MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
SEPTEMBER 21, 2010

A regular meeting of the Boone Town Council was called to order at 6:30 p.m. on September 21, 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, Intern Matthew Farley, Finance Director Amy Davis, Human Resources Director Peri Moretz, Development Planner David Graham, Fire Chief Jimmy Isaacs, Police Chief Dana Crawford, Public Works Director Blake Brown, Planning Director Bill Bailey, Public Utilities Director Rick Miller and Assistant to the Manager Jim Byrne.

TENTATIVE AGENDA ADOPTION

Town Manager Greg Young presented one addition to the agenda:

1. Status on DBDA Contract.

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

VOTE: Aye-All
Nay-None

CONSENT AGENDA ADOPTION

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

Minutes: August 2, 2010 - Special Meeting.
August 2, 2010 - Quarterly Public Hearing.
August 17/19, 2010 - Regular Meeting.
August 23, 2010 - Special Meeting.
August 26, 2010 - Special Meeting.
Tax Releases & Refunds: June & July, 2010

Tax Refunds
June 2010

Taxpayer	**Year**	**Amount**	**Description**
MIDDLESTEADT, WAYNE RICHARD	2009	2.35	TURNED IN TAG
SMITH, KILEY TATE EDELBAUM, SARAH LORA	2009	8.43	TURNED IN TAG
WHIDDON, LAMON LYDELL	2009	23.49	TURNED IN TAG
		34.27	

Tax Releases
June 2010

Taxpayer	**Year**	**Amount**	**Description**

BLAKE, DAVID ANDREW	2009	13.07	SALVAGE TITLE
MIKE AUSTIN ENTERPRISES	2009	214.27	INCORRECT FIRE DISTRICT
LAND, SHARON BRIDGES LAND, JAMES FRANK II	2009	57.02	LIVES IN GASTON CO
WILLIAMS, EMMETT LOWELL	2009	20.28	INCORRECT SITUS
PURTLE, SILAS	2009	17.62	INCORRECT SITUS
PURTLE, SILAS	2009	18.15	INCORRECT SITUS
X TREME FITNESS OF BOONE, INC GRAHAM HOLSHOUSER	2009	130.24	BUSINESS SOLD
X TREME FITNESS OF BOONE, INC GRAHAM HOLSHOUSER	2008	122.10	BUSINESS SOLD
MID SOUTH HOLDINGS LLC	2007	80.66	COMMON AREA-SHOULD HAVE BEEN
		673.41	

Tax Refunds
July 2010

Taxpayer	**Year**	**Amount**	**Description**
DANNER, LOVELY MILLER	2009	2.46	TURN IN TAG
CHILDERS, GARY L AND EMILY	2009	6.54	TURN IN TAG
		9.00	

Tax Releases
July 2010

Taxpayer	**Year**	**Amount**	**Description**
KISH, MARISSA JEAN	2010	7.02	ADJ VALUE DUE TO WRECK
JONES, GARRETT MYRON	2010	166.98	INCORRECT SITUS
BLOCKER, JEREMY D GREER, MELISSA L	2010	4.44	ADJ FOR HIGH MILES
BROWN, ELIZABETH D	2010	68.64	FAILED TO RECEIVE FULL OA EXEMPTION
CAPITAL INVESTMENTS COMPANIES	2010	58.82	INCORRECT VALUE
APPALACHIAN PIZZA, INC. DBA HUNGRY HOWIES PIZZA/SUB	2010	283.40	DOUBLE BILLED
ADVANCE STORES COMPANY INC ADVANCE AUTO PARTS OF BOONE	2010	131.68	INCORRECT VALUE

PNCEF, LLC	2010	26.88	INCORRECT BILL
DORGAN, KATHLEEN KERNAN DORGAN, CLAUDE HOWARD	2010	15.50	TURN IN TAG
CHERRY, TODD L. CHERRY, CARRIE ANNE	2009	12.95	TURN IN TAG SOLD VEHICLE
NORTHESTER OB-GYN, PA	2009	809.93	APP REGIONAL MED ASSUMED BUSINESS
FISHER, REBECCA NICOLE FISHER, KENNETH MICHAEL	2007	22.20	TURN IN TAG
		1608.44	

MSD July 2010

Taxpayer	**Year**	**Amount**	**Description**
CAPITAL INVESTMENTS COMPANIES	2010	33.39	INCORRECT VALUE
		33.39	

Approval of Encroachment Agreement: Bulldog Beer & Wine Projecting Sign

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

THIS ENCROACHMENT AGREEMENT is made and entered into this the 21st day of September, 2010, by and between the TOWN OF BOONE, party of the first part; and Bulldog Beer and Wine, party of the second part.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Adoption of Resolution: Amending the Payment in Lieu of Sidewalk Construction Capital Reserve Fund.

RESOLUTION
AMENDMENT OF THE PAYMENT IN LIEU OF SIDEWALK CONSTRUCTION CAPITAL RESERVE FUND

WHEREAS, there is a need in the Town of Boone, North Carolina to plan for the expansion of sidewalk infrastructure.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD THAT:

Section 1: The Governing Board has previously established a Capital Reserve Fund for the purpose of reserving funds for sidewalk infrastructure funded by payments in lieu of sidewalk construction as an alternative for developers in certain situations.

Section 2: In June 2010 the Governing Board approved the enactment of a General Municipal Vehicle Tax. The designated use for said tax funds is expansion of funding for sidewalk construction; therefore, the Payment In Lieu of Sidewalk Construction Capital Reserve Fund is amended to also accept and reserve funding accumulated from revenue generated by the General Municipal Vehicle Tax.

Section 3: The name of the Payment in Lieu of Sidewalk Construction Capital Reserve Fund shall be amended to the Sidewalk Construction Capital Reserve Fund.

Section 4: This resolution shall become effective upon its adoption.

Adopted this the 21st day of September, 2010.

____
Mayor

ATTEST:

____
Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE (146)

Adoption of Resolution: Amending the Capital Reserve Land Fund.

RESOLUTION
AMENDMENT OF THE
CAPITAL RESERVE-LAND FUND

WHEREAS, there is a need in the Town of Boone, North Carolina to purchase a 75' aerial ladder fire truck. It has been determined that the purchase of this truck is necessary due to the existing truck having been out of service for an extended period due to corrosion damage;

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD THAT:

Section 1. The Governing Board hereby amends the Capital Reserve-Land Fund for the purpose of using a portion of accumulated funds toward costs associated with the purchase of a 75' aerial ladder fire truck.

