MINUTES-REGULAR MEETING
BOONE TOWN COUNCIL
NOVEMBER 16, 2010

A regular meeting of the Boone Town Council was called to order at 6:31 p.m. on Tuesday, November 16, 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, and Rennie Brantz. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Deputy Town Clerk Kim Brown, Assistant to the Manager Jim Byrne, Finance Director Amy Davis, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Human Resources Director Peri Moretz, Planning & Inspections Director Bill Bailey, Planner Jane Shook, and Development Coordinator David Graham.

ANNOUNCEMENTS

Mayor Clawson noted that anyone wishing to speak on a non-agenda item may sign up to speak during the Public Comment period.

Mayor Clawson announced the receipt of the "Outstanding Project Merit Award" by the Town of Boone for the development of the Town of Boone Urban Forest Master Management Plan. Planning Director Bill Bailey stated that the award was given by the North Carolina Department of Environment and Natural Resources. Urban Design Specialist Brian Johnson was recognized for his hard work in developing the Town's Urban Forest Master Management Plan.

Town Attorney Sam Furgiuele announced that a decision had been rendered on the Templeton appeal case by the NC Court of Appeals. He stated that he had not had time to fully read the decision but that the NC Court of Appeals did rule in favor of the Town of Boone.

TENTATIVE AGENDA ADOPTION

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

1. Request by Jimmy Deal to table consideration of item 6.A. Zoning Map & Text Amendments Case 20100530 GH Winkler Family Ltd. General Use District Rezoning Map Amendment to the November 18, 2010 meeting.
2. Table consideration of item 6.H. Board Appointments to the November 18, 2010 meeting.
3. Addition of item 6.P. Presentation of Planning & Inspections Monthly Report.
4. Addition of item 6.Q. Presentation of Municipal Service District Special Task Force Recommendations.

Upon a motion by Council Member Ball, seconded by Council Member Mason, the tentative agenda was adopted.

VOTE: Aye - All
Nay - None

CONSENT AGENDA ADOPTION

Upon a motion by Council Member Brantz, seconded by Council Member Mason, the following consent agenda items were adopted, as presented:

Minutes: October 6, 2010 - Special Meeting.
October 13, 2010 - Special Meeting.
October 19/21, 2010 - Special Meeting.

Tax Refunds & Releases: October 2010.

Tax Releases

October 2010

Taxpayer	Year	Amount	Description
BARD, GEORGE W & JEAN	2010	20.35	TURNED IN PLATE
ISAACS, KENNETH DEAN	2010	61.68	DOES NOT LIVE IN TOB
RAZA, ALI	2010	20.35	ADJ FOR BILL OF SALE
VANNOY, VANESSA	2010	49.36	FAILED TO RECEIVE EXEMPTION
TOWER, TIMOTHY JACK	2010	2.76	SOLD/PLATE TURNED IN
MCGUIRE, TERESA ANN	2010	1.11	INCORRECT SITUS
MODERN TOYOTA SCION OF BOONE	2010	315.35	RENTAL
LEARNING TREE ROLAND MILLER	2010	8.14	BUSINESS CLOSED IN 2007
LEARNING TREE ROLAND MILLER	2009	4.07	BUSINESS CLOSED IN 2007
LEARNING TREE ROLAND MILLER	2008	2.44	BUSINESS CLOSED IN 2007
HUFF, WILLIAM TODD HUFF, PENNY WARD	2009	23.95	TURN IN TAG
HUFF, WILLIAM TODD HUFF, PENNY WARD	2009	31.93	NOT IN TOB
		541.49	

Tax Refunds
October 2010

Taxpayer	Year	Amount	Description
GREAT AMERICA LEASING CORP	2010	55.80	PROPERTY NOT IN TOB
RITOLA, JOSEPH LEONARD	2010	7.61	REGISTERED IN GA
COUNCILL, JAMES EDWARD	2009	10.26	TURN IN TAG
		73.67	

Acceptance of Consent Order - Transfer of Seized Vehicle to Watauga County Board of Education:

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WATAUGA

04 CRS 51933

STATE OF NORTH CAROLINA	)	
	)	
Vs.	)	
	)	**CONSENT ORDER TO TRANSFER**
JERRY WILLIAM RUTLEDGE	)	**OWNERSHIP OF SEIZED VEHICLE**
	)	**TO WATAUGA COUNTY BOARD**
In Re: 1994 Pontiac Bonneville	)	**OF EDUCATION**
VIN: 1G2HX52L0R4215102	)	
	)	

THIS MATTER coming to be heard upon the Motion of the Watauga County Board of Education before the Honorable James Baker, Senior Resident Superior Court Judge for issuance of a transfer of ownership of a seized vehicle from the current owners, the Town of Boone Police Department, to the Watauga County Board of Education pursuant to N.C.G.S. § 90-112.

FINDINGS OF FACT

1. The property for which the Watauga County Board of Education seeks ownership of is a
   1994 Pontiac Bonneville VIN # 1G2HX52L0R4215102 (hereinafter referred to as the "Vehicle".
2. Pursuant to a Seizure Order signed and filed on August 16, 2004 the Vehicle was placed in the custody and control of a law enforcement officer with territorial jurisdiction to affect the seizure and more specifically being the Boone Police Detective Carson Puckett.
3. Pursuant to a Order of Forfeiture entered on the 16th of August, 2004 by the Honorable Superior Court Judge presiding, the Vehicle was order forfeited to the Boone Police Department pursuant to N.C.G.S. § 112(c).
4. Boone Police Chief Dana Crawford has determined that the Vehicle no longer is of use to the Boone Police Department and wishes to dispose of said Vehicle.
5. Pursuant to N.C.G.S. §112(d) the Vehicle is to be sold by the Boone Police Department and the money transferred to the Watauga County School Fund.
6. The Watauga County Board of Education wishes to use the Vehicle in its automotive educational program in lieu of receiving the money for the sale of the vehicle.
7. This action of turning the vehicle over to the Watauga County Board of Education has been authorized by the Boone Town Council pursuant to N.C.G.S. § 160A-276(b).

CONCLUSION OF LAW

1. This Court has jurisdiction over the property.
2. A proper Order of Forfeiture was issued for the Vehicle.
3. The Vehicle is no longer needed by the Boone Police Department and pursuant to N.C.G.S. § 112(d) the Vehicle and or the proceeds of the sale of the Vehicle should be turned over to the Watauga County Board of Education.

IT IS THEREFORE ORDERED, ADJUDGE AND DECREED that the Vehicle be transferred over to the Watauga County Board of Education's ownership, custody and control. That the Boone Police Department will ensure that the title to the Vehicle is transferred properly through the Department of Motor Vehicles to reflect the Watauga County Board of Education as the titled owner.

