

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
OCTOBER 19, 2010**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m. on October 19, 2010, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Stephen Phillips, Jamie Leigh, Rennie Brantz, and Andy Ball. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Town Clerk Freida Van Allen, Assistant to the Manager Jim Byrne, Finance Director Amy Davis, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Public Utilities Director Rick Miller, Public Works Director Blake Brown, Planning Director Bill Bailey, and Human Resources Director Peri Moretz.

TENTATIVE AGENDA ADOPTION

There were no changes to the agenda. 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 Phillips, Council moved to adopt the following consent agenda items:

Minutes: September 14, 2010 - Special Meeting
 September 14, 2010 - Special Meeting
 September 15, 2010 - Special Meeting
 September 21/23, 2010 - Regular Meeting
 September 27, 2010 - Special Meeting
 September 28, 2010 - Special Meeting
 September 29, 2010 - Special Meeting.

Tax Refunds & Releases: August & September 2010.

**TAX RELEASES
AUGUST 2010**

Taxpayer	Year	Amount	Description
WILLIAMS, CLARENCE EDWARD JR WILLIAMS, REBECCA CRISSIN	2010	1.54	SOLD VEHICLE
REGION D COUNCIL OF GOVERNMENTS	2010	3486.88	EXEMPT PROPERTY
REINS STURDIVANT FUNERAL DIRECTORS	2010	17.79	TURN IN TAG/ADJ FOR INCORRECT
WEST, ABIGAIL KAITLAN	2010	7.47	LIVES IN JOHNSON CO.
LAND, SHARON BRIDGES LAND, JAMES FRANK II	2010	57.02	LIVES IN GASTON CO.
GRACE EVANGELICAL LUTHERAN CHURCH	2010	1462.98	EXEMPT PROPERTY
OLLIS, PAUL FRANK	2010	8.30	TURN IN TAG
ANDERS, MICHAEL RAY	2009	5.92	SOLD VEHICLE
VON QUALEN, SHIRLEY ANN JONES	2000	16.46	EXEMPT

		5179.58	

**TAX REFUNDS
AUGUST 2010**

Taxpayer	Year	Amount	Description
DOYLE, JEFFREY A DOYLE, KIMBERLY S	2009	23.31	MOVED TO TEXAS
BRANTLEY, ALAN CRAIG	2009	3.09	TURN IN TAG SOLD VEHICLE
VON QUALEN, KEITH P	2009	32.30	INCORRECT SITUS
VON QUALEN, KEITH P	2008	32.30	INCORRECT SITUS
VON QUALEN, KEITH P	2008	115.22	INCORRECT SITUS
		206.22	

**TAX RELEASES
SEPTEMBER 2010**

Taxpayer	Year	Amount	Description
NELSON, ADRYONA MARIE	2010	29.08	SOLD VEHICLE
HOOVER, DONALD ALLEN HOOVER, MARISA RAE	2010	4.33	TURN IN TAG SOLD VEHICLE
KLIMA, RICHARD ERVIN	2010	8.68	PLATE TURNED IN
GRIMSRUD, JAKOB KRISTIAN	2010	3.89	BODY CONDITION OF VEHICLE
CITIFINANCIAL INC	2010	15.17	NO LEASEHOLD IMPROVE FOR 2010
MERRILL, DEE KERR	2010	14.47	LIVES IN MECKLENBERG CO
STURGILL, GARY LEE	2010	14.01	TURN IN TAG
APPALACHIAN MUSIC SHOPPE LLC	2010	20.38	TURN IN TAG
THOMAS, ELOISE STOWE	2010	206.09	HOUSE TORN DOWN
NC DOT	2010	2264.77	EXEMPT PROPERTY
TURCK, GEORGE PETER	2010	6.07	TURN IN TAG
MAIN, THOMAS	2010	50.97	ADJ FOR BILL OF SALE
MCGUIRE, TERESA ANN	2009	37.22	INCORRECT SITUS
		2675.13	

Approval of Official Names for Town of Boone Parks.

Approval of Amendment to Article XIV. Personnel Records & Reports:

ARTICLE XIV. PERSONNEL RECORDS AND REPORTS

Section 1. Personnel Records and Reports - Public Information.

In compliance with N.C. Gen. Stat. §160A-168, the following information with respect to each Town employee is a matter of public record: name; age; date of original employment or appointment to the service; **the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the Town has the written contract or a record of the oral contract in its possession**; current position, title; current salary; date and amount of ~~each the most recent~~ increase or decrease in salary **with the Town**; date **and type** of ~~the most recent~~ each promotion, demotion, transfer, suspension, separation, or other change in position classification **with the Town**; **date and general description of the reasons for each promotion with the Town**; **date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the Town**; **if the disciplinary action was a dismissal, a copy of the written notice of the final decision setting forth the specific acts or omissions that are the basis of the dismissal**; and the office to which the employee is currently assigned. “Salary” shall include pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the Town. Any person may have access to this information for the purpose of inspection, examination, and copying during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the Town may adopt, as well as such copying charges as may be generally assessed by the Town for copies of public records.

Adoption of Resolution: Financing Contract:

RESOLUTION

The governing body for the Town of Boone, North Carolina, held a regular meeting at the Town Council Chambers, the regular place of meeting, on October 19, 2010, at 6:30 p.m.

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT FINANCING CONTRACT IN THE AMOUNT OF \$313,000.00 WITH RBC BANK (USA) TO FINANCE THE ACQUISITION OF CERTAIN EQUIPMENT FOR USE BY THE TOWN OF BOONE, NORTH CAROLINA, AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED INSTRUMENTS, AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH

BE IT RESOLVED by the governing body for the Town of Boone, North Carolina (the “Unit”):

- Section 1. The governing body of the Unit does hereby find and determine:
- a) The Town of Boone proposes the acquisition of certain equipment, which may include fixtures as more fully described in the hereinafter mentioned Contract (collectively, the “Equipment”):
 - b) After consideration, the governing body of the Unit has determined that the most advantageous manner of financing thereof is by an installment contract pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended;
 - c) Pursuant to Section 160A-20, the Unit is authorized to finance the acquisition of personal property, including fixtures, by installment contracts that create a security interest in the property financed to secure repayment of the financing; and
 - d) RBC Bank (USA) (“RBC Bank (USA)”) has proposed that RBC Bank (USA) enter into an Installment Financing Contract with the Unit to finance the Equipment pursuant to which RBC Bank (USA) will lend the Unit then amount of \$313,000.00 (the “Contract”) and a related Escrow Agreement between the Unit and RBC Bank (USA) (the “Escrow Agreement”).

Section 2. The governing body of the Unit hereby authorizes and directs Authorized Officer, Amy Davis, to execute, acknowledge and deliver the Contract and Escrow Agreement on behalf of the Unit in such form and substance as the person executing and delivering such instruments on behalf of the Unit

shall find acceptable. The Clerk is hereby authorized to affix the official seal of the Town of Boone to the Contract and the Escrow Agreement and attest the same.