Section 2. This fund will remain operational until provisions are made to satisfy identified needs. The remaining balance of funds will be retained for the original established purpose of purchasing land.

Section 3. The Governing Board has identified $429,000 for transfer to general fund for costs associated with purchase of a 75' aerial ladder truck.

Section 4. This resolution shall become effective upon its adoption.

Mayor

ATTEST:

Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE (147)

Approval of Special Events Permit: ASU Homecoming Parade set for Saturday, October 9, 2010 at 10:30 A.M.
WHS Homecoming Parade set for Friday, October 22, 2010 at 3:00 p.m.
6th Annual High Country Toy Run set for Saturday, October 2, 2010 at 9:00 a.m.

VOTE: Aye-All
Nay-None

PUBLIC HEARING - CDBG GRANT FOR OASIS, INC.

Mayor Clawson opened the public hearing at 6:38 p.m. Assistant to the Manager Jim Byrne said this public hearing is prerequisite to applying for a Community Development Block Grant . Mr. Byrne plans to apply for $1,000,000 for OASIS, Incorporated. Council member Brantz asked when the grant application is due. Mr. Byrne said the application is due September 30, 2010. There being no further comments, the public hearing closed at 6:40 p.m.

PRESENTATION OF PLANNING AND INSPECTIONS MONTHLY REPORT

Planning Director Bill Bailey presented a monthly report on Planning and Inspections departmental activity. **(Permanently on file in the September 2010 Boone Town Council packet.)**

UPDATE ON DOWNTOWN STREETSCAPE PLAN/BUDGET

Council member Mason asked for a status report on the downtown streetscape project, specifically asking if benches were included in the project. Public Works Director Blake Brown explained that the benches were to be donated and that the lighting should be installed by next spring. Council member Mason requested that “donated by” signs be placed on all benches. Mr. Brown responded yes and said the Greenway Committee is developing a commemorative program to be implemented throughout Town. Council then discussed at length the replacement of sidewalks throughout the downtown area. On a motion by Council member Leigh, seconded by Council member Brantz, Council moved to evaluate the condition and performance of the brick pavers, that were installed in front of the Mast Store, in June 2011 following the winter season.

VOTE: Aye-All
Nay-None

ADOPTION OF ZONING AMENDMENT

Case 20100335 - Highland Woods Apartment 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 further identified as PIN(s): 2901-21-2041-000, 2901-21-3138-000 & 2901-21-3367-000 from B-3 General Business to CD R-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 Planner David Graham said this case has been sent back to the Planning Commission last month in order to allow the developer the opportunity to work with neighbors and the Planning Commission regarding neighborhood concerns. On a motion by Council member Mason, seconded by Council member Ball, Council moved to allow further public comment on the case. The public hearing opened at 7:15 p.m. Bunk Spann made the following comments:

At Council's last meeting, Council asked the developers associated with the Highland Wood apartment zoning issue to meet once again with the neighbors, to try to work out any concerns, and to decide on conditions that might satisfy both parties. Following the neighborhood meeting, both parties would then meet once again with the Planning Commission (PC) for discussion of the issues and possible PC recommendations to Council based on the developer's desire to institute a conditional District Zoning Map.

At the September 13 meeting of the Planning Commission, the developers and the neighbors reported that a mutually satisfying meeting was held and that certain conditions were agreed upon. After some discussion with the PC, the developers put forward five conditions for consideration. The PC voted unanimously to recommend all five conditions to the Council. Both parties appear to be satisfied with the outcome. Equally important to the outcome was the spirit of collaboration enjoyed by both parties.

I was so impressed by this spirit of collaboration that I am here to ask Council to consider developing legislation that I believe can build into our regulations a collaborative, consensual approach to conditional zoning/conditional use rather than the more adversarial approach often fostered by the current process.

Let me outline a four-step process that I believe could lead to a better outcome where conditional zoning or conditional use is under consideration:

Step 1: Upon filing a conditional zoning or conditional use request, the developer would be required to meet with neighbors to explain his intentions and to gather neighborhood concerns. Ideally, this initial meeting should be conducted by Planning and Inspections. All information gathered would be shared with everyone involved.

Step 2: The neighbors and the developers would meet a second time to try and resolve all issues and concerns. The parties would seek consensus rather than conflict.

Step 3: The parties would present the conditions reached through consensus to the Planning Commission for discussion. Following the discussion, the PC would present its findings and recommendations to the Council for action.

Step 4: If appropriate, Council would remand any unresolved issues raised by the parties back to the Planning Commission to see what, if anything could be worked out, with the possibility that a modified set of conditions might come forth from the developer based on a new consensus.

In the Highland Wood case, the key to a successful conclusion was the good faith meeting between the developer and the neighborhood. If this pivotal step could be incorporated into our process, I believe it would more often produce a win/win rather than a win/lose outcome and both developer and neighbors would more often leave with good feelings toward one another.

I congratulate the Council on the process they offered to the parties and I am pleased that the process offered resulted in an almost complete reversal of the vote initially taken by the PC. I believe that both the parties as well as the PC concluded their discussion with the belief that both the feelings and the outcome were quite positive. It is my hope that Council will review the current process and consider changing it for the better.

Mr. Spann reported that the Planning Commission voted to unanimously recommend approval of the zoning request. Mr. Jason Gaston, engineer for the project, agreed that meeting with neighborhood members produced positive results for everyone involved. Council member Mason asked if Phase II property will be developed. Mr. Gaston said no, that the conditional use zoning process must be used again if there are future plans to develop that property. There being no further comments, the public hearing closed at 7:37 p.m. Council member Mason commented that she had spoken with several residents of the neighborhood and that they are now in favor of the project. On a motion by Council member Mason, 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 redevelopment will be revitalizing a "Brownfield" structure that is located in a corridor overlay district. It was also indicated that the conditions stipulated below will protect a viable residential area and that this redevelopment will be an enhancement to a major entrance into Boone. The conditions are as follows:

1. Phase II must be removed from the development proposal.
2. The applicant will provide curb gutter and a 5' sidewalk along the west side of Highland Hall Road all the way down to the new bus stop on Highway 421 as noted in the plan dated 9/21/10 **(EXHIBIT B)**.
3. The applicant will provide a bus stop in coordination with AppalCART at the intersection of Highland Hall Road and Highway 421.
4. The applicant will provide additional landscaping along the northern side of the northwest building consisting of vegetation that will provide an opaque screen from the adjacent R-1 property and will provide a vegetative screen at the project entrance at Highland Hall Road to screen headlights from adjacent properties.
5. The applicant will provide continued maintenance of the slope of the subject property along Highway 421 and provide for snow removal from the sidewalk along Highland Hall Road between the project and the bus stop.
6. The site plans referenced for this project are dated 9/14/10 **(EXHIBIT A)**.
7. The R-1 portion of the property will remain undeveloped and act as a buffer between the project and adjacent properties.