Acceptance of Consent Order - Mountaintop Home Builders Settlement:

NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
	SUPERIOR COURT DIVISION
WATAUGA COUNTY	10 CvS 232

TOWN OF BOONE,)
Plaintiff,)
vs.)
) **CON**
MOUNTAINTOP HOME BUILDERS,)
LLC; BB&T COLLATERAL SERVICE)
CORP.; and BRANCH BANKING &)
TRUST COMPANY;)
Defendants.)

THIS MATTER having come before the Court upon the request of the parties for the Court to accept their agreement as the Court's order; and plaintiffs, represented by Samuel F. Furgiuele, Jr., Attorney at Law, and defendant Mountaintop Home Builders, LLC, the only remaining defendant following the dismissal by plaintiff of its action against all other defendants, represented by John M. Logsdon, Attorney at Law; and the parties having reported to the Court that a full settlement of this matter was reached at mediation, fully resolving all issues involved in this action, the action consolidated with this action, Watauga County case number 10-CvS-213, and all other matters and disputes currently existing between the parties, and that the parties desire that the Court endorse their settlement and adopt it as the Court's final judgment; 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; based upon the consent of the parties, the Court enters the following judgment without the necessity of full findings of fact and conclusions of law, which the parties hereby waive, as affirmed by their endorsement of this Consent Judgment, and the Court hereby adopts said settlement as its order upon the following findings and conclusions:

FINDINGS OF FACT

1. Plaintiff is a municipal corporation organized and existing under the laws of the State of North Carolina, possessing the powers, duties and authority, including the power of eminent domain, vested in it by the General Assembly of North Carolina. The Town of Boone is located in Watauga County, North Carolina.

2. Defendant Mountaintop Home Builders, LLC, is a North Carolina limited liability company, registered with the North Carolina Secretary of State and doing business in North Carolina.

3. On April 1, 2010, plaintiff initiated a condemnation action against defendant, seeking to condemn property owned by defendant.

4. On March 25, 2010, Mountaintop Home Builders, LLC, filed an application and order extending its time to file a complaint for the stated purpose of preventing plaintiff from condemning the same property, in Watauga County case number 10 CVS 213. This action was subsequently consolidated with the instant action by consent order entered by this Court.

5. With its complaint, plaintiff deposited $25,439.04, the value it estimated as just compensation for the property which was to be condemned. The amount of property taken was subsequently reduced by agreement of the parties, and upon its application and without objection, defendant drew down the money deposited at the time the action was filed.

6. Prior to the filing of this action, the parties have been engaged in a dispute regarding their relative ownership rights, the parties owning adjoining tracts of land, and the portion condemned located on defendant's adjoining tract. That dispute related, *inter alia*, to the right of defendant to utilize an existing road way from plaintiff's tract to its own and other matters regarding plaintiff's subdivision ordinance, along with the impact of certain tracts of land acquired by defendant and combined with its initial tract.

7. The parties participated in court ordered mediation on October 4, 2010, mediated by the Honorable Michael Helms. At that mediation, the parties agreed to a full and comprehensive settlement between them whereby plaintiff would purchase the entire adjoining property of defendant, and they wish that settlement to be adopted by this Court as its judgment. The parties have reported that as required by the mediated settlement, this agreement has been approved by the Town of Boone Town Council, and defendant has provided plaintiff a copy of the appraisal of Michael Sweeting and a copy of the agreement dated May 1, 2007, referenced in the deed of trust recorded in Book of Records 1290, Page 618, Watauga County Registry.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the subject matter of this action and over the parties.

2. The Court has authority to adopt the mediated settlement of the parties as its final judgment.

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

JUDGMENT

1. Defendant shall be entitled to retain the full amount of the funds deposited by plaintiff at the time of the filing of this action, $25,439.04.

2. On or before November 30, 2010, plaintiff shall pay defendant the additional sum of $170,274.95.

3. On or before August 1, 2011, plaintiff shall make a final payment of $200,000.00 to defendant.

4. At the time of the $170,274.95 payment by plaintiff to defendant, defendant shall convey to plaintiff by general warranty deed, all the property described in that certain deed recorded at Book of Records 1078, Page 184, Watauga County Registry, that certain deed recorded at Book of Records 1290, Page 605, Watauga County Registry, and that certain deed recorded at Book of Records 1290, Page 602, Watauga County Registry, the latter subject to the terms and conditions included in that certain deed of trust recorded in Book of Records 1290, Page 618, Watauga County Registry.

5. Each party shall bear its own costs, including attorneys fees.

VOTE: Aye - All
Nay - None

PUBLIC COMMENT

There was no one present who wished to speak during the Public Comment period.

APPROVAL OF ZONING MAP & TEXT AMENDMENTS

Development Coordinator David Graham presented the following case:

Case 20100522 Boone Point Conditional Zoning District Modification Map Amendment - Boone Station Partners, LLC have filed a Conditional District Zoning Map amendment for property located at 148/178 Highway 105 Extension and further identified as Watauga County Parcel Number 2910-27-6826-000. The request is to modify the current Conditional District Zoning to allow for Home Occupations (use 1.700) and Offices (use 3.110) to the portion of the building identified as 10 residential condominiums. Specifically, the applicant is requesting approval to allow condominium units (201-205) to be permitted as four office space uses and one unit as a home occupation unit. In addition, the applicant is requesting approval of condominium

units (301-305) to be permitted as two office space uses and three units as home occupation units. Mr. Graham stated that the Planning Commission voted unanimously to recommend approval of the proposed map amendment. Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved that the proposed amendment to the Town's zoning map is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because it allows the property to be a viable mixed use property under current economic conditions by adding the proposed uses.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved to approve the proposed amendment to the Town's zoning map with the following three conditions and believe that approval is reasonable and in the public interest because the addition of these uses allows the project to be a thriving mixed-use project:

1. Approval is subject to the Application and site plan submitted bearing the date of October 12, 2010. Insignificant deviations may be permitted to comply with the requirements of the UDO or NC State Building Code.
2. Any commitments and representations concerning the proposed project made by the applicant or his representatives at the public hearing shall also become a condition of approval.
3. Applications and final plans shall be submitted that are in compliance with the provisions of the UDO and NC State Building Code.