- Section 3. The proper officers of the Unit are authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do or cause to be done any and all other acts and things necessary or proper for carrying out this Resolution and the Contract and the Escrow Agreement.
- Section 4. Notwithstanding any provision of the Contract or the Escrow Agreement, no deficiency judgement may be rendered against the Unit in any action for breach of a contractual obligation under the Contract or the Escrow Agreement and the taxing power of the Unit is not and may not be pledged directly or indirectly to secure any moneys due under the Contract, the security provided under the Contract being the sole security for RBC Bank (USA) in such instance.
- Section 5. The Unit covenants that, to the extent permitted by the Constitution and laws of the State of North Carolina, it will comply with the requirements of the Internal Revenue Code of 1986, as amended (“the code”) as required so that interest on the Unit’s obligations under the Contract will not be included in the gross income of RBC Bank (USA).
- Section 6. The Unit hereby represents that it reasonably expects that it, all subordinate entities thereof and all entities issuing obligations on behalf of the Unit will issue in the aggregate less than \$30,000,000 of tax-exempt obligations, including the Contract (not counting private-activity bonds except for qualified 501(c)(3) bonds as defined in the Code) during calendar year 2010. In addition, the Unit hereby designates the Contract and its obligations under the Contract as a “qualified tax-exempt obligation” for the purposes of the Code.
- Section 7. This Resolution shall take effect immediately upon its passage, on October 19, 2010.

ATTEST:

Mayor

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 148-149)

Schedule Special Meetings: MSD Special Task Force on Wednesday, November 10, 2010 at 5:30 p.m. Monday, November 15, 2010 at 5:30 p.m. and Wednesday, November 17, 2010 at 6:00 p.m. All meetings will be held in the Council Chambers.

VOTE: Aye - All
Nay - None

PUBLIC HEARING - TOWN OF BOONE WATER SHORTAGE RESPONSE PLAN

Mayor Clawson opened the public hearing at 6:33 p.m. Public Utilities Director Rick Miller said a public hearing is required before Council can adopt the water shortage response plan. There being no comments, the public hearing closed at 6:34 p.m.

SCHEDULE FOR FALL QUARTERLY PUBLIC HEARING - ZONING MAP AMENDMENTS

Case 20100522 Boone Point Conditional District Modification - Planning and Inspections Director Bill Bailey presented two zoning map amendments to be heard at the November 2nd Quarterly Public Hearing. Mr. Bailey said the first map amendment is for Boone Point whose representatives are requesting removal of the residential component of their conditional district zoning. On a motion by Council member Mason, seconded by Council member Ball, Council moved to send this map amendment to the November 2nd Quarterly Public Hearing.

VOTE:Aye-All
Nay-None

On a motion by Council member Brantz, seconded by Council member Mason, Council moved to excuse Council member Phillips from deliberation and voting on the next matter because of his association with GH Winkler family.

VOTE:Aye-All
Nay-None

Case 20100530 GH Winkler Family Limited Partnership General Use Rezoning - Mr. Bailey said the second map amendment is from the GH Winkler Family whose representatives are requesting to rezone a B-3 portion of property located at 115 Highway 105 Extension to R-3. Mr. Bailey said the property is known as the driving range located behind Papa John's Pizza. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to send this map amendment to the November 2nd Quarterly Public Hearing.

VOTE:Aye-All
Nay-None
Excused-1 (Phillips)

SCHEDULE FOR FUTURE QUARTERLY PUBLIC HEARING - REVISION TO UDO NUMBERING SYSTEM

Planning and Inspections Director Bill Bailey said because of the revision of the table of permitted uses the numbering system in the UDO also needs to be updated. Mr. Bailey said the new numbering system will be formatted similar to the Town Code and that he hopes to have the text amendment on the numbering system ready by the November Quarterly Public Hearing. On a motion by Council member Brantz, seconded by Council member Ball, Council moved to send this text amendment to the November 2nd Quarterly Public Hearing.

VOTE:Aye - All
Nay - None

SCHEDULE FOR QUARTERLY PUBLIC HEARING - ZONING TEXT AMENDMENT-ARTICLE 18 SECTION 327

Planning and Inspections Director Bill Bailey explained that this text amendment would allow signs within the Residential Rehabilitation (RR) district. Mr. Bailey said the Boone Mennonite Church, located within the RR district, is not allowed to place a church sign because it is not currently permitted. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to send this text amendment to the November 2nd Quarterly Public Hearing.

VOTE:Aye - All
Nay - None

SCHEDULE FOR FALL QUARTERLY PUBLIC HEARING - ZONING TEXT AMENDMENT-FIRE DEPT. REQUIREMENTS FOR DEVELOPMENT

Planning and Inspections Director Bill Bailey explained that there is currently a disconnect between the Planning and Inspections and Fire Departments regarding development. Mr. Bailey said this text amendment will address that deficiency. Town Attorney Sam Furgiuele pointed out that this action will give the Town the opportunity to issue stop orders unless all Town codes are not met. On a motion by Council member Brantz, seconded by Council member Phillips, Council moved to send this text amendment to the November 2nd Quarterly Public Hearing.

VOTE:Aye - All
Nay - None

SCHEDULE FOR FALL QUARTERLY PUBLIC HEARING - ZONING TEXT AMENDMENTS

Article XIX. Parking. Section 346. Number of Parking Spaces Required. Town Attorney Sam Furgiuele said that this text amendment will require that the initial parking spaces developed must remain parking spaces or be subject to penalties. On a motion by Council member Mason, seconded by Council member Phillips, Council moved to send this text amendment to the November 2nd Quarterly Public Hearing.

VOTE:Aye-All
Nay-None

Article X. Permissible Uses - Board of Adjustment Jurisdiction. Town Attorney Furgiuele explained that the next text amendment will give the Planning Department the authority to notify Council if a developer has misrepresented information that was initially given at a Town Council water allocation hearing. Any minor or majority change of information will allow the Planning Department to require a special use permit, thereby sending the development to the Board of Adjustment in which case the Town will have to opportunity to speak regarding the issue. On a motion by Council member Brantz, seconded by Council member Ball, Council moved to send this text amendment to the November 2nd Quarterly Public Hearing.

VOTE:Aye-All
Nay-None

Article IX. Zoning Districts & Maps - Addition of Transitional Zones. Town Attorney Furgiuele said this text amendment will create buffers, or transitional zones, for residential areas. Mr. Furgiuele explained that transitional zones will be implemented by zones rather than by uses. Council discussed at length the proposed text amendment. On a motion by Council member Ball, seconded by Council member Mason, Council moved to send this text amendment to the November 2nd Quarterly Public Hearing, as long as the section (e) is reformatted into a list.

VOTE:Aye-All
Nay-None

Article I. General Provisions - Relationship to other Codes. Town Attorney Furgiuele said this text amendment will work in conjunction with the Fire Department text amendment presented above and require that development be in compliance with all applicable Town Codes and all applicable State Codes. On a motion by Council member Brantz, seconded by Council member Phillips, Council moved to send the text amendment to the November 2nd Quarterly Public Hearing.