VOTE: Aye-All
Nay-None

On a motion by Council member Mason, 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 it will be a corridor improvement, the applicant has agreed to preserve historic trees and it is a redevelopment of a "Brownfield" property. The project is in proximity to ASU and provides a transition buffer that is more restrictive than the general B-3 to R-1 neighborhood zones. The conditions listed above must also be met.

VOTE: Aye-All
Nay-None

DBDA QUARTERLY UPDATE - OCTOBER MEETING

Council member Leigh explained that one of the provisions of the interim contract is that the DBDA provide a quarterly report to Council. On a motion by Council member Leigh, seconded by Council member Ball, Council moved to request the following information from the DBDA.

1. A detailed general ledger (income & expenses) from July 1st to present.
2. Time sheets (msd vs. non-msd activities) from July 1st to present.
3. Explanation of the fund accounting system now in place.
4. An analysis of the fund balance by an independent party.
5. A copy of the latest audit (dated 9/1/10), along with a copy of 990.
6. A copy of the revised by-laws and personnel policies.
7. A copy of the final DBDA FY 10-11 budget.
8. An update on DBDA activities and strategy to reach goals.

This information is to be presented to the Town Clerk by Monday, October 11, 2010 for inclusion in the October 19/21, 2010 Boone Town Council packet.

VOTE: Aye-All
Nay-None

Mayor Clawson declared a break a 7:54 p.m. Council reconvened at 8:04 p.m. Mayor Pro-Tem Mason presided while Mayor Clawson was away at a conference call with the NC League of

Municipalities.

UPDATE ON U4020 PROJECT - BIKE LANES

Council member Ball asked about the status of bike lanes on the U4020 project. Public Works Director Blake Brown responded that the two outside lanes will be extended two feet for bike lanes. Council member Mason asked about bike lane signage. Mr. Brown said he did not believe there would be signage. Council member Ball suggested signage or pavement stenciling for the bike lanes. Mr. Brown said he would contact DOT since Highway 421 (U4020 project) is the property of that organization.

UPDATE ON DOWNTOWN PARKING POLICIES - SATURDAY ENFORCEMENT AND ASU GAME-DAY PARKING

Council member Ball asked for an update on the Saturday parking enforcement and ASU game-day parking. Town Manager Greg Young presented the following report:

	Town of Boone			
	Saturday & Game Day Parking Enforcement			
Date	**Description**	**Revenue**	**Cost**	**Profit / (Loss)**
8/28/2010	Queen Street Meters	$ 175.73		
	King Street Pay Lot	$ 133.00		
	Citations Paid - 11 ea.	$ 110.00		
		$ 418.73	*$ 410.00*	*$8.73*
9/4/2010	Queen Street Meters	$ 406.34		
	King Street Pay Lot	$ 272.00		
	Citations Paid - 2 ea.	$ 20.00		
		$ 698.34	*$ 410.00*	*$288.34*
9/11/2010	Queen Street Meters	$ 179.55		
	King Street Pay Lot	$ 132.00		
	Queen Street Lot	$ 795.00		
		$1,106.55	*$1,400.00*	*($293.45)*
9/18/2010	Queen Street Meters	$ 915.00		
	King Street Pay Lot	$ 163.95		
	Queen Street Lot	$ 66.00		
	Citations Paid - 10 ea.	$ 100.00		
		$1,244.95	*$1,400.00*	*($155.05)*
Total		***$3,468.57***	***$3,620.00***	***($151.43)***

After little discussion, Council agreed to revisit this matter at the end of the 2010 ASU football season. Council member Mason also asked that an update be provided at upcoming Council meetings.

DISCUSSION OF POSSIBLE BAN ON USE OF COAL TAR-BASED PAVEMENT SEALANTS

Council member Ball introduced Watauga Riverkeeper Donna Lisenby to present information regarding a possible ban on coal tar sealants. Ms. Lisenby presented a powerpoint and video listing the harmful affects of coal tar based sealants. **(Powerpoint presentation is permanently on file in the September 21/23, 2010 Town Council packet.)** Council discussed at length the possibility of banning coal tar sealants, including the possible UDO amendment to require permits for driveway sealing. On a motion by Council member Ball, seconded by Council member Brantz, Council moved to direct the Town Attorney to investigate the legality of banning all coal tar-based sealants within the Town's jurisdiction

VOTE: Aye-All
Nay-None

On a motion by Council member Ball, seconded by Council member Phillips, Council directed the Town Attorney to draft a resolution urging enforcement because of the Hodges Creek fish kill and to study and make recommendations on the harmful effects of coal tar-based sealants. This resolution will be sent to the NC Division of Environment and Health Resources, the Division of Water Quality and and the NC League of Municipalities.

VOTE: Aye-All
Nay-None

REQUEST PERMISSION TO APPLY FOR CDBG GRANT - DOMESTIC VIOLENCE GRANT

Assistant to the Manager Jim Byrne requested permission to apply for a CDBG grant in the amount of $1,000,000 to create additional transitional housing for OASIS, which helps victims of domestic violence. Mr. Byrne said the application is due September 30, 2010 and that no matching funds are required. On a motion by Council member Brantz, seconded by Council member Ball, Council moved to grant permission to apply for this CDBG grant.

VOTE: Aye-All
Nay-None

REQUEST WAIVER OF BIDDING REQUIREMENTS - PURCHASE OF 75' AERIAL LADDER FIRE TRUCK

Fire Chief Jimmy Isaacs requested permission to piggyback on a Florida Sheriff's Association bid to purchase a 75' aerial ladder truck in the amount of $552,000. Mr. Isaacs said this option will allow delivery of the aerial truck within 90 days. On a motion by Council member Brantz, seconded by Council member Leigh, Council moved to waive the bidding requirements and to purchase via the Florida Sheriff's Association a 75' aerial ladder fire truck from Ferrara Fire Apparatus for $552,000.

