by the Vermont American plant but that he had cleaned up the property and no future action has been required by the NC Department of Environment and Natural Resources (DENR). Council Member Leigh asked about Appalcart service to the project. Mr. Cook stated that there are currently two stops: one located at the Ivy Terrace property and one located at the first phase of the project. He stated that it is his intent to have the Appalcart stop relocated from the first phase of the project to the second phase of the project. Mr. Cook stated that he is also required by the Town to install sidewalks along the entire length of the Glen Wilde project, approximately 800 feet. Project Architect Brent Davis entered into evidence preliminary floor plan drawings and elevations of the project **(Exhibit B, permanently on file in the Clerk's office)**. He pointed out that the project meets several policies of the 2006 Comprehensive Plan including policies 2.1.1, 2.2.2, 2.1.2, and 2.3.3. Mr. Davis stated that the structures will include the use of poplar bark, shake siding, and timber-frame elements. He explained that the apartments will include a large kitchen, dining area, and a private bathroom for each bedroom. Mr. Langston stated that a Special Use Permit has been submitted to the Town and that plans are currently under review by the Planning Staff. In regard to possible issues for extending service to the property, Public Utilities Director Rick Miller explained that since the property is below the grade of the road, the developer must install either a pump station to State Farm Road or extend the public sewer line to create a gravity feed. Mr. Langston indicated that private pump stations will be installed for each of the two buildings. Mark Kadyk stated that he has lived on the property across the road from the project since 1979. He stated that he feels this project will have the least impact on the adjoining properties as the developer has taken into consideration the terrain and the preservation of existing trees. With no other testimony offered, Mr. Furgiuele closed the public hearing at 8:45 p.m. Council Member Mason stated that this project fits into the surrounding area and provides a needed housing option for families and young professionals. Council Member Brantz stated that he appreciates the use of native materials for the project and also feels that the design of the project fits into the surrounding area. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to grant the request made by John Cook for 10,800 gpd for the property located off State Farm Road from the 2010 year allocation.

VOTE: Aye - All
Nay - None

**CLOSED SESSION**

Upon a motion by Council Member Brantz, seconded by Council Member Mason Council moved to enter Closed Session at 8:47 p.m. pursuant to NCGS 143-318.11a)3)5) in order to discuss the following matters:

Legal Advice - Open Air Markets
Update on professional complaint against engineer
Update on lawsuit by Watauga Medics against Town

Legal Advice - Regarding two R-1 complaints
Legal Advice - Regarding threatened litigation by Hogue/Harrington regarding denied Special Use Permit
Legal Advice - Regarding threatened litigation by Appalachian Residences II regarding denial of water allocation
Legal Advice - Regarding UDO text amendment on sidewalks
Property Acquisition - Chestnut Drive Connector
Legal Advice - Water Service Disconnection
Update on NOV's - Storm Drainage
Legal Advice - Raw Water Intake.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Ball, seconded by Council Member Brantz, Council moved to exit Closed Session at 11:59 p.m.

VOTE: Aye - All
Nay - None

**POSSIBLE ACTION FOLLOWING CLOSED SESSION**

Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved to amend the agenda in order to discuss the agenda for the September 15th Water Study Committee/Special Town Council meeting.

VOTE: Aye - All
Nay - None

**AGENDA FOR SEPTEMBER 15, 2010 WATER STUDY COMMITTEE MEETING**

Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved to add the following item to the September 15, 2010 Water Study Committee/Special Town Council Meeting agenda:

**Discussion of the difficulty of predicting water usage in mixed-use developments.**

VOTE: Aye - All
Nay - None

**ADJOURNMENT**

On a motion by Council Member Mason, seconded by Council Member Ball, Council moved to adjourn the meeting at 12:04 a.m.

VOTE: Aye - All
Nay - None

_____ _____

Town Clerk Mayor

Deputy Town Clerk