VOTE:Aye-All
Nay-Non

PRESENTATION OF P&I MONTHLY REPORT

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

PRESENTATION OF DBDA QUARTERLY REPORT

DBDA Executive Director Mary Baker appeared before Council to present a quarterly report of various information regarding DBDA financial and work-related activities. Council member Leigh asked if the employee handbook had been approved by the DBDA Board of Directors. Ms. Baker said no, but that it will at the next meeting. Council discussed at length the applicability of meeting all State and Federal laws. Town Attorney Furgieuele agreed to send to the DBDA language citing Federal discrimination laws to be included in the DBDA Employee Handbook. Council then discussed the different checking accounts the DBDA now administers. Council member Leigh asked how often the DBDA's accountant reviews the financials. Ms. Baker responded quarterly or as needed. Council member Leigh pointed out problems with the payroll taxes that should be brought to the accountant's attention. Council member Mason commented that the new time accounting system is much clearer and noted that once good systems are put into place operations flow much more easily. Town Manager Greg Young pointed out an outstanding purchase order for sign replacement and the need to make sure that any new benches are not copyrighted. No action was taken on the report.

REQUEST FOR NEW BOARD POSITION - ALTERNATIVE TRANSPORTATION SUBCOMMITTEE

Council member Lynne Mason requested a new board member position on the Alternative Transportation Subcommittee. Council member Mason requested that the new member have some bicycle expertise. Public Works Director Blake Brown clarified that the new position must be on the Transportation Committee since the Alternative Transportation Subcommittee is appointed from that committee. On a motion by Council member Phillips, seconded by Council member Brantz, Council moved to appoint a new board member position on the Transportation Committee and directed the Clerk to advertise for that position asking for a person with bicycle expertise.

VOTE:Aye - All
Nay - None

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Clawson announced the following board vacancies:

- § One position on the Community Appearance Commission - requires residency in planning jurisdiction
- § One resident position and one ETJ position on the Board of Adjustment
- § One community member position on the Water Study Committee.

BOARD APPOINTMENTS - AFFORDABLE HOUSING TASK FORCE

Council member Mason nominated Cathy LaMarre to serve as the single-family neighborhood advocate on the Affordable Housing Task Force. There being no further nominations, Ms. LaMarre was appointed for an unexpired term. Her term will expire June 30, 2012.

VOTE:Aye - All
Nay - None

BOARD APPOINTMENTS - BOARD OF ADJUSTMENT

There were no applications received for these vacancies.

BOARD APPOINTMENTS - BOONE TOURISM DEVELOPMENT AUTHORITY COMMITTEE

Council member Mason nominated Jim Wooten and Sheri Moretz to two open positions on the Boone Tourism Development Authority. There being no further nominations, Council appointed Jim Wooten and Sheri Moretz to the Boone Tourism Development Authority. Mr. Wooten will represent a business that collects the occupancy tax and Ms. Moretz will represent a business that current promotes tourism. Both of their terms will expire October 31, 2013.

VOTE:Aye - All

Nay - None

BOARD APPOINTMENT - HISTORIC PRESERVATION COMMISSION

There were no applications received for this vacancy.

BOARD APPOINTMENTS - OUTSIDE AGENCY FUNDING COMMITTEE

There were no applications received for these vacancies.

BOARD APPOINTMENT - PLANNING COMMISSION

There were no applications received for this vacancy.

BOARD APPOINTMENT - WATAUGA COUNTY RECREATION COMMISSION

Council member Leigh nominated West Eppley to an open position on the Watauga County Recreation Commission. Council member Mason nominated David Koppenhaver to another open position on the Watauga County Recreation Commission. There being no further nominations, Council appointed West Eppley and David Koppenhaver. These nominations will be forwarded to the Watauga County Board of County Commissioners for final appointment.

VOTE: Aye - All
Nay - None

BOARD APPOINTMENT - WATER STUDY COMMITTEE

There were no applications received for this vacancy.

Mayor Clawson declared a break at 7:59 p.m. Council reconvened at 8:10 p.m.

DISCUSSION OF SUPPORT FOR PROJECT - WATAUGA COUNTY FARMER’S MARKET AND AGRITOURISM PROJECT

Mr. Richard Boylan, Watauga County Agricultural Extension Agent and a member of the Watauga County Farmers’ Market board presented the following information for Town Council to consider:

Request for Support

The Watauga Co. Farmers Market Board has formally authorized a committee to investigate acquisition of the Henson Farm as a permanent home for our market as well as an Agritourism/heritage farm site. You have our current proposal for how the property could be used before you. We are extremely grateful to have the support of the Sustainable Development Task Force who endorse this project.

The county has been most generous in offering the Watauga County Farmers Market a temporary space in the parking lot at the Social Services Building. It is a tremendous relief to know that the County Market, after the lease with the SAHA expires, will not dissolve into a number of smaller curb markets. Many market members see this as a bridge location. Others seek to remain at the Horn location at least another year. However, many citizens feel that it is time for a permanent home with enough space and resources to grow and build upon the 36-year legacy of the Watauga Market.

At this time we are not asking for monetary support. We seek your enthusiastic backing of this project and your willingness to become a stakeholder in this undertaking. We have requested and received support from a number of organizations and agencies, and the backing of the Town of Boone would certainly grant additional credibility.

A 501(c)(3) group is being formed to begin fundraising efforts for this project. We have already heard from Sen Goss that he enthusiastically supports the project and will actively seek funding for its realization. Conservation Groups are involved and other potential stake holders. We seek the endorsement of the Town of Boone in order to continue to build the sustainable collaboration that is so important for our community’s continued development.

David Sengel, Committee Chair	Karen Bauman, Market Manager
Susie Winters	Bill Moretz
Christian Teague	Sue Counts
Richard Boylan	Jen Walker

GREER/HENSON PROPERTY PROPOSAL

The Watauga County Farmers Market is currently seeking a new market location to accommodate a growing number of vendors and customers after 36 years at its current location. The preference is for a permanent home as a part of a proposed agri-tourism site located on the old Greer/Henson Farm at the corner of Deerfield Road and Highway 321, Boone, NC.

This seventeen-acre property is the last farm of its kind within the town limits and sits at a prime business location. The importance of local foods as an economic engine for Watauga and the surrounding counties has been well documented; most recently, the Watauga County Soil and Water Conservation District completed an *Agricultural Development and Farmland Preservation Plan* (ADFP) that outlines the challenges and opportunities for the region, and the growing need for agriculture and tourism to work together to achieve optimum economic success. Additionally, a 2007 report by the Appalachian Sustainable Agriculture Project, *Growing Local*, estimated that there is \$452 million in unmet demand each year for WNC farm products. That study also determined that there exists an overall willingness to pay more for local foods and to support local farms. Watauga County's 20-year plan for growth and the ADFP plan both demonstrates strong, existing governmental support for local foods and agriculture.