VOTE: Aye - All
Nay - None

Planner Jane Shook presented the following case:

Case 20100557 Fire Department Standards Text Amendment - The request is to modify existing UDO language to include references to other pertinent codes and other standards for the Fire Department. Currently, plan review is conducted by all departments: Planning and Inspections Department, Fire Department, Public Utilities Department and Public Works Department that in addition to commercial projects, other residential projects including single family projects need review from the Fire Department. This additional review is to ensure that new projects meet standards enforced by other departments to ensure service can be provided to all new projects. Ms. Shook stated that the Planning Commission voted unanimously to recommend approval of the proposed text amendment. Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town of Boone which relate to this application because the text amendment supports public health, safety, and welfare.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to approve the proposed amendment to the Town's zoning ordinance and believes that approval is reasonable and in the public interest because the proposed amendment provides clarity for applicants regarding their responsibilities in addition to the UDO.

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

VOTE: Aye - All
Nay - None

Planner Jane Shook presented the following case:

Case 20100558 Parking Retention Text Amendment - Request to revise Article 19, Section 346 "Number of Parking Spaces Required" to clearly state the number of parking spaces

provided at the time of approval of the development may not be subsequently reduced without the approval of the permit issuing authority. Some development with approved parking plans have modified and reduced the approved number of parking spaces, which has impacts for development, especially residential, then being left without an appropriate amount of parking for the development or residents. A clear statement that any reduction to the amount of approved parking for a particular use is needed to provide clarity to applicants as to what their responsibilities are. This standard does not make it impossible for future applicants to reduce the number of parking for a use, but ensures that the applicants receive approval from the appropriate permit issuing authority as to the correct number of parking spaces needed. Ms. Shook stated that the Planning Commission voted unanimously to recommend approval of the proposed text amendment. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because the text amendment clarifies UDO parking requirements and provides more clarity and predictability in the UDO.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve the proposed amendment to the Town's zoning ordinance and believes approval is reasonable and in the public interest because it provides for more clarity and predictability in the UDO.

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

VOTE: Aye - All
Nay - None

Planner Jane Shook presented the following case:

Case 20100559 Transitional Zones Text Amendment - The request is to create transitional zones which attach to each R-1, R-1A, R-R, R-2, and R-A district without regard to the current uses in that district. The transitional zones are established for the purpose of creating special protections for residents of the protected residential districts from the potential adverse impacts of certain potentially incompatible nearby development, based upon the legislative finding that the general requirements of this ordinance have not been sufficient to protect the residents of such protected districts from the adverse consequences of such developments and that the variety of circumstances which may need to be ameliorated in the face of such development are not amenable to a "one size fits all" approach. The proposed text creates procedural and technical standards for development located within a transitional zone based upon the proposed use. Ms. Shook stated that the Planning Commission voted nine to one on the first required vote and unanimously on the second required vote to recommend approval of the proposed amendment with suggested changes to the proposed text language. Town Attorney Sam Furgiuele stated that he is opposed to the recommended text changes suggested by the Planning Commission and disagreed with comments made during the public hearing by Jason Gaston of Valor Engineering. He explained that he feels Mr. Gaston does not understand the intent of the proposed text. Lengthy discussion ensued regarding the suggested text changes made by the Planning Commission. Upon a motion by Council Member Leigh, seconded by Council Member Ball, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because the proposed text amendment provides for protection of residential neighborhoods.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Leigh, seconded by Council Member Mason, Council members moved to approve the proposed text amendment and believe approval is reasonable and in the public interest because it provides for the protection of residential neighborhoods.

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

VOTE: Aye - All
Nay - None

Planner Jane Shook presented the following case:

Case 20100560 Section 167 Text Amendment - The request is to revise Article 10, Section 167: Board of Adjustment Jurisdiction over Uses Otherwise Permissible with a Zoning Permit, to include language for applications submitted for zoning approval when the site specific development plan or accompanying details of the plan are materially different from the site specific development plan or accompanying details presented to the Town Council in connection with an application for and allocation of vested rights to connect to the Town's water or sewer system. New procedure would require the administrator to treat the application as an application for a special use permit. Currently, applicants who have requested a water allocation from Council are required to present a site specific development proposal. Occasionally, applicants have submitted plans for development which differ from the plans discussed before Council. The intent of the proposed text is to give applicants clear direction as their responsibility when they submit for zoning approval. Ms. Shook noted that the Planning Commission had voted unanimously to recommend approval of the proposed text amendment. Upon a motion by Council Member Mason, seconded by Council Member Leigh, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's Comprehensive plan and other applicable adopted plans of the Town which relate to this application because the text amendment will provide a needed tool for Council to act as a party if the case is sent to the Board of Adjustment and provides clarity to the applicants during the water application process.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Leigh, Council moved to approve the proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because the text amendment requires the applicant to be consistent to Council and all subsequent bodies.

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

VOTE: Aye - All
Nay - None

Planner Jane Shook presented the following case:

Case 20100561 Article 18, Section 327 Residential Signs Text Amendment - The request is to revise Article 18, Section 327: Signs Permitted in the R-1, RA, R-1A, R-2, R-4 and MH Districts, to include (1) adding the Residential Rehabilitation (RR) District to the applicable zoning districts, and (2) add standards for Use 5.2 Churches, Synagogues, and Temples to Section 327. Recently, the Planning & Inspections Department received an inquiry about a church located in the Residential Rehabilitation (RR) district regarding the replacement of its signs. Upon review it was determined that the RR district was mistakenly omitted from Section 327. Ms. Shook noted that the Planning Commission unanimously recommended approval of the proposed text amendment. Upon a motion by Council Member Mason, seconded by Council Member Leigh, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's Comprehensive plan and other applicable adopted plans of the Town which relate to this application because the text amendment corrects a current inconsistency within the UDO.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Leigh, Council moved to approve the proposed amendment to the Town's zoning ordinance and believes approval is reasonable and in the public interest because the text amendment corrects a current

inconsistency within the UDO and makes sign regulations more predictable for applicants in the RR zoning district.

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

VOTE: Aye - All
Nay - None

DISCUSSION/POSSIBLE ACTION ON UDO ARTICLE 10 - TABLE OF PERMITTED USES SITE COMPLIANCE REGULATIONS

Planner Jane Shook stated that at the November 1, 2010 Quarterly Public Hearing, Planning Staff and the Town Attorney discussed with the Council the current work being done on Article 10, specifically the Table of Permissible Uses . Direction from the Council was requested for when development must bring the site into compliance with current UDO standards. She noted that this is currently triggered by either a change in the use of the property or by when the cost of improvements to a development equal or exceed 50% of the value of the structure. Ms. Shook explained that currently, in the Table of Permissible Uses, a "change in use" is when a use changes from one principal use category to another and that while working on revisions to the Table of Permissible Uses (including restructuring and evaluating each individual use) how principal use categories will be defined is likely to change. Furthermore, she indicated that complications may arise in a "change of use" situation when the "change of use" has no discernible impact or very little impact yet the applicant is required to bring the site up to current UDO standards. She relayed that many applicants have been discouraged by the amount of money it costs to do so and chose not to proceed with the project. With the recent economic downturn, Ms. Shook noted that direction is requested from Council as to whether or not to incorporate the "change of use" standard into the new language and to evaluate the percentage that would trigger nonconforming project to come into compliance if it were removed. Council Member Mason inquired as to what is being used in other communities. Ms. Shook informed Council that many other communities utilize a tiered approach. Upon a motion by Council Member Phillips, seconded by Council Member Mason, Council moved to direct the Planning Staff to determine a lower percentage threshold, to gather more information on a tiered approach, and to eliminate the "change of use" in the new language.