VOTE: Aye-All
Nay-None

TRANSPORTATION COMMITTEE RECOMMENDATION - BIKE-ABILITY PROGRAM

Public Works Director Blake Brown requested Council's permission to develop a bike-ability program. Mr. Brown said the Alternative Transportation Plan adopted in 1995 needs an update and that the Town hopes to secure an NC DOT bicycle program grant within the next two years. After little discussion, on a motion by Council member Ball, seconded by Council member Phillips, Council moved to have the Alternative Transportation sub-committee investigate and develop a bike-ability program for the Town of Boone.

VOTE: Aye-All
Nay-None

TRANSPORTATION COMMITTEE RECOMMENDATION - WARRANT STUDY FOR

HIGHWAY 105 INTERSECTIONS

Public Works Director Blake Brown reported that the traffic signal has been removed at the old Watauga High School intersection on Highway 105. Mr. Brown, along with Police Chief Dana Crawford, noted that speeding is again an issue on Highway 105 since the traffic signal was removed. Mr. Brown also said that once the signal was removed the crosswalk for pedestrians was also removed. Police Chief Crawford said the Police Department has issued 90 speeding violations since the signal was removed an amount which is more than half the violations issues when the signal was operational. On a motion by Council member Brantz, seconded by Council member Ball, Council moved to request that DOT perform a warrant study at the intersections of High School Drive and Poplar Hill Drive on Highway 105.

VOTE: Aye-All
Nay-None

REQUEST FOR FUNDING RELEASE - SIDEWALK CONSTRUCTION

Public Works Director Blake Brown requested funding for sidewalk construction on State Farm Road, Highway 105 and Boone Heights Drive. Mr. Brown said the funding will be used for sidewalk, as well as curb and gutter along those roads. On a motion by Council member Ball, seconded by Council member Phillips, Council moved to allocate $10,245 from the "Fee in Lieu" line item and $115,043 from the Sidewalk Capital Reserve fund.

VOTE: Aye-All
Nay-None

Mayor Clawson rejoined the meeting at 9:29 p.m.

APPROVAL OF BID - MEDIUM DUTY TRUCK

Public Works Director Blake Brown presented informal bid minutes for the purchase of a diesel four-wheel drive medium duty truck with do-al spreader and snow plow:

VENDOR	BID AMOUNT
Scruggs Equipment	$149,600.00
Rush International Trucks	$154,515.18
Western Carolina Freightliner	$141,279.00

Mr. Brown recommended that Scruggs Equipment be awarded the bid. Mr. Brown said the truck will be delivered in December and will be paid for using Powell Bill funds. On a motion by Council member Ball, seconded by Council member Mason, Council moved to award the bid to Scruggs Equipment in the amount of $149,600.

VOTE: Aye-All
Nay-None

APPROVAL OF BID - ONE-TON 4x4 DIESEL DUMP TRUCK

Public Works Director Blake Brown presented bid minutes for the purchase of a one-ton, four-wheel drive, diesel dump truck with salt and sand spreader and snow plow:

VENDOR	BID AMOUNT
Everette Chevrolet/Buick/GMC	$69,961.00
Scruggs Equipment Company	$70,042.00
Mack Brown Inc.	$67,951.00

Mr. Brown recommended Mack Brown, Incorporated. On a motion by Council member Ball, seconded by Council member Mason, Council moved to award the bid to Mack Brown, Incorporated in the amount of $67,951.00.

VOTE: Aye-All
Nay-None

SCHEDULE SPECIAL MEETING - INTERGOVERNMENTAL RETREAT

On a motion by Council member Mason, seconded by Council member Brantz, Council moved to schedule an Intergovernmental Retreat for Tuesday, September 28, 2010 at 5:30 p.m. at the Broyhill Inn and Conference Center.

VOTE: Aye-All
Nay-None

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Clawson announced three positions open on the Boone Tourism Development Authority and three positions open on the Watauga County Recreation Commission. Mayor Clawson also announced one community member position open on the Water Study Committee. Council directed the Clerk to advertise on the Town's website and with local civic organizations.

BOARD APPOINTMENT - AFFORDABLE HOUSING TASK FORCE

There were no applications for the two vacant community member positions; however, Council unanimously appointed Brett Scantlin as a Planning Commission representative on this board.

BOARD APPOINTMENT - BOARD OF ADJUSTMENT

Council received an application from Dr. Brian Ellison to fill an Alternate ETJ position on the Board of Adjustment. Town Attorney Sam Furguiele that there may be a regular ETJ position open pending the resignation of Earl Keller. Mr. Furgiuele said Mr. Keller has indicated that he plans to resign; however, Mr. Keller has not submitted his resignation in writing as of this date. Council directed the Town Clerk to ascertain Mr. Keller's intentions and to discuss this matter at the Thursday, September 23rd meeting.

BOARD APPOINTMENT - HISTORIC PRESERVATION COMMISSION

There were no applications for the one vacant ETJ position.

BOARD APPOINTMENT - OUTSIDE AGENCY FUNDING COMMITTEE

There were no applications for the three resident positions.

BOARD APPOINTMENT - PLANNING COMMISSION

There were no applications for the one vacant ETJ position.

APPROVAL OF BID - ORCHARD STREET SANITARY SEWER REPLACEMENT PROJECT

Public Utilities Director Rick Miller presented a certified bid tab for the Orchard Street Sanitary Sewer replacement project:

VENDOR	**BID AMOUNT**

Allied Infrastructure	$173,999.80
Blythe Development Company	$188,465.00
Freestone Construction, LLC	$133,200.00
Iron Mountain Construction	$139,938.00
Waters Brothers Construction Company	$155,073.35

Mr. Miller, along with a formal recommendation from Cavanaugh & Associates, recommended Freestone Construction, LLC. On a motion by Council member Brantz, seconded by Council member Ball, Council moved to award the bid to Freestone Construction, LLC in the amount of $133,200.

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 September, 2010 Boone Town Council packet.)