The Greer/Henson property offers a unique opportunity to accomplish the economic and heritage preservation goals of the High Country through attention to the local foods economy. The Watauga County Farmers Market, which serves as a primary means for farmers within a six-county area to sell their products direct to consumers, could grow its vendor membership, increase operating hours and provide a year-round market store. The Watauga Market has been a force for community cohesion and a tourist attraction for 36 years, and a move to the Greer/Henson property would serve to expand these assets. Additionally, we envision the property as a collaborative endeavor among a diverse set of local stakeholders which could also house a farm heritage museum and numerous educational and entertainment functions related to the High Country's agricultural heritage and abundance.

In addition to a well-preserved agricultural landscape, the Greer/Henson property includes a large barn and a late-19th century farm house, both of which are in good condition and easily restorable for new purposes. Two rooms downstairs could be restored as a period farmhouse preserving the Greer/Henson family legacy. There is a bathroom and office space for the Watauga County Farmers Market manager and a large kitchen that could be updated to serve as a certified commercial canning kitchen for the community. Upstairs, four large rooms could become rental office space for local foods organizations such as the New River Organic Growers, Blue Ridge Women in Agriculture, The Hunger Coalition, and the Gleaners, etc. The property could also serve as a convenient, in-town pick-up location for the numerous CSAs in the area, and as a space for classes and workshops for both emerging and established farmers.

The Greer/Henson property also contains a brick ranch house that could be rehabilitated as a year-round local food market store and gallery space for craft vendors. Additionally, there is a potential for a vendor-sponsored coffee shop or the new F.A.R.M. Café (Feed All Regardless of Means) organization which is currently looking for a serving location. Outside of the ranch house, there is ample room for landscape vendors to sell herbs and plants in the spring and summer and Christmas trees/wreathes in the winter where they can compete with the non-local big-box stores.

There are many more opportunities for the Greer/Henson property to become an economic generator and educational/tourism destination for the High Country-barn dances, outdoor concerts, community gardens, heritage orchards, corn mazes, seed preservation, etc. There is ample room for children's activities such as a petting zoo, pony rides, an ag fair, Scouts, Future Farmers of America.

The current owner of the Greer/Henson property has expressed a keen interest in working with the Watauga Market to help preserve her home place in a manner consistent with its heritage. She has informally offered the property at a price below the current market value for this location, and might consider an even better arrangement if she were presented evidence of governmental and diverse organizational support.

The Watauga County Farmers Market is in the process of forming a 501(c)(3) "Friends of the Market" organization to investigate funding and support for this undertaking. We are aware that this needs to be a collaborative effort and that the restoration, management, and maintenance costs could be quite high in addition to the initial purchase price. However, there is the expectation that eventually this endeavor will become self-sustaining and a legacy for the region far into the future.

Planning and Inspections Director Bill Bailey pointed out that most of this property is located within a floodway and that any development on the property will require a special use permit. Mr. Boylan said at this point they are looking for supporters. The entire Council offered enthusiastic support for the project. After little discussion, on a motion by Council member Ball, seconded by Council member Leigh, Council moved to draft a letter of support for this very exciting project.

VOTE: Aye-All

Nay-None

APPROVAL OF BID - PUBLIC WORKS DEPARTMENT-BUCKET TRUCK

On a motion by Council member Brantz, seconded by Council member Phillips, Council moved to award a bid to Federal Contracts Corporation in the amount of \$153,629 for a Terex Bucket Truck.

VOTE: Aye - All

Nay - None

APPROVAL OF RESOLUTION - CONCERNS OF CONTINUED USE OF COAL TAR

Town Attorney Sam Furgiuele explained that the State of North Carolina has no influence or enforcement power over the use of coal-tar sealants. Mr. Furgiuele said the Town may want to regulate the use by requiring driveway sealing permits or requiring buffers around streams or creeks. Mr. Furgiuele said the Town could also discourage the use of coal-tar-based sealants by placing such language within the UDO. After discussing the options at length, Council decided to discuss the possible driveway permitting process at a later date. On a motion by Council member Ball, seconded by Council member Leigh, Council moved to adopt the following resolution:

RESOLUTION EXPRESSING THE CONCERNS OF THE TOWN OF BOONE, NORTH CAROLINA REGARDING THE CONTINUED USE OF COAL TAR

WHEREAS, on July 17, 2010 a fish kill occurred in Hodges Creek, a waterway in the Town of Boone, North Carolina; and

WHEREAS, an investigation into the cause of the kill concluded that it was the result of the drainage from a coal-tar-based pavement sealant into a stormwater drain which fed into Hodges Creek; and

WHEREAS, studies published by the United States Geological Survey have concluded that coal-tar-based sealants contain high levels of polycyclic aromatic hydrocarbons ("PAHs"), that PAHs are toxic to aquatic life, and most recently, that multifamily residences in close proximity to parking areas treated with coal-tar-based sealants had significantly higher concentrations of PAHs in house dust than residences not near such areas; and

WHEREAS, certain PAHs have been alleged to be human carcinogens; and

WHEREAS, Hodges Creek drains into Winkler's Creek, which itself flows into the New River, an American Heritage River; and

WHEREAS, the New River and Winkler's Creek are each sources for the Town's water supply; and

WHEREAS, the Boone Town Council is charged with protecting the health and welfare of the citizens of Boone and protecting the economic vitality of Boone, itself connected to the protection of the natural environment; and

WHEREAS, the United States Environmental Protection Agency is charged with regulating the safe use of chemicals and their components, and is given the power to ban unsafe chemicals, when appropriate; and

WHEREAS, the aforesaid fish kill and published studies raise serious questions regarding the use of coal tar based pavement sealants within the Town of Boone and elsewhere;

NOW, THEREFORE, BE IT RESOLVED that the Boone Town Council urges the United States Environmental Protection Agency to investigate and consider a ban on the use of coal tar in pavement sealants; and

BE IT FURTHER RESOLVED that the Boone Town Council urges the U.S. Congress to investigate and conduct hearings into the harmful effects of coal tar based pavement sealants and to ban the use of those products should the evidence so direct; and

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to President Barack Obama, EPA Administrator Lisa P. Jackson, North Carolina Senators Richard M. Burr and Kay R. Hagan, and to 5th District Congresswoman, Virginia Foxx.

Adopted this the 19th day of October, 2010.

Loretta Clawson, Mayor

ATTEST:

Freida Van Allen, Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 150)

VOTE: Aye - All
Nay - None

REPORT ON LANDFILL AGREEMENT

Town Attorney Sam Furgiuele reported that after reviewing the Landfill Settlement Agreement/Consent Order the Town has no obligation to provide free water to the nine residences adjacent to the landfill. Mr. Furgiuele said the Town has fulfilled the terms of the agreement and must amend the water and sewer code to provide free water to those nine residences. Any code amendment must offer nondiscriminatory service to all customers. No further action was taken on this matter.

DISCUSSION OF TOWN CODE AMENDMENT - CODE OF ETHICS POLICY

Town Attorney Sam Furgiuele reminded Council members that they must adopt a code of ethics policy and attend code of ethics training by January 1, 2011. Mr. Furgiuele presented a draft policy and suggested that Council review it before the November 16, 2010 meeting. Council discussed the policy at length and decided to review the policy and take final action at the December meeting.