VOTE: Aye - All
Nay - None

DISCUSSION/POSSIBLE ACTION ON UDO ARTICLE 10 - TABLE OF PERMITTED USES EVALUATING MULTI-FAMILY HOUSING

Planner Jane Shook stated that at the November 1, 2010 Quarterly Public Hearing, Planning Staff and the Town Attorney discussed with the Council the current work being done on Article 10, specifically the Table of Permissible Uses and multi-family housing. Direction from Council is being requested regarding the possibility of researching and creating performance standards for different types of multi-family housing. Upon a motion by Council Member Leigh, seconded by Council Member Mason, Council moved to direct the Planning Staff in conjunction with the Affordable Housing Task Force, further evaluate this issue and develop recommendations to present to Council at a later date.

VOTE: Aye - All
Nay - None

REQUEST CHANGE TO PEDESTRIAN SIGNAGE - DOWNTOWN BOONE DEVELOPMENT ASSOCIATION

DBDA Executive Director Mary Baker appeared before Council to present a proposal to upgrade pedestrian signs previously approved by the Community Appearance Commission and the Town Council to accommodate a listing of all of the downtown businesses. She stated that initially the signage would have included a listing for approximately 70 businesses but that now the listing will include approximately 150 businesses. Furthermore, Ms. Baker indicated that the DBDA is offering to cover the expense to update the signs. Public Works Director Blake Brown voiced a concern with an increase in the size of the signage, citing the possibility of impeding pedestrian

traffic and possible damage due to snow removal operations. Discussion ensued concerning copyright issues with the DBDA logo. Town Manager Greg Young stated that the sign company has verbally agreed to release the copyright but that written confirmation is needed regarding the release of the copyright. He stated that there is also an issue with delaying the process and an outstanding purchase order issued for the first order of signs. Mr. Young also informed the Council of plans for locating a kiosk with a map and listing of businesses in the planter next to the Vetro building of which the Town had no prior knowledge. He noted that the kiosk has been ordered but that there has been no direction from Council as to where the kiosk is to be located. Council Member Brantz asked if the 50% amount of the invoice that has paid can be applied to the new signage. Mr. Young indicated that it could be with Council's approval. Ms. Baker also requested direction in regard to the seasonal banners located on the light posts downtown. Council Member Ball suggested that Ms. Baker send the options for consideration via email to the members of the Council. Planning Director Bill Bailey pointed out that Section 325 of the UDO exempts the Town of Boone from the regulations contained in the sign ordinance as long as the signs are owned by the Town. Town Attorney Sam Furgiuele stated that an agreement could be negotiated in order to make clear the ownership of the signs. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved for the following:

- put on hold any further work on the signs until issues can be resolved
- approve the DBDA's paying the difference for the expense of larger signage
- ownership agreement be developed regarding ownership of the signs
- proceed with the placement of the kiosk
- direct the Town Manager to pursue a copyright release
- direct the Pubic Works Director to identify the best locations for sign placement, including reviewing placing the signs on the sides of buildings
- this matter be placed on the December agenda for further consideration

VOTE: Aye - All
Nay - None

Mayor Clawson declared a break at 8:49 p.m. Council reconvened at 9:00 p.m.

TRANSPORTATION COMMITTEE RECOMMENDATION - PEDESTRIAN IMPROVEMENTS FOR HOWARD STREET

Public Works Director Blake Brown stated that as a result of the request made by Dan Meyer of the Chamber of Commerce at the October meeting, the Transportation Committee is recommending sending a letter to each stakeholder on Howard Street in lieu of a survey. He stated that the letter will make stakeholders aware of a temporarily-modified plan to make Howard Street a one-way street with a pedestrian designated walkway, invite them to send written comments to the Transportation Committee, and invite them to a public hearing that is requested to be scheduled prior to the December regular council meeting. Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to approve the recommendation of the Transportation Committee and to schedule a public hearing to be held at the regular December meeting.

VOTE: Aye - All
Nay - None

TRANSPORTATION COMMITTEE RECOMMENDATION - REPLACEMENT OF ASU REPRESENTATIVE TO COMMITTEE

Public Works Director Blake Brown informed the Council that Dr. Clyde Robbins retired from ASU on October 31, 2010 and requested that the Council consider filling Dr. Robbins' vacant position by appointing Allison Kemp-Sullivan. He explained that Ms. Kemp-Sullivan is an experienced engineer who is now serving as the interim director for the ASU Construction and Design program. Council Member Leigh questioned why this committee does not have to follow the process for filling board vacancies as other Town boards. Mr. Brown stated that this board is unique in the fact that its make-up is comprised of persons with technical and practical experience in regard to transportation issues including representatives from the NC DOT, ASU,

Watauga County Planning & Inspections Office, and AppalCART. After brief discussion, Council Member Ball moved to nominate Allison Kemp-Sullivan for appointment to the Transportation Committee, replacing Dr. Clyde Robbins and to instruct Public Works Director Blake Brown to present a resolution at the next regular meeting detailing the specific positions of the Transportation Committee. Council Member Brantz seconded the motion.

VOTE: Aye - All
Nay - None

TRANSPORTATION COMMITTEE RECOMMENDATION - PEDESTRIAN ISSUES FOR KING ST. & COLLEGE ST. INTERSECTION

Public Works Director Blake Brown presented to the Council a recommendation from the Transportation Committee regarding pedestrian safety and traffic concerns at the intersection of King and College Streets. He stated that the committee is requesting that a letter from Mayor Clawson be sent to the NC DOT to requesting input and recommendations from that office. Furthermore, Mr. Brown indicated that due to the same type of pedestrian and traffic issues in the College Street/Hamby Alley/Howard Street area, the Transportation Committee is recommending that the Town hire an engineer to study this area and make recommendations to address the concerns. He stated that the Transportation Commission is also requesting the scheduling of a public hearing once these findings are complete in order to consider options. Mr. Blake shared with the Council a letter from Skip Greene, on behalf of the First Baptist Church, expressing concerns with pedestrian safety and an increase in traffic volume and requesting to be part of the conversation regarding any future improvements to that area. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council directed Public Works Director Blake Brown to:

- $ approach ASU about the possibility of a cost-share agreement between it, the NC DOT and the Town,
- $ draft a letter to the NC DOT requesting its input and recommendations,
- $ present quotes regarding the engineering costs for studying the issues for this area to the next regular council meeting.