APPROVAL OF BUDGET AMENDMENTS

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

DESCRIPTION	ACCOUNT #	TO:	FROM:
Professional Services - Gov. Body	010-400-000-509100	$2,000.	
Appropriated Fund Balance	010-000-000-499900		$2,000.
NCDOT U-4020 Project	010-411-000-549121	$60,842.	
Appropriated Fund Balance	010-000-000-499900		$60,842.
Transfer to Law Enforcement Pension Fund	010-500-300-598042	$23,857.	
Appropriated Fund Balance	010-000-000-499900		$23,857.
Capital Outlay-Trucks	010-500-350-573300	$499,000.	
Capital Outlay Reinstatement	010-411-000-575000		$70,000.
Transfer from Capital Reserve-Land	010-000-000-577010		$429,000.
Contracted Services-Parking Contract(Sat/Game Day)	010-600-401-577010	$27,260.	
Parking Violation Penalties	010-000-000-577010		$27,260.
Powell Bill-Paving & Resurfacing	010-600-403-577401	$27,136.	
Appropriated Fund Balance	010-000-000-499900		$27,136.

VOTE: Aye-All
Nay-None

ADOPTION OF CODE AMENDMENT - AGENDA ADDITIONS

Town Attorney Sam Furgiuele explained the proposed code amendments which would limit agenda additions for both Council and all Town committees. Mr. Furgiuele felt that Council may be restricting itself too much by adopting the amendment regarding Town Council agenda additions. Council member Leigh agreed with limiting agenda additions for Town committees, but not for the Town Council. Council member Phillips argued that the Town Council should be held to the same standard as Town-appointed committees. After little discussion, on a motion by Council member Leigh, seconded by Council member Brantz, Council moved to adopt the following code amendment:

§ 30.05. EMERGENCY MEETINGS.

. . .

(F) Only business connected with the emergency may be transacted at an emergency meeting. **No item may be added for action at an emergency meeting with the exception of a request for the scheduling of another emergency meeting in accordance with the provisions of this section.**

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

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

§ 35.04 MEETINGS OF BOARDS, COMMISSIONS, TASK FORCES, ADVISORY BODIES, COMMITTEES AND OTHER SUCH ENTITIES.

. . .

(A) Every board, commission, task force, advisory body, committee and other such entity (hereafter "Town body") created by the Council, including any committee of a Town body, sub-committee, or working group, by whatever name or designation (hereafter referred to as a "sub-committee") and whether created by the Council or other Town body with Council approval, must operate in compliance with the North Carolina Open Meetings law, codified as N.C. Gen. Stat. §§ 143-318.9 et seq. (hereafter, "the law"). At a minimum, all meetings of a Town Body or sub-committee shall require all of the following:

(1) Notice of all official meetings, other than an emergency meeting, by posting of the date, time and name of the Town body or sub-committee at least 48 hours in advance, on the bulletin board for that purpose in Town Hall. If an agenda has been distributed to members of the Town body or sub-committee **prior to the meeting**, it shall also be posted. **When an agenda has not been distributed prior to the meeting, it shall be distributed at the beginning of the meeting before the meeting is called to order and additional copies shall be available for members of the media and public.** An "official meeting" occurs whenever a "regularly scheduled meeting of the Town body or sub-committee occurs, whether or not a quorum is present, or when a majority of the Town body or sub-committee meet, whether in person or by electronic means such as conference call or e-mail, to conduct a hearing, deliberate, take action, or otherwise transact public business. "Deliberate" includes examining, weighing or reflecting upon the reasons for or against a possible decision and also includes the collective acquisition and exchange of facts preliminary to a decision. An "emergency meeting" is one that concerns generally unexpected circumstances which require the immediate consideration of the Town body or sub-committee. In the event of an emergency meeting, a local news medium must be notified prior to the meeting.

. . .

(B) Unless the Council adopts procedures specific to the body or sub-committee, will conduct its meetings in compliance with the following procedures:

. . .

(3) The agenda of the body or sub-committee shall include only those matters within the responsibilities and powers of the body or sub-committee which have been conferred upon it by the Council. **Once an agenda is distributed to the members of a body or sub-committee, no new item may be added to the agenda for action at that meeting, except for the scheduling of an emergency or special meeting.**

VOTE: Aye-All
Nay-None

REDUCTION OF SUPER MAJORITY VOTE REQUIRED FOR MSD SPECIAL TASK FORCE

Council member Leigh pointed out that several members of the downtown area think that the super majority vote now required for the MSD Special Task Force is too restrictive, in that nine out of the twelve members must vote in the affirmative to send a recommendation forward to Council. Council member Leigh proposed dropping the super majority voting recommendation to 60% or that eight out of the 12 members must vote in the affirmative to send a recommendation forward to Council. On a motion by Council member Leigh, seconded by Council member Brantz, Council moved to change the voting requirement for the Municipal Service District Special Task Force to a 60% majority to send a recommendation to Council. Before voting, Council member Mason voiced her concern about changing the rules mid-way during the Task Force meetings.

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

STATUS OF DBDA CONTRACT

Council member Leigh provided an update on the status of the DBDA contract. Council member Leigh pointed out that Council formally adopted an interim contract at the July and August Council meetings. At the August meeting, DBDA president Dempsey Wilcox reviewed some negotiated changes from the July contract and informed Council that the DBDA could work with the contract that was adopted at the August meeting. Council member Leigh reported that the DBDA met on September 20th and did not approve the contract. Council member Leigh reported that the DBDA had an attorney review the contract and that now the DBDA wants more changes. Council member Leigh expressed her frustration that the Town still does not have a contract three months into what is a six-month interim contract. Council member Mason felt that some of the requested changes are legitimate and that the DBDA wants to sign the contract with the Town. After some discussion, on a motion by Council member Leigh, seconded by Council member Ball, Council moved to establish a deadline for a signed contract from the DBDA as October 1, 2010.

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

On a motion by Council member Mason, seconded by Council member Ball, Council moved to schedule a special meeting with the DBDA Board of Directors for Wednesday, September 29, 2010 at 5:00 p.m. in the Council Chambers to discuss the interim contract.

VOTE: Aye-All
Nay-None

RECESS

On a motion by Council member Brantz, seconded by Council member Ball, Council moved to recess the meeting at 10:46 p.m. until Thursday, September 23, 2010 at 6:30 p.m. in the Council Chambers.