ADOPTION OF WATER & SEWER CODE AMENDMENT - WAIVE OR MODIFY WATER AND/OR SEWER FEES

Town Attorney Sam Furgiuele presented a water and sewer code amendment that would allow Council the authority to waive water and sewer fees up to \$10,000 and authorizes the use of payment plans. After some discussion, Council member Mason suggested having a higher amount, such as \$15,000, since disconnecting water is a public health issue. Council member Leigh said she is charged with protecting the Town and felt that the Town did not have unlimited resources and should not always be "the nice guy." Council member Brantz felt the dollar amount should also be higher. Council member Leigh reiterated that government cannot continually bail out citizens every time something bad happens to them. After a lengthy discussion, on a motion by Council member Brantz, seconded by Council member Mason, 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 \$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 **requested to be waived** ~~in question~~ does not exceed \$3,000.00. **A decision of the Town Manager is final and may not be appealed to the Town Council even if the Town Manager refuses to waive or make any adjustment in the amount in question. However, in cases in which the Town Manager has declined to exercise authority or where the amount a current customer seeks to have waived or modified exceeds \$3,000.00, the request shall be referred to the Town Council action for action. The Town Council may waive or modify the amount up to a total of \$15,000.00 and may authorize repayment of any amount which is not waived in equal installments over a period of up to eight months. For the Town Council to exercise any authority under this section, it must conclude that the cause of the unpaid bill was beyond the control of the customer, that the customer acted expediently in the case of a leak once the existence of the leak was discovered, and that the customer has acted in good faith and with an interest in minimizing any loss of water to the Town's system. In general, neither the Town Manager nor the Town Council should waive any portion of an unpaid amount which has accrued over a period exceeding three billing cycles.**

The Director of Public Utilities shall provide the Town Manager with a written report summarizing the unusual circumstances and providing his or her recommendation. **In each case in which Town Council approval must be sought, the Director of Public Utilities shall also provide the Town Council with the report and recommendation.**

- C. **In cases in which the amount sought to be waived is caused by a water leak and the amounts incurred by the customer relate to both water and sewer charges, the Town Manager can also modify and waive the indebtedness relating to the sewer charges without limit if it is determined that none of the water for which the charges are waived actually discharged into or impacted the sewer system.**

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

ADOPTION OF RESOLUTION - TOWN OF BOONE WATER SHORTAGE RESPONSE PLAN

Public Utilities Director Rick Miller said this plan is required by the NC Department of Environmental and Natural Resources, Division of Water Resources. Mr. Miller said the plan will be updated every five years. On a motion by Council member Mason, seconded by Council member Ball, Council moved to adopt the following resolution:

RESOLUTION

WHEREAS, North Carolina General Statute 143-355 (I) requires that each unit of local government that provides public water services or plans to provide such services shall, either individually or together with other such units of local government, prepare and submit a Water Shortage Response Plan; and

WHEREAS, as required by the statute and in the interests of sound local planning, a Water Shortage Response Plan for the Town of Boone, has been developed and submitted to the Town Council for approval; and

WHEREAS, the Town Council finds that the Water Shortage Response Plan is in accordance with the provisions of North Carolina General Statute 143-355 (I) and that it will provide appropriate guidance for the future management of water supplies for the Town of Boone, as well as useful information to the Department of Environment and Natural Resources for the development of a state water supply plan as required by statute;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Boone that the Water Shortage Response Plan entitled, Town of Boone Water Shortage Response Plan, dated 10/19/10 is hereby approved and shall be submitted to the Department of Environment and Natural Resources, Division of Water Resources; and

BE IT FURTHER RESOLVED that the Town Council intends that this plan shall be revised to reflect changes in relevant data and projections at least once every five years or as otherwise requested by the Department, in accordance with the statute and sound planning practice.

Adopted this the 19th day of October, 2010.

Mayor

ATTEST:

Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 151)

VOTE: Aye - All
Nay - None

APPROVAL OF CONTRACT - ORCHARD STREET SANITARY WATER & SEWER DENSITY TESTING

Public Utilities Director Rick Miller said this contract will provide for asphalt and compacting testing of the Orchard Street sanitary water and sewer project. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to adopt a contract with S&ME in the amount not to exceed \$61,000 (**contract permanently on file in the October 19/21 Boone Town Council packet**).

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 October 2010 Boone Town Council meeting packet.)**

APPROVAL OF BUDGET AMENDMENTS

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

DESCRIPTION	ACCOUNT #	TO:	FROM:
STATE FUND - POWELL BILL	010-000-000-442100	\$6,650	
POWELL BILL - PAVING & RESURFACING	010-600-403-577401		(\$6,650)
PUBLIC SAFETY VEHICLE EQUIPMENT-POLICE	010-500-300-516400	\$4,500	
CONTRIBUTIONS/DONATIONS-GENERAL FUND	010-000-000-482200		(\$4,500)
MAINTENANCE & REPAIR VEHICLES-POLICE	010-500-300-525301	\$929	
MISCELLANEOUS REVENUE-GENERAL FUND	010-000-000-489900		(\$929)
CAPITAL OUTLAY LARGE TRUCKS-STREET DEPARTMENT	010-600-401-573300	\$101,500	
CAPITAL OUTLAY LARGE TRUCKS-POWELL BILL	010-600-403-573300	\$102,000	
CAPITAL OUTLAY TRUCKS-POWELL BILL	010-600-403-573200	\$48,500	
LOAN PROCEEDS-GENERAL FUND	010-000-000-492000		(\$252,000)

VOTE:Aye - All
Nay - None

RECESS

On a motion by Council member Brantz, seconded by Council member Mason, Council moved to recess at 10:03 p.m. until Thursday, October 21, 2010 at 6:30 p.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE:Aye - All
Nay - None

CALL TO RECONVENE

A recessed meeting from Tuesday, October 19, 2010 was called to order at 6:30 p.m., Thursday, October 21, 2010, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Mason, Stephen Phillips, Jamie Leigh, Andy Ball (arrived at 6:33 p.m.), and Rennie Brantz (arrived at 6:38 p.m.) Town Attorney Sam Furguele was also present. Staff members present were Town Manager Greg Young, Deputy Town Clerk Kimberly Brown, Assistant to the Town Manager Jim Byrne, Police Captain Jim

Wilson, Fire Marshal Ronnie Marsh, 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 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 change to the agenda:

1. Addition of Item 12.A. - Termination of Easement - Village at Meadowview.

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

VOTE: Aye - All

Nay - None

Absent - 2 (Ball, Brantz)

PUBLIC COMMENT

There was no one present to speak under public comment.