VOTE: Aye - All
Nay - None

ADOPTION OF TOWN CODE AMENDMENT - CODE OF ETHICS POLICY

Town Attorney Sam Furgiuele presented the final draft of language presented for a Code of Ethics policy that was initially presented to Council for consideration at the October regular meeting. Upon a motion by Council Member Leigh, seconded by Council Member Mason, Council moved to adopt the following amendment to the Town Code:

Section 30.52 CODE OF ETHICS

(A) **GENERAL PRINCIPLES UNDERLYING THE CODE OF ETHICS.**

(1) **Purpose**. The purpose of this Code of Ethics is to establish guidelines for ethical standards of conduct for members of the Town Council, including the Mayor and members of the Town's various volunteer boards, committees and task forces (hereinafter, "Committees") and to provide guidance in determining what conduct is appropriate in particular cases. This Code should not be considered a substitute for the law or for a Council member's best judgment, and the provisions herein should be considered minimum standards and examples. Town Council and Committee Members shall strive to bring the perception and actual honesty to all endeavors related to Town matters or which may reflect on the public perception of the Town.

(2) **Commitment to the Code of Ethics**. No person elected or appointed to the Boone Town Council or appointed to a Committee of the Town of Boone shall begin official duties until that person has certified that he or she has read this Code of Ethics and agrees to comply with the provisions contained herein. Each

person so elected or appointed shall be provided by the Town Clerk with a copy of this Code of Ethics.

(3) **Foundation of Code of Ethics.** The Code of Ethics is founded on the following ideas, and they shall inform the interpretation of the Code of Ethics:

(a) The stability and proper operation of democratic representative government depends upon public confidence in the integrity of the government and upon responsible exercise of the trust conferred by the people upon their elected officials and the other persons they appoint to transact the government's business.

(b) Governmental decisions and policy must be made and implemented through proper channels, and fair and open processes of the governmental structure to the extent possible.

(c) Elected local government officials must be able to act in a manner that maintains their integrity and independence, yet is responsive to the interests and needs of those they represent, without fear of reprisal or condemnation.

(d) Elected local government officials must always remain aware that at various times they play different roles:

(i) As advocates, who strive to advance the legitimate needs of the citizens,

(ii) As legislators, who balance the public interest and private rights in considering and enacting ordinances, orders, and resolutions, and

(iii) As fair and impartial decision-makers, when making quasi-judicial and administrative determinations.

(e) Elected local government officials must know how to distinguish among these roles, to determine when each role is appropriate, and to act accordingly.

(f) Elected local government officials must be aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of their constituents. Each official must ultimately find within his or her own conscience the touchstone by which to determine what conduct is appropriate.

(g) People serving on the various Boards, Committees and Task Forces (hereinafter referred to as "Committee Members") that often inform the legislative, administrative and decision-making processes must exercise their roles in such manner as to justify the trust placed upon them by their elected officials, and they must not use their positions for improper purposes.

(B) **CODE OF ETHICS.**

(1) **Principle 1-1.** Town Council and Committee Members should obey all laws, including State and federal laws and regulations, and local ordinances which apply to their official actions.

Principle 1-2. Town Council and Committee Members should be guided by the spirit as well as the letter of the law in whatever they do.

Principle 1-3. Town Council and Committee Members shall endeavor to keep themselves up to date about new or ongoing legal or ethical issues they may face in their official positions. They should avail themselves of resources and training in these areas which may be reasonably available to them. Town Council and Committee Members should review the pertinent sections in the Town's Code, Unified Development Ordinance and other sources concerning the

procedures by which they perform their duties so that they will be knowledgeable and informed as they do so.

(2) **Mandates:**

(a) Town Council and Committee Members must ask to be recused from voting on matters involving their own direct or indirect financial interests or official conduct and must not participate in the deliberations or votes regarding such matters. They must avoid attempting to influence others who are involved in approving, making or administering a contract with the Town if they will derive a direct benefit from the contract.

(b) Town Council and Committee Members must avoid soliciting or receiving any gift or reward in exchange for recommending, influencing, or attempting to influence the award of any contract by the Town.

(c) Town Council and Committee Members shall avoid using knowledge of a contemplated action by the Town, or information learned in their official capacities and not made public, to acquire a financial interest in any property, transaction, or enterprise, or to otherwise gain a financial benefit that may be affected by the information or contemplated action, and they shall not help another person in doing so.

(d) Town Council members shall reject any gift or favor from a current, past, or potential contractor of the Town.

(e) Town Council and Committee Members shall not participate in or vote upon any quasi-judicial matter coming before them if prior to hearing the evidence of the case they have a fixed opinion that is not susceptible to change; they have had undisclosed *ex parte* communications regarding the substance of the matter involved; they have a close familial, business, or other associational relationship with an affected person; or they have a financial interest in the outcome of the matter.

(f) Every Town Council member shall attend statutorily mandated ethics training.

(3) **Principle 2-1.** Town Council and Committee Members should act with integrity and with independence from improper influence as they exercise the functions of their offices.

Principle 2-2. Town Council and Committee Members should use their best independent judgment to pursue the common good as they see it, presenting their opinions to all in a reasonable, forthright, and consistent manner.

Principle 2-3. Town Council and Committee Members should not be subject to improper influence by family, friends, business associates or others who are motivated by self-interest rather than the common good, but they must be able to consider the opinions and ideas of others throughout the community as they formulate approaches to the issues with which they are presented.

Principle 2-4. Town Council and Committee Members should strive to show respect toward other persons with whom they interact, including each other, recognizing that they may often be perceived as representing the Town itself even when they are acting in a personal capacity.

Principle 2-5. Town Council and Committee Members shall strive to not form a final opinion regarding an issue until all sides have been given a reasonable opportunity to present their viewpoints.

Principle 2-6. In situations in which recusal from voting or participation is not allowed, but an objective observer may believe that a conflict of interest exists, Town Council Members shall seek to explain their inability to seek recusal while striving to discharge their responsibilities to advance the common good.