VOTE: Aye-All
Nay-None

CALL TO RECONVENE

A recessed meeting from Tuesday, September 21, 2010 was called to order at 6:30 p.m., Thursday, September 23, 2010, in the Council Chambers, 1500 Blowing Rock Road. Mayor Pro-Tem Lynne Mason presided. Council members present were Stephen Phillips, Jamie Leigh, Andy Ball and Rennie Brantz. 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, Planning Director Bill Bailey, and Intern Matthew Farley.

ANNOUNCEMENTS

Mayor Pro-Tem Mason 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. Addition of Public Hearing on Submission of $1,000,000 CDBG Grant to benefit OASIS, Inc.
2. Addition of Item 12.A. - Board of Adjustment Appointment.
3. Addition of Item 12.B. - Water Committee Recommendation - Water Shortage Triggers.
4. Addition of Item 12.C. - Adoption of Contract - Aerial Ladder Truck.
5. Deletion of Item 14.B. - Summit Rentals LLC Water and Sewer Request.
6. Addition to Closed Session - Legal Advice-Water Intake Project.
7. Addition to Closed Session - Update on NOV’s-Storm Drainage.

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

VOTE: Aye - All
Nay - None

PUBLIC COMMENT

There was no one present to speak under public comment.

PUBLIC HEARING - $1,000,000 CDBG GRANT TO BENEFIT OASIS, INC.

Mayor Pro-Tem Mason opened a public hearing at 6:38 to receive public comment on the submission of a $1,000,000 CDBG grant to benefit OASIS, Inc. Assistant to the Manager Jim Byrne explained the purpose of the grant to provide funding for transitional housing and that the housing will be administered by the Boone Housing Authority. With no one offering comment, Mayor Pro-Tem Mason closed the public hearing at 6:40 p.m.

BOARD OF ADJUSTMENT APPOINTMENT

Planning Director Bill Bailey stated that an application for an ETJ position on the Board of Adjustment has been submitted by Dr. Brian Ellison. He stated that a resignation letter from Earl Keller has not yet been received. Mr. Bailey also pointed out that there are two vacant ETJ alternate positions also open. Upon a motion by Council Member Ball, seconded by Council Member Brantz, Council moved to nominate Dr. Brian Ellison for a regular ETJ position on the Board of Adjustment contingent upon the receipt of a letter of resignation from Earl Keller.

VOTE: Aye - All
Nay - None

WATER COMMITTEE RECOMMENDATION - WATER SHORTAGE TRIGGERS

Public Utilities Director Rick Miller presented recommendations from the Water Study Committee on water shortage triggers and an amendment to the Water and Sewer Code. Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to adopt the following amendments to the Water and Sewer Code:

Section 7.1 **Applicabilty of Water Conservation Regulations.**

Whenever the conditions described in Section 7.10 are met, a Water Shortage stage at the level indicated shall be declared in accordance the procedures and regulations of this Article. Recognizing that there may be situations in which those "triggers" do not fully reflect the threat to the Town's water supply, however, even if such conditions have not been strictly met, i~~I~~n the event it appears to the Director of Public Utilities . . . water system.

Section 7.10 **Table of Conditions.**

Stage	**River Operating Conditions**
1	Water Level reading of >8.0 but <7.85 at Intake in South-fork and/or, Discharge at USGS Gage 03161000 is <300cfs for >14 days and/or, >80% of Production Capacity for 3 consecutive days or, at any time as recommended by Public Utilities staff
2	Water Level reading of <7.85 but >7.6 at Intake in South-fork and/or, Discharge at USGS Gage 03161000 is <150cfs for >10 days and/or, >90% of Production Capacity for 3 consecutive days at any time as recommended by Public Utilities staff
3	Water Level reading of <7.6 at Intake in South-fork or, Discharge at USGS Gage 03161000 is <50cfs or, 100% of Production Capacity on any day or, at any time as recommended by Public Utilities staff

VOTE: Aye - All
Nay - None

<u>ADOPTION OF CONTRACT - AERIAL LADDER TRUCK</u>

Fire Chief Jimmy Isaacs appeared before the Council to request approval of a contract between the Town of Boone and Ferrara Fire Apparatus, Inc. for the purchase of an aerial ladder truck in the amount of $551,928.00. Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to approve the following contract, as presented, and the technical specifications (as referenced in the contract):

STATE OF NORTH CAROLINA

<u>CONTRACT</u>

COUNTY OF WATAUGA

THIS CONTRACT, made and entered into this 24th day of September, 2010, by and between the TOWN OF BOONE, NORTH CAROLINA (hereinafter referred to as "BOONE") AND FERRARA FIRE APPARATUS, INCORPORATED, (hereinafter referred to as "FERRARA"), collectively referred to as "the parties."

WITNESSETH:

WHEREAS, BOONE currently has a contract with FERRARA; and

WHEREAS, BOONE is in need of an Aerial Ladder Truck and is authorized under state law to contract with a current vendor for the production of same; and

WHEREAS, FERRARA has submitted a proposal to BOONE; and

WHEREAS, FERRARA has agreed to construct and sell, and BOONE has agreed to buy one Aerial Ladder Truck;

NOW, THEREFORE, in consideration of the mutual premises contained herein , as well as other good and valuable consideration flowing between the parties, it is mutually agreed as follows:

1. FERRARA shall deliver to BOONE one Aerial Ladder Truck constructed in Accordance with the specifications attached hereto as Exhibit 1 pp 1-117 (hereinafter referred to as "the Aerial Ladder Truck.")
2. The terms and specifications attached hereto as Exhibit 1, are incorporated herein by reference. In the event any conflict exists between this contract and any provisions of said attachment, this contract shall supercede the conflicting term of the attachments.
3. BOONE shall pay FERRARA the sum of $551,928.00 for said Aerail Ladder Truck. This payment shall be made within 10 days after FERRARA delivers and BOONE accepts the Aerial Ladder Truck.
4. FERRARA covenants and agrees that at the time of delivery of the Aerial Ladder Truck unless noted otherwise, FERRARA is the lawful owner of said truck; that it is free from all liens and encumbrances; that FERRARA has the right o sell the above-described property; and that FERRARA will indemnify BOONE from all damages arising from claims by third parties to ownership of any of said property, and will warrant and defend these covenants against the lawful claims and demands of all parties.
5. FERRARA shall deliver the completed Aerial Ladder Truck with such documentation as necessary to obtain title.
6. FERRARA shall deliver the completed Aerial Ladder Truck to BOONE in Boone, North Carolina within 90 after award of contract. Time is of the essence. Award of contract occurs when the contract is approved by the Boone Town Council and a signed contract is delivered to FERRARA at preconstruction conference. FERRARA shall return signed contract to BOONE within 10 working days from receipt of signed contract from BOONE. Its failure to return a fully executed contract within said time period shall be considered its rejection of the contract and BOONE shall thereafter, without penalty, be entitled to contract with any other party.
7. BOONE and FERRARA acknowledge that BOONE will incur damages if FERRARA fails to deliver the Aerial Ladder Truck within the time specified. The parties further acknowledge that the damages which might be reasonably anticipated are difficult to ascertain due to their indefiniteness or uncertainty. Consequently, the parties agree that FERRARA shall pay Boone LIQUIDATED DAMAGES in the amount of $551.98 per day for each calendar day, in whole or part, FERRARA fails to deliver the Aerial Ladder Truck within the specified time.
8. This Contract shall be governed by the laws of the State of North Carolina. Venue for any dispute shall be in Watauga County, North Carolina.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and their corporate names by their duly authorized officers and their seal to hereunto affixed, the day and year first written above.