TERMINATION OF EASEMENT - VILLAGE AT MEADOWVIEW

Town Attorney Sam Furguele explained that the Town of Boone had been contacted by the owners of the Village at Meadowview because it was discovered that they had encroached into an area where the Town of Boone has a recorded easement for sewer lines. In discussing the issue with Public Utilities Director Rick Miller, Mr. Furguele realized the Town had not ever accepted the dedication of water and sewer lines at the development and that Mr. Miller had thought that the Town had relinquished the easement. Mr. Miller stated that this project was originally developed with the intention that the Town would assume the ownership of the lines. He stated that for several reasons, including the fact that the developer could not obtain a bond performance bond for the work, the Town did not accept the utility lines. Furthermore, he stated that the owner is responsible for the maintenance of the water and sewer lines on the property. Mr. Furguele stated that the easement had been recorded at the Watauga County Courthouse and that termination of the recorded easement would rectify the issue. Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved to approve the following agreement: **EXHIBIT A**.

VOTE: Aye - All

Nay - None

Absent - 1 (Brantz)

REQUESTED APPEARANCE - ANNE LEHURAY

Anne LeHuray appeared before the Council, on behalf of the Pavement Coatings Technology Council (PCTC), to offer testimony in support of the requirement of manufacturers' directions and best management practices in the application of pavement sealcoats. She offered her regret for the incident in which runoff containing sealant was leaked into a local creek in Boone and stated that the PCTC is now using that incident as a learning tool for the correct application of pavement sealcoat. Ms. LeHuray distributed information in regard to the use of coal-tar pavement sealcoats. In answer to questions from the Council regarding possible alternatives to coal-tar sealcoats, she stated that no alternative that is as effective as coal-tar sealcoats exists that

resists the degradation caused by petroleum products and that coal-tar sealcoats are used 95% of the time in the United States. She stated that there are some experimental options, but these are not widely used and are expensive to use. Furthermore, she stated that at the National Pavement Expo, held annually in Nashville, TN, information regarding the correct application of coal-tar sealant is distributed to attendees. Ms. LeHurray stated that a certification program has also been discussed but not yet realized. Ms. LeHurray was accompanied by several representatives from the coal-tar sealant industry including contractors and manufacturers. She offered to answer any questions the Council might have on the use of coal-tar sealant.

REQUESTED APPEARANCE - RONNIE HOLSTE/ABC BOARD

Candy Winebarger, Chair of the Town of Boone ABC Board, appeared before the Council to inform the Council of the 1st Quarter 2010/2011 ABC distributions: \$100,000.00 Town of Boone, \$4,500.00 Town of Boone Law Enforcement, \$11,500.00 Alcohol Education. The total amount was \$116,000.00.

REQUESTED APPEARANCE - DAN MEYER/CHAMBER OF COMMERCE

Dan Meyer, President of the Boone Area Chamber of Commerce, appeared before the Council to alert members to a public safety issue on Howard Street. He stated that due to an increase in new student rental units along Howard Street, there has been more pedestrian traffic in that area. He pointed out that delivery trucks also require most of the width of the roadway. Mr. Meyer inquired as to the feasibility of instituting the traffic plan approved for the Howard Street project in an effort to improve the overall safety for persons using Howard Street. Discussion ensued concerning the possibilities of making the street “one-way”, the effectiveness of painted sidewalk stripes, and the limitations of the existing roadway. Council Member Ball asked that the inclusion of a bike lane also be considered. Council Members Leigh and Phillips requested that the committee consider the option of making Howard Street a full pedestrian area. Town Manager Greg Young stated that the option of new striping and making the street one-way is the option involving minimal costs. Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to direct the Transportation Committee to consider the issue of improvements to Howard Street regarding pedestrian safety with input solicited from the property and business owners on Howard Street, consideration of the options suggested by Council regarding bike lanes and pedestrian-only area, and being limited to striping improvements only.

VOTE:Aye - All

Nay - None

REQUESTED APPEARANCE - DEERFIELD UNITED METHODIST CHURCH

Owen Thomas and J.C. Tester, members of the Deerfield United Methodist Church Board of Trustees, appeared before the Council to request an adjustment to the water and sewer bill for the church. Mr. Thomas began by explaining that a leak occurred between the August and September meter readings by the Town. He explained that the leak was in a short section of two-inch plastic pipe between the water meter and the pressure reducing valve. He stated that the section of pipe is contained in a large meter/valve box which allowed a large volume of water to leak undetected. Mr. Thomas stated that the pipe was repaired by A & S Plumbing the same day that the Town notified the church of the leak. The total amount due on the account is \$21,629.80 for water and \$17,297.00 for sewer. He stated that the leaked water went back into the stream and did not go into the system to be treated by the Town. Council Member Mason inquired about any insurance relief for the leak. Mr. Thomas stated that the insurance does not cover that type of leak. He informed the Council that he had contacted an engineer and that the engineer had indicated that the line met the requirement standards when it was installed. Public Utilities Director Rick Miller stated that there could have been several issues that may have caused the pipe to fail. Upon a motion by Council Member Mason, seconded by Council Member Leigh, Council moved to direct the Town Manager to waive the sewer fees incurred due to the leak with the exception of the average monthly use amount, to waive \$15,000.00 from the amount of water charges incurred because of the leak, and to allow the Utility Billing Department to work out a

payment plan with the customer in order to pay the remaining balance of water charges, in the amount of \$6,629.80, incurred due to the leak within an eight-month time period.

VOTE: Aye - All

Nay - None

Mayor Clawson declared a break at 7:54 p.m. Council reconvened at 8:04 p.m.

Before deliberating on the water and sewer requests, Town Attorney Sam Furguele questioned the members of the Council on 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 Furguele opened a public hearing at 8:06 p.m. to hear sworn testimony from Jason Gaston of Valor Engineering 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 reiterating that the request is for 19,908 gallons per day for a 130-bedroom residential complex with 16,000 square feet of retail space. He stated that the applicant is waiting until any proposed changes to the density regulations are adopted by Council in order to proceed with the development. Mr. Gaston asked to table the request. With no other testimony, Mr. Furguele closed the public hearing at 8:10 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 19,908 gallons per day for property located at the corner of Highway 321 and Clement Street until the regular meeting in December 2010.

VOTE: Aye - All

Nay - None

WATER & SEWER REQUEST - HACKETT PROPERTIES INC.

Town Attorney Sam Furguele opened a public hearing at 8:13 p.m. to hear sworn testimony from Dino Hackett (applicant/property owner), Public Utilities Director Rick Miller, Planning Director Bill Bailey, and concerned neighbor Mike Curio regarding a request for water and sewer service to property located on Park Street. Chelsea Garrett, attorney representing Mr. Hackett, was also present for the hearing. Planning Director Bill Bailey began by offering testimony regarding copies of minutes **(contained in the October Town Council information packet)** regarding the past history of the property and the Special Use Permit that was granted for the property on July 10, 2008. Mr. Bailey presented the following exhibits for consideration by the Council: **P & I Exhibit 1 - SU20080326 Special Use Permit and supporting documentation, P & I Exhibit 2 - Preliminary Grading Plan entitled "Preliminary Layout Cedar Ridge", P & I Exhibit 3 - Untitled Architectural Rendering, and P & I Exhibit 4 - Untitled Architectural Rendering (copies of P & I Exhibits 1-4 permanently on file in Clerk's Office.)** He listed the following conditions contained in the Special Use Permit approved on July 10, 2008:

1. A twenty-foot easement preserving exiting hiking trail.
2. Undeveloped land placed in perpetual conservation.
3. Deed restrictions as owner occupied and second homes and prohibiting rental units.
4. Widen Park Street with a sidewalk from the development entrance to Queen Street.
5. Where there is a conflict between the application information and the plans, the plans shall control. Minor modifications may be permitted to comply with the requirements of the UDO. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
6. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.