(4) **Mandates:**

(a) Town Council and Committee Members must be free to assert policy positions and opinions without fear of reprisal from fellow Town Council or Committee Members or citizens so to assert that a Town Council or Committee Member is behaving unethically based simply upon a disagreement with that Town Council or Committee Member related to a question of policy, as opposed to the Town Council or Committee Member's actual unethical behavior, is unfair, dishonest, irresponsible, and itself unethical.

(b) Town Council and Committee Members who are involved in quasi-judicial procedures shall actively avoid inappropriate contacts with interested persons regarding the issues involved in those procedures, and when despite their best efforts they engage in such contacts, they shall disclose them and withdraw from participation in the procedures.

(5) **Principle 3-1.** Town Council and Committee Members should avoid impropriety in the exercise of their official duties. Their official actions should be above reproach.

Principle 3-2. Town Council and Committee Members should recognize that they are part of a larger group and should act accordingly. They should respect their office and not behave in ways that reflect badly on it. They should treat other Town Council and Committee Members and the public with respect, and should honor the opinions of others even when they disagree.

Principle 3-3. If a Town Council or Committee Member concludes that his or her actions which the Town Council or Committee Member believes are legal and ethical may be misunderstood, he or she should seek the advice of the Town attorney as to whether the actions are legal and ethical. Alternatively, he or she may state on the record the facts of the situation and the steps taken to resolve it.

(6) **Mandates:**

(a) A Town Council or Committee Member should never make a request to a Town employee, including the Town Manager, for an action, forbearance or other thing of value which would benefit him or herself or any other person or entity, whether or not the Town Council and Committee Member has a familial, business or other relationship with that person or entity, unless as an ordinary citizens of the Town it would be appropriate to make such a request. Even in such instances where such a request would ordinarily be appropriate, a Town Council or Committee Member making such a request must disclose to the employee that he or she is not entitled to preferential treatment, that the request should be rejected if it would not customarily be granted to an ordinary citizen of the Town, and that the employee may refuse the request without fear of reprisal.

(b) Town Council and Committee Members shall not attempt to influence a decision by the Town Council or the Committee on which they serve relative to any action from which they will derive a direct financial benefit, although they shall not be precluded from appearing in an individual capacity to testify in quasi-judicial zoning procedures which have a substantial impact upon their own property interests so long as those interests are disclosed.

(c) Town Council and Committee Members shall not solicit or accept any gift or other thing of value which might be perceived as affecting any vote or decision involving the donor, but the receipt of an honorarium for participating in a meeting, the receipt of an advertising item or souvenir of nominal value or a meal furnished at a banquet will not be considered a violation of this principle so long as it does not actually influence the Town Council or Committee Member in the discharge of his or her official duties. In the event a Town Council or Committee Member has

inadvertently accepted a gift or other thing of value from a person seeking action by the Town, the Town Council member or Committee Member may not attempt to influence the decision or participate in any vote relating to the decision.

(d) Town Council and Committee Members must recognize that unless specifically charged with representing the Town, Council or Committee, they are not authorized to act on behalf of the Town, Council or Committee, and they should not offer their opinions, positions or analysis as representing the views of the Town, Council or Committee unless the Council or Committee has itself taken official action as a body in conformity with those opinions, positions or analysis.

(7) **Principle 4-1.** Town Council and Committee Members should be faithful in the performance of the duties of their offices.

Principle 4-2. Town Council and Committee Members should be diligent in their attendance at meetings and in their preparation for those meetings. They should carefully analyze all credible information that is provided to them and recognize the importance to the well being of Town and its citizens of many of their decisions.

Principle 4-3. Town Council members shall seek full accountability from those over whom the Town Council has authority, particularly with regard to the expenditure of public funds.

Principle 4-4. Town Council members should set a good example for others in the community, keeping in mind that trust and respect must continually be earned.

Principle 4-5. Town Council and Committee Members should be willing to bear their fair share of the workload, commensurate with their skills and other commitments.

Principle 4-6. Town Council members in particular should strive to recognize that by accepting the public trust, they may have to subordinate their personal endeavors to discharge their official responsibilities. To the extent appropriate, they should be willing to put the Town's interests ahead of their own.

(8) **Mandates:**

(a) Town Council and Committee Members should keep confidential information entrusted to them in legally called and held closed sessions, the disclosure of which has or may have a negative impact on the interests of the Town itself, and they shall keep private confidentially obtained information about other members which would embarrass those members or expose them to public ridicule, but which has no bearing on the performance of any official duty.

(9) **Principle 5-1.** Town Council and Committee Members shall conduct the affairs of their boards in an open and public manner.

Principle 5-2. Town Council and Committee Members should remember when meeting that they are conducting the public's business.

Principle 5-3. Town Council and Committee Members should remember that except for those records otherwise protected by law against public disclosure, the records of the Town of Boone belong to the public and not to them or the Town's employees. They should make clear that a climate of openness is to be maintained at all times in the Town.

Principle 5-4. In order to ensure strict compliance with the laws governing openness, Town Council members should prohibit unjustified delays in fulfilling public records requests should they become aware of such delays. They should assure themselves before they go into closed session that the closed session is

called for a lawful purpose.

(10) **Mandates:**

(a) Town Council and Committee Members must comply with all applicable laws governing open meetings and public records.

(C) **Censure Procedures**.

(1) If the Town Council has reason to believe that one of its members or a member of a Town Committee has violated a mandate of this Code of Ethics, by majority vote of the Town Council members present and voting, it may open an investigation into the matter, using the resources of the Town to compile the necessary information to make a determination. If the proceeding involves a Town Council member's actions, that member shall not participate in the vote to authorize the investigation.

(2) Following investigation, all information compiled, including any grounds for the finding of probable cause that a mandate has been violated shall be summarized in writing by the Town Manager, Town Attorney or such other person as may be designated by the Town Council, and the written summary shall be shared with the accused Town Council or Committee Member promptly when it is available. All such information pertaining to the case shall be open to public inspection and copying as pursuant to North Carolina General Statute §132-1, *et seq*.

(3) Following such investigation and report, should the Town Council determine, by vote of a two-thirds majority of those present and voting, that it wishes to proceed further with a censure proceeding, it shall call for and schedule a quasi-judicial hearing at a regular meeting or special meeting convened for that purpose. If the proceeding involves a Town Council member's actions, that member shall not participate in the vote to proceed or schedule the hearing.

(4) The Notice of the hearing stating its time, place, and purpose shall be published at least two times, once each in two separate calendar weeks in a newspaper of general circulation, or it shall be advertised daily for at least ten days on the Town's official website. If placed in the newspaper, the initial notice shall be published at least ten days and not more than twenty-five days before the date set for the hearing and shall state that the summary regarding the allegations against the Town Council or Committee Member is available for public inspection and copying in the office of the Town Clerk.

(5) The hearing shall be convened at the time and place specified. Any and all votes during the hearing and any deliberations that follow shall be taken by a vote of the full Town Council in attendance and participating, and each vote shall be recorded in the minutes. The hearing and any deliberations shall be conducted in open session in accordance with the requirements of the North Carolina open meetings statutes – North Carolina General Statutes §143-318.9 and §143-318.10.

(6) The accused Town Council or Committee Member shall have the right to challenge the participation in the case of any other Town Council member or the presiding officer, based on bias or self-interest. If such a challenge is made, the Town Council shall immediately hear evidence and vote on the challenge in a separate hearing conducted for that purpose. It shall not be a basis for removal of a Town Council member that he or she was the person who offered the motion to investigate the behavior in question or to conduct the hearing. Neither the accused Town Council member, if any, nor the Town Council member whose participation is challenged, may vote on the challenge although both may offer evidence. The challenge shall be decided by a majority vote of those present and voting, a quorum being present not including the person accused and the person challenged. If more than one person's participation is challenged, however, a separate hearing shall be conducted as to each challenged member's participation and all members except the accused member and challenged member shall participate in the vote as to the right of the challenged member to participate.

(7) The rules governing any hearing as to bias and the hearing on the underlying

ethical charges shall be those that apply to a standard quasi-judicial hearing, and an audio or video recording of the proceedings shall be made. All hearings this policy shall be conducted by the Town Attorney. During the hearing, the accused Town Council or Committee Member shall have the right:

(a) to have counsel present;

(b) to present and cross-examine expert and other witnesses; and

(c) to offer evidence.

(8) Any person in attendance at the hearing with knowledge of the alleged incident(s) giving rise to or materially related to the allegation shall be given an opportunity to testify, and all testimony shall be taken under oath.

(9) Once the hearing is concluded, it shall be closed by majority vote. The presiding officer shall then entertain a motion to adopt a non-binding resolution censuring the Town Council or Committee Member based on specified violations of the mandates of the Code of Ethics. Any motion made must be an affirmative one in favor of adopting a non-binding resolution of censure. If the motion or resolution does not state particular grounds for censure under the Code of Ethics, the presiding officer shall rule it out of order. If a motion to adopt a non-binding resolution of censure stating particular grounds under the code of ethics has been made, the board shall debate the motion. The accused Town Council Member, if any, and any other Town Council who has been removed from participation because of bias or self-interest may remain present, but shall not be allowed to participate in the debate. At the conclusion of the debate, the Town Council shall vote, except for the accused Town Council, if any, and any other Town Council member who has been removed from participation. If the motion is approved by a minimum two-thirds vote of those present and voting, a quorum being present, the motion will be approved and the non-binding resolution of censure adopted. The quorum requirement shall be met if the requisite number is present, even though removal of some from participation may prevent a quorum from actually voting on the issue.

(10) If a resolution of censure is adopted, it shall become a part of the official record of the Town Council. If it pertains to a member of a Committee, it shall be the basis for further action, which may be taken immediately following the vote of censure, to remove the Committee Member from the Committee upon which he or she serves.

This Code of Ethics is Adopted by the Town Council of the Town of Boone, North Carolina this ___ day of _____, 2010.

_____
Loretta Clawson, Mayor

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

VOTE: Aye - All
Nay - None

ADOPTION OF TOWN CODE AMENDMENT - PROTECTION OF TOWN SEAL AND ADDRESS CONCERNS IN WHICH INTELLECTUAL PROPERTY IS RESERVED

Town Attorney presented a draft code amendment to Chapter 36: Town Logo, Sections 36.01, 36.02, and 36.03 in regard to the use of the Town Seal/logo and Chapter 37: Contracts regarding concerns for intellectual property rights. Council Member Ball inquired as to if the Town Logo has been copyrighted. Mr. Furgiuele stated that he will investigate registering the Town Logo as copyrighted.

ADOPTION OF RESOLUTION - OPT OUT OF FOURTH YEAR OF PERMIT EXTENSION FOR ALL DEVELOPMENT PERMITS ISSUED BY THE TOWN OF BOONE THAT ARE SUBJECT TO NC SESSION LAW 2010-177

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to adopt the following resolution:

RESOLUTION PROVIDING FOR THE TOWN OF BOONE, NORTH CAROLINA TO OPT OUT OF THE FOURTH YEAR OF PERMIT EXTENSION FOR ALL DEVELOPMENT PERMITS ISSUED BY THE TOWN THAT ARE SUBJECT TO NORTH CAROLINA SESSION LAW 2010-177

WHEREAS, the economic conditions affecting the State of North Carolina reduced the development activity across the State, leading the North Carolina General Assembly to adopt the "Permit Extension Act of 2009" to temporarily prevent the expiration of certain development permits issued by the State and local governments, including the Town of Boone; and

WHEREAS, the Permit Extension Act of 2009 tolled the expiration of certain development rights, retroactively, issued by the Town of Boone and unexpired during any portion of the period from January 1, 2008 through December 31, 2010; and

WHEREAS, although local development activity has somewhat slowed in the Town of Boone during the current economic downturn, and the initial extension period provided by the Permit Extension Act of 2009 afforded needed relief to the development community, through that period there has continued to be significant development activity, with many and several relatively large development projects proposed and built; and

WHEREAS, certain development permits issued by the Town of Boone, even absent the Permit Extension Act of 2009, had extended vesting periods granted by the Town of Boone's Board of Adjustment or the Boone Town Council, and thus the Permit Extension Act of 2009 had the effect of potentially lengthening vested development rights for projects that had not even been begun for periods of as long as eight years; and

WHEREAS, the General Assembly acted again in 2010, in Section Law 2010-177, to extend for an additional one year the period during which the expiration of development permits would be tolled, until January 1, 2012; and

WHEREAS, Session Law 2010-177 also authorized the Town of Boone to opt out of the additional year of tolling providing in that law; and

WHEREAS, the continued tolling of time for development permits creates numerous administrative burdens on the Planning staff, who must determine the version of the Town's Unified Development Ordinance which was in effect at the time each individual project was permitted; and

WHEREAS, the continued tolling of time for development permits causes ambiguities to exist for the various boards of the Town which are involved in the issuance of development permits or the assessment of the needs created by the growth of the Town since, for example, projects thought to have been abandoned have been revived and may now have impacts on the Town or surrounding properties which have substantially changed and increased since their permits were first issued because of other and subsequent development approvals issued with the expectation that such projects had been abandoned; and

WHEREAS, in Ordinance 05-01, the Boone Town Council has linked the vesting of water rights for connections to its limited water supply to the vesting periods of an applicant's development permits, and the unintended consequence of the Permit Extension Act of 2009 was to theoretically revive projects which have been abandoned, thus forcing the Town to sequester water for projects which may never be constructed, making it unavailable to other projects which are in need of water allocations; and

WHEREAS, the expiration of permits serves the useful public purpose of encouraging permit holders to complete projects, winnowing out projects which are poorly conceived and

bringing closure to the permitting process; and

WHEREAS, the Boone Town Council concludes that it is the best interests of the Town of Boone and promotes the health, safety and welfare of the citizens, residents, and property owners within the Town of Boone's planning jurisdiction to opt out of any further blanket permit extensions which might be authorized by the General Assembly;

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

Section 1. The Town Council hereby declines to be subject to the one-year permit extension provisions of Session Law 2010-177, as that Act amends the Permit Extension Act of 2009, with respect to all of those development permits issued by the Town of Boone, including but not limited to zoning, building, grading, special use and conditional district zoning permits, which are otherwise subject to these acts.

Section 2. If any section, phrase or provision of this Resolution is for any reason declared to be invalid, such declaration shall not affect the validity of the remainder of the Resolution.

Section 3. This Resolution shall take effect immediately upon its passage.

Adopted this the 16th day of November, 2010.

_____
Loretta Clawson, Mayor

ATTEST:

_____
Freida Van Allen, Town Clerk

(RESOLUTION TO BE TYPED IN BOOK _3_, PAGE(S)__152__)

VOTE: Aye - All
Nay - None

RESCHEDULE DECEMBER COUNCIL MEETINGS

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to reschedule the December regular council meetings to **Tuesday, December 14, 2010** and **Thursday, December 16, 2010**, beginning at 6:30 p.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE: Aye - All
Nay - None

SCHEDULE WATER COMMITTEE MEETING

Public Utilities Director Rick Miller requested the scheduling of a special meeting for the Water Study Committee in order to discuss water usage numbers, possible modifications to Ordinance #05-01, and to receive recommendations from the Water Use Sub-Committee regarding water shortage declarations. Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to schedule a special meeting of the Water Study Committee on Wednesday, December 1, 2010, at 5:30 p.m. in the Council Chambers, 1500 Blowing Rock Road, to discuss the above-mentioned items.

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 November 2010 Boone Town Council meeting packet.)

DISCUSSION OF CAPITAL IMPROVEMENTS PLAN

In regard to previous discussions held at the annual Town Council Retreat and at the request of the Council during a special meeting in August 2010, Assistant to the Manager Jim Byrne appeared before the Council to offer two quotes for the development of a Capital Improvement Plan for the Town of Boone. He stated that the lowest responsible bid was from McGill Associates in the amount of $71,000 and that the next to lowest responsible bid was from Davis-Martin-Powell & Associates in the amount of $74,950. Council Member Leigh voiced concern regarding the costs involved in the development of a CIP by a professional group. Council Member Mason indicated that she feels that such a plan will provide for a way to prioritize projects. After further discussion, Council Member Ball moved to table action on the consideration of the two bids submitted by McGill Associates and Davis-Martin-Powell & Associates until the February 2011 meeting and to direct Assistant to the Manager Jim Byrne to develop an initial Capital Improvements Plan to be presented at the February 2011 meeting.

VOTE: Aye - All
Nay - None

PRESENTATION OF P & I MONTHLY REPORT

Planning & Inspections Director Bill Bailey presented the P & I monthly report. **(Permanently on file in the November 2010 Boone Town Council Supplemental Packet.)**

PRESENTATION OF MUNICIPAL SERVICE DISTRICT SPECIAL TASK FORCE RECOMMENDATIONS

Janet Pepin, facilitator of the MSD Special Task Force meetings, appeared before the Council to present the MSD Special Task Force recommendations. **(MSD Special Task Force recommendations power-point permanently on file in the Clerk's Office.)**

RECESS MEETING

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to recess the meeting until Thursday, November 18, 2010, at 6:30 p.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE: Aye - All
Nay - None

A recessed meeting from Tuesday, November 16, 2010 was called to order at 6:30 p.m. on Thursday, November 18, 2010 in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Andy Ball, Rennie Brantz, Jamie Leigh and Stephen Phillips. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Town Clerk Freida Van Allen, Human Resources Director Peri Moretz, Finance Director Amy Davis, Assistant to the Manager Jim Byrne, Public Utilities Director Rick Miller, Public Works Director Blake Brown, Fire Chief Jimmy Isaacs, Police Chief Dana Crawford and Planning and Inspections Director Bill Bailey.

TENTATIVE AGENDA ADOPTION

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

-Deletion of Item 14.B. - Chuck Luddeke Water and Sewer Request.
-Addition of Templeton Properties, LP to Closed Session.

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

VOTE: Aye-All
Nay-None

PRESENTATION OF FINAL MUNICIPAL SERVICE DISTRICT SPECIAL TASK FORCE RECOMMENDATION

The Municipal Service District Special Task Force made the following recommendation to Council: *To recommend the municipality created non-profit management model with an MSD membership based non-profit corporation. Six members of the 12-member board of directors will be appointed by the Town Council and the remaining six members will be appointed by the MSD membership. During the first year the DBDA shall be asked to appoint members. The administrator will be hired by the Town and the personnel hiring process using external focus groups for participation in the process will include MSD taxpayers as a focus group during the hiring process. This newly created non-profit would begin as of July 1, 2011*. Council member Phillips started the discussion by stating he would prefer the DBDA to remain intact, citing that establishing a new non-profit will take time and be costly. Council member Phillips explained that he could understand establishment of a new non-profit agency if it had been difficult for the Town to work with the DBDA . Council member Leigh felt the Task Force's recommendation is middle-ground and a compromise to both organizations. Council member Brantz said even though he initially voted to establish a new non-profit organization after listening to testimony last night at the public hearing he felt that the DBDA could remain as the non-profit agency while incorporating most of the Task Force recommendations. Council member Brantz then made a motion to accept the Municipal Service District Special Task Force recommendations as presented, with the exception of creating a new non-profit agency. Council member Brantz proposed keeping the DBDA as the non-profit agency. There was no second to the motion because discussion immediately ensued. Mayor Clawson expressed her disbelief that the Town Council is not accepting the MSD Special Task Force recommendations, especially after all the time spent discussing the matter. Council member Mason said the Town needs a strong, viable downtown and said the Town Council is accepting the Task Force recommendations with a slightly different