VOTE: Aye - All
Nay - None

REQUESTED APPEARANCES - SAMANTHA ALEXANDER

Police Chief Dana Crawford appeared before the Council to address any concerns about the transfer of ownership of Boone Taxi from Marcus Royal to Samantha Alexander. Chief Crawford stated that there were no issues noted in the application submitted by Ms. Alexander. Upon a motion by Council Member Phillips, seconded by Council Member Leigh, Council moved to approve the request for transfer of ownership of Boone Taxi from Marcus Royal to Samantha Alexander.

VOTE: Aye - All
Nay - None

REQUESTED APPEARANCES - REBECCA SUTTON

Public Utilities Director Rick Miller explained the situation in which Ms. Sutton experienced a water leak during this past winter which resulted in an extremely high water bill. He stated that the Water and Sewer Code does give authority to the Town Manager to waive up to $500 based on a hardship or unusual fact and that Town Manager Greg Young has provided a $500 waiver on Ms. Sutton's water bill. He stated that the Codes do not allow any other action to waive or reduce an overdue water account. Ms. Sutton explained that there was a leak in the underground pipe leading from the house to the water meter and that she was unaware of any problems since she did not notice running water or experience a change in water pressure. She stated that after she had been notified of the excessive usage, she notified the property owner who then had the water disconnected in order to repair the leak. She further stated that the property owner filed a claim with his insurance company to cover the cost of the repair and the utility bill. Ms. Sutton stated that the insurance did pay for the repair but denied payment of the utility bill. She stated that she was then advised to have the property owner put the water account into his name to be responsible for the overdue amount. She indicated that the property owner did not take this action and that the property has since been sold. Ms. Sutton asked for the Council's help in taking care of the overdue amount which is $2,100.20. She stated that she had continued to pay the average monthly water bill toward the account. She stated that the extraordinary weather conditions experienced last winter prohibited the meter from being read an action which might have alerted her to the situation at an earlier date. Council agreed that Ms. Sutton's situation was unusual and that she had done all she could to remedy the situation. Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to amend the agenda to consider possible action on amending the Water and Sewer Code in order to adjust the limit that the Town Manager is authorized to use to adjust a water bill ; to direct staff to consider recommendations on other options for the Council to consider in such cases; and to delay action on Ms. Sutton's request.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to adopt the following code amendment:

ARTICLE III
COVERAGE AND DEFINITIONS

Section 1-4. Hardship Policy.

A. A financial hardship case shall be defined as an individual and/or family living below the poverty level as defined by the United States Government**.**

B. In financial hardship cases, the Town Manager shall have the authority to modify or waive any water and/or sewer regulation or fee when the amount in question does not exceed ~~$500.00~~ **$3,000.00**. In each financial hardship case, the Director of Public Utilities shall provide the Town Manager with a written report summarizing all of the relevant facts and detailing his or her recommendation. This report shall include a written verification that the individual does in fact fall below the poverty level.

Section 1-5. Unusual Fact Guidelines.

A. An unusual circumstances case is defined as a situation in which the strict implementation of the water and/or sewer regulations or fees shall defeat the policy or rationale underlying said regulations or fees.

B. The Town Manager shall have the authority to modify or waive the water and sewer regulations and/or fees in unusual circumstances cases when the amount in question does not exceed ~~$500.00~~ **$3,000.00**. The Director of Public Utilities shall provide the Town Manager with a written report summarizing the unusual circumstances and providing his or her recommendation.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Ball, seconded by Council Member Brantz, Council moved to direct the Town Manager to consider Ms. Sutton's request to waive her outstanding water bill for the full amount.

VOTE: Aye - All
Nay - None

REQUESTED APPEARANCES - KEITH WEBB/MCGILL & ASSOCIATES

Keith Webb and Denny Martin of McGill & Associates appeared before the Council to present an update on the Town of Boone's Water & Sewer Capital Improvements Plan. The presentation included the following:

1. Strategic Goals & Objectives
2. Methodology
3. Review of Existing Facilities
4. Proposed Capital Improvements.

(A copy of the presentation is permanently on file in the Clerk's Office.)

Mayor Pro-Tem Mason declared a break at 8:03 p.m. Council reconvened at 8:15 p.m.

Before deliberating on the water and sewer requests, Town Attorney Sam Furgiuele questioned the members of the Council on whether or not they had 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 8:16 p.m. to hear sworn testimony from Jason Gaston (Valor Engineering), Public Utilities Director Rick Miller, and Planning Director Bill Bailey on a request for water and sewer service to property located at 603 Blowing Rock Road. Jason Gaston, acting as agent on behalf of the property owner, began by pointing out a change in the application to reduce the square-footage of retail area to 16,000 sqft and to reduce the number of bedrooms to 130 so that the request is for 19,908 gpd. He stated that the Council had granted a request to transfer an allocation of 6,000 gpd at the last meeting but that the applicant chose not to pay the availability fees, therefore letting the allocation expire. Mr. Gaston stated that the applicant is waiting until possible amendments to the B zoning districts are approved by the Council to proceed with his project. He requested to table this project until the October regular meeting. Council Member Brantz asked about the number of floors and the distribution of bedrooms per unit. Mr. Gaston stated that the project will include four floors: retail use on the first floor, parking for the second floor, and residential use for the third and fourth floors. He stated that the number of bedrooms per unit is still under consideration and noted that one-bedroom units are currently in great demand. Discussion ensued regarding when the proposed amendments to the B zones may come before the Council for consideration. Planning Director Bill Bailey stated that the earliest possible date for consideration would be in December due to the current list of priorities being undertaken by the staff. Public Utilities Director Rick Miller stated that the biggest change to this application was the reduction in the number of bedrooms. With no other testimony offered, Mr. Furgiuele closed the public hearing at 8:32 p.m. Upon a motion by Council Member Leigh, seconded by Council Member Brantz, Council moved to table the request made by John Winkler for 19,908 gpd for property located at the corner of Highway 321 and Clement Street until the regular Council meeting in October.