Chelsea Garrett, attorney representing Hackett Properties, Inc., reiterated that the project is for a 150-bed multi-family complex. She stated that Mr. Hackett has already purchased the property and that he is asking for water and sewer service prior to spending the money necessary to determine the best way to develop the property. She reminded the Council that the applicant must appear before the Boone Board of Adjustment if he wants to make any substantial changes to the project permitted by the Special Use Permit in July 2008. Council Member Leigh asked how Council members are supposed to consider this project when no plan is being presented to them. Ms. Garrett stated that the property was purchased knowing that the plan submitted and approved by the Board of Adjustment in 2008 permitted the proposed number of units and that the allocation requested is based on that permitted number of units. Mr. Hackett stated that it is financially difficult to pay the costs of having an engineer design how the water will be accessed on the property without knowing if water service will be granted by the Council. Discussion ensued as to how the units will be marketed. Mr. Hackett testified that the units will not be marketed as “student housing.” He indicated that in order to provide an affordable project, he will need to know all the costs that will be incurred for the project, including the cost of obtaining water. Ms. Garrett pointed out that the condition regarding a deed restriction prohibiting rental units is quite broad and should the applicant want to change the condition, then he must appear before the Board of Adjustment. Public Utilities Director Rick Miller stated that three options exist for accessing the Town’s water system for this site since it falls under the requirements of the secondary pressure zone: (1) from Park Street, it would require at least two pumps and installing a new tank that would serve only this property; (2) utilizing a right-of-way to access the Junaluska tank; or (3) obtaining an easement to access the Charles/Gladys Street tank. Mr. Miller stated that the availability fee for the water allocation is \$185,625 and that, if approved by Council, 10-20 percent of that amount must be paid within 30 days to secure a one or two year approval for the water allocation. Mike Curcio, an adjoining property owner to the project, voiced concern about the enforcement of the deed restriction for the project. He stated that this area is zoned R-4 as to provide transitional zoning and that the density of the area has not changed very much in the past few years. He asked the Council to keep the density and zoning as it currently is in that area. Ms. Garrett asked that deliberation of this request be tabled for two months so that the applicant can try to calculate the costs, based on the current plan approved by the Board of Adjustment, so that it can be determined if the project can meet affordable housing needs. With no other testimony, Mr. Furguele closed the hearing at 9:32 p.m. Council Member Leigh voiced her concern that the applicant has not provided a plan to the Council for consideration. Council Member Brantz stated that he believes this will be a good project but is agreeable to tabling the case until December so that further information can be obtained. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to table the request from Hackett Properties, Inc. for water and sewer service to property located off Park Street until the December regular meeting.

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

WATER & SEWER REQUEST - DAN NGUYEN

Town Attorney Sam Furguele opened a public hearing at 9:41p.m. to hear sworn testimony from property owner Dan Nguyen, Public Utilities Director Rick Miller, and Planning & Inspections Director Bill Bailey regarding a request for water and sewer service to property located at 430 New River Heights. Mr. Nguyen explained that the property contains a well and septic system but that the water from the well has an unpleasant odor. He stated that he has contacted Dewey Wright Well and Pump Company and Winkler Plumbing about what options are open and was advised that being able to connect to the Town’s system would be the best option. He explained the property location in relation to the new high school and stated that his neighbor is connected to the Town’s water system. Public Utilities Director Rick Miller stated that Mr. Nguyen must acquire easements to connect to the Town’s water system. Planning & Inspections Director Bill Bailey stated that the property is located in the 500-year flood plain and just a corner of the carport is located in the 100-year floodplain. With no other testimony, Mr. Furguele closed the public hearing at 9:50 p.m. Upon a motion by Council Member Mason, seconded by Council Member Leigh, Council moved to approve the request for water service in the amount of 270

gallons per day for property at 430 New River Heights contingent on the application securing the necessary easements to connect to the Town’s water system.

VOTE:Aye - All

Nay - None

WATER & SEWER REQUEST - BOONE HOSPITALITY ASSOCIATES II

Town Attorney Sam Furguele opened a public hearing at 9:52 p.m. to hear information from Brian Martin, attorney representing the applicant, and sworn testimony from Public Utilities Director Rick Miller and Planning Director Bill Bailey regarding a request for water allocation to property located at 1104 Highway 105. Mr. Martin explained that this property is the site for the Courtyard Marriott Hotel which will include a restaurant and spa. He stated that the water allocation previously approved for this property has expired and that this request is for a new allocation in the amount of 8,274 gallons per day. Mr. Martin stated that the property was recently purchased by Boone Hospitality Associates II and that the new owners were not aware of the water allocation that was due to expire for the property. Planning Director Bill Bailey stated that the permits for this project have not been issued yet but that plans are expected to be submitted that will address any concerns for the project including concerns regarding landscaping. Public Utilities Director Rick Miller stated that the water use has not changed with the change in ownership. With no other testimony offered, Mr. Furguele closed the public hearing at 9:59 p.m. Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to approve the request for 8,274 gallons per day made by Boone Hospitality Associates II for property located off Highway 105, to be taken from the 2010 allotment.

VOTE:Aye - All

Nay - None

CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to enter Closed Session at 10:01 p.m. pursuant to NCGS 143-318.11a)3) in order to discuss the following matters:

- \$ Legal Advice - Hogue Settlement
- \$ Legal Advice - Mountaintop Home Builders Settlement
- \$ Update on lease of Town of Boone property.

VOTE:Aye - All

Nay - None

Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to exit Closed Session at 11:05 p.m.

VOTE:Aye - All

Nay - None

POSSIBLE ACTION FOLLOWING CLOSED SESSION

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve the following Hogue Consent Order, for a seven-year term:

STATE OF NORTH CAROLINA
WATAUGA COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
10 CVS 643

CYRUS D. HOGUE III, NANCY MARIE)
VEST, WILLIAM DIXON HARRINGTON)

& JANE WHEAT HARRINGTON,	)	
	)	
Petitioners,	)	CONSENT ORDER
v.	)	
	)	
TOWN OF BOONE & TOWN OF	)	
BOONE BOARD OF ADJUSTMENT,	)	
	)	
Respondents.	)	

THIS MATTER having come before the Court at its session of _____, 2010, the Honorable _____ presiding; and plaintiffs having appeared, represented by Cyrus D. Hogue, III, Attorney at Law, and defendants having appeared, represented by Samuel F. Furguele, Jr., Attorney at Law; and the Parties having reported to the Court, by and through counsel, that a settlement of this matter has been reached and that the Parties desire that the Court endorse their settlement and adopt it as the Court’s order; and the Parties having further stipulated and agreed to dispense with full findings of fact and conclusions of law and the recitation of such facts and conclusions; the Court, by consent of the parties, hereby adopts said settlement as its order upon the following findings and conclusions:

1. Petitioners Cyrus D. Hogue III, Nancy Marie Vest, William Dixon Harrington and Jane Wheat Harrington are citizens and residents of Orange County, North Carolina, of legal age and under no disability.
2. Respondent, Town of Boone (hereinafter the "Town"), is a municipal corporation created under and by virtue of Article VII of the North Carolina Constitution and NCGS § 160A-1, *et seq.*, located in Watauga County, North Carolina and authorized to exercise zoning and land use authority within its boundaries and extra-territorial jurisdiction.
3. Respondent, Town of Boone Board of Adjustment (hereinafter the "Board") is a public body organized under NCGS § 160A-388 and charged with deciding applications for the issuance of special use permits within the jurisdiction of the Town.
4. Petitioners are the owners of that certain property (hereinafter, the “property”) lying within the planning jurisdiction of the Town and described as follows:

Lying and being in Boone Township, Watauga County North Carolina and BEGINNING at a stake in Junaluska Road and being a corner of Lot 14 of the Mrs. W. A. Denton property, and runs thence with the said Junaluska road as follows: North 5 West 75 feet, North 15 west 82 feet, North 65 east 25 feet, South 62 East 125 feet to a stake in said road and another corner of Lot 14: thence with the line of said Lot 14 to the beginning, and being Lot 15 of the said Mrs. W. A. Denton property as shown on plat of said property prepared by I. A. Bumgarner, Surveyor, June 1949, and recorded in plat book 2 at page 32 of the Watauga County Registry.
5. The Town has exercised it zoning and land use authority through the adoption of a Unified Development Ordinance (hereinafter, the “UDO”), Comprehensive Plan and other publically adopted ordinances and plans. Pursuant to the UDO, the property in question is zoned “R-A,” a designation which allows up to 2 unrelated persons to reside thereon. It is further eligible for consideration for the issuance of a Special Use Permit to allow up to 4 unrelated persons to reside there.
6. Petitioners duly applied for a Special Use Permit to allow up to 3 unrelated persons to reside on the property.
7. Following a public hearing conducted by the Board on August 5, 2010, and despite the fact that no evidence was introduced in opposition to the issuance of this Special Use Permit at the public hearing, the Board denied the application based upon a motion that the issuance of the permit would not be in harmony with the area in which it is located and issuance would not be in general conformity with the Town’s duly adopted Comprehensive Plan.

8. This Court has jurisdiction over the parties and subject matter of this action.
9. Venue is proper in this Court under and by virtue of, *inter alia*, NCGS § 1-82 and NCGS § 160A.
10. The Parties have reached a settlement of the issues involved in this action and have requested, by and through counsel, that the Court endorse said settlement as its order, and their agreement to same is indicated by their execution of this Consent Order. The Town of Boone Town Council and the Town of Boone Board of Adjustment have each, in open session, authorized the entry of this Consent Order.
11. This Court has the authority to accept the settlement of the parties as its order.

NOW, THEREFORE, BASED UPON THE FOREGOING FINDINGS, IT IS HEREBY ORDERED AS FOLLOWS:

1. This matter shall and hereby is remanded the Town of Boone Board of Adjustment for issuance of a special use permit, subject to the following conditions:
 - a. The Special Use Permit shall authorize occupancy of the property by up to three unrelated persons;
 - b. Seven years from the date of issuance of the Special Use Permit, the Town shall notify all persons who own property, any portion of which is within one-hundred-and-fifty feet of the subject property (“affected property owners”), by certified mail, return receipt requested, of the right by any one of them to request in writing and within thirty days of their receipt of such notice, a hearing before the Board of Adjustment to determine whether the Special Use Permit should be terminated and rescinded.
 - c. The identity of said persons and the addresses to which said notices shall be sent shall be determined by the names and addresses of the relevant property owners on file with the office of the Watauga County Tax Administrator unless the Town has actual, specific, and reliable information of a different owner and address for any of the affected property owners.
 - d. Should no affected property owner request that a hearing be conducted on the issue of the termination of the Special Use Permit, no further action on the part of the parties hereto shall be necessary, and the Special Use Permit shall exist and continue as if it had been issued on August 5, 2010 without limitation in time.
 - e. Should one or more of the affected property owners request that a hearing be conducted by the Board of Adjustment, the Town will publish and give proper notice of a hearing on the issue in conformity with the notice requirements established by the Town’s Unified Development Ordinance and any other relevant provision of State and Municipal law for a hearing on an application for a special use permit, and thereafter, at the time, date and location advertised, the Board shall conduct a hearing, in accordance with its usual procedures, on the issue as to whether the Special Use Permit should be terminated and rescinded.
 - f. In the event no competent evidence is offered at the aforesaid hearing in opposition to the continuation of the Special Use Permit, the Board of Adjustment shall issue a decision authorizing its continuation.
 - g. In the event that competent evidence is offered at the aforesaid hearing in opposition to the continuation of the Special Use Permit, the Board of Adjustment shall issue a decision authorizing its continuation unless it adopts a motion, by a majority vote of all members present, finding one or more of the following:

1. The continuation of the Special Use Permit will materially endanger the public health or safety, or
 2. The continuation of the Special Use Permit will substantially injure the value of adjoining or abutting property, or
 3. The continuation of the Special Use Permit will not be in harmony with the area in which it is located, or
 4. The continuation of the Special Use Permit will not be in general conformity with the comprehensive plan, thoroughfare plan, or other plan officially adopted by the Town of Boone Town Council.
- h. In the event that following a hearing, the Board of Adjustment votes to terminate the Special Use Permit, Petitioners shall have thirty (30) days from service of said decision upon their undersigned counsel or such other person which he may designate, in writing, to petition this Court for further judicial review of the decision in accordance with the procedures and mandates provided in NCGS 160A-388 and other pertinent law.

This the ____ day of _____, 20____.

Superior Court Judge Presiding

Consented to:

C. D. HOGUE, III
Attorney for Petitioners
110 W. Margaret Lane
Hillsborough, NC 27278
State Bar No. 6673
(919) 732-4865

Samuel F. Furgiuele, Jr.
Attorney for Respondents
P.O. Box 386
Boone, NC 28607
State Bar No. 13887
(828) 264-7110

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved to direct the Town Manager and the Town Attorney to proceed with the Mountaintop Settlement Agreement, which will be formally approved at a later date.

VOTE: Aye - All
Nay - None

ADJOURNMENT

On a motion by Council Member Leigh, seconded by Council Member Mason, Council moved to adjourn the meeting at 11:07 p.m.

VOTE: Aye - All

Nay - None

Town Clerk

Mayor

Deputy Town Clerk