VOTE: Aye - All
Nay - None

WATER & SEWER REQUEST - CHUCK LUDDEKE

Town Attorney Sam Furgiuele opened a public hearing at 8:33 p.m. to hear sworn testimony from Chuck Luddeke (applicant/property owner), Public Utilities Director Rick Miller, Planning Director Bill Bailey, and Roger Wright regarding a request for water and sewer service to property located on Water Street and King Street. Mr. Luddeke stated that he is the current owner of the Mellow Mushroom in Blowing Rock and is planning to open another Mellow Mushroom in Boone at 805 West King Street. He stated that the request is for 4,472 gpd. Mr. Luddeke entered into evidence as **Exhibit A (permanently on file in the Clerk's office)** a set of conceptual drawings of the project and as **Exhibit B (permanently on file in the Clerk's office)** copies of the water bill showing the usage for the Mellow Mushroom in Blowing Rock. He explained that the restaurant is proposed to seat 150 people: 49 persons or fewer on the mezzanine and the remainder inside the building. In regard to parking, he stated that the restaurant patrons will have the use of the parking lot across the street at the High Country Bank complex after 5:00 p.m. and can also use the parking located on Queen Street. He noted that the parking spaces along King Street become available after 5:00 p.m. when the Watauga County Courthouse closes. Public Utilities Director Rick Miller stated that he has talked to Mr. Luddeke about the cross-connection and grease trap requirements and foresees no issues with supplying the location utility service. Council Member Brantz asked about the amount of availability fees for the project. Mr. Luddeke stated that the availability fees are $37,000. Planning Director Bill Bailey stated that he did not foresee any specific concerns regarding the project. Roger Wright voiced his support of the project as it will provide sales tax revenue and add to the tax-base. With no other testimony offered, Mr. Furgiuele closed the public hearing at 8:48 p.m. Upon a motion by Council Member Phillips, seconded by Council Member Mason, Council moved to approve the request for 4,472 gpd from the 2010 allotment from Chuck Luddeke for property located at the corner of King and Water Streets.

VOTE: Aye - All
Nay - None

WATER & SEWER REQUEST - HACKETT PROPERTIES

Town Attorney Sam Furgiuele opened a public hearing at 8:49 p.m. to hear sworn testimony from Dino Hackett (applicant/property owner), Public Utilities Director Rick Miller, and Planning Director Bill Bailey regarding a request for water and sewer service to property located on Park Street. Mr. Hackett explained that the request for 22,500 gpd is for a 50 unit complex with 150 bedrooms. He stated that a Special Use Permit (SUP) had been granted for this property for this project and that he plans no substantial changes to the permitted project. Mr. Hackett indicated that he was uncertain about the condition of the SUP which restricts the renting of the units. Mr. Furgiuele stated that his recollection of the case included a condition of the SUP in which a restricted covenant or Home Owners' Association guidelines which would prohibit renting or leasing of units by the individual owners. He further recalled that the project was presented as being targeted to young professionals, including faculty and staff for ASU due to the proximity of the campus. He suggested that Mr. Hackett may want to further review the conditions of the Special Use Permit issued by the Board of Adjustment for this property. In response to a question about accessing water, Mr. Hackett stated that he has not determined how the water will be accessed for the project. Public Utilities Director Rick Miller stated that the project is in the secondary pressure zone. He stated that he foresees no concerns regarding this project as long as the regulations for extension in the secondary pressure are followed. Furthermore, he stated that no decision as to how the water was to be accessed was ever determined at prior meetings. Mr. Miller indicated that water can be accessed from the Junaluska tank or the Charles/Gladys Street tank or that the owner may determine another means of accessing water. Council Member Brantz asked about the amount of availability fees for the project. Mr. Hackett stated that the availability fees are $186,000. Planning Director Bill Bailey pointed out that the project is to be developed within the town limits, and that a large tract of the property is being preserved for green space. He also stated that the steep slope and viewshed requirements are not an issue since the project is planned for the area within the town limits not on the steep area of the property in the ETJ and in the county. In regard to installing sidewalks, Mr. Hackett stated that he does not have all of the rights-of-way or easements necessary for that project at this time. With no other testimony offered, Mr. Furgiuele closed the public hearing at 9:19 p.m. After brief discussion, it was the consensus of the Council that questions regarding the conditions of the SUP, specifically installation of sidewalks and restrictive covenant requirements, need to be further investigated by the planning staff, as well as the applicant. Upon a motion by Council Member Leigh, seconded by Council Member Ball, Council moved to table the request for water and sewer service made by Dino Hackett for property located on Park Street until the regular meeting in October.

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

Council requested that transcripts be made available to the applicant and members of the Council of the audio tape recordings of the Board of Adjustment meeting during which the Special Use

Permit for this property was granted. Furthermore, Council also requested copies of the minutes of the Council meetings where requests for water allocations were made for this property.

CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to enter Closed Session at 9:28 p.m. pursuant to NCGS 143-318.11a)3)5) in order to discuss the following matters:

$ Legal Advice - Temporary Zoning Uses
$ Legal Advice - Sign Contract
$ Property Acquisition - Right-of-Way
$ Legal Advice - Lease of Town property.
$ Legal Advice - Water Intake Project.
$ Update on NOV's - Storm Drainage.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to exit Closed Session at 12:10 a.m.

VOTE: Aye - All
Nay - None

ADJOURNMENT

On a motion by Council Member Phillips, seconded by Council Member Leigh, Council moved to adjourn the meeting at 12:11 a.m.

VOTE: Aye - All
Nay - None

Town Clerk Mayor

Deputy Town Clerk Mayor Pro-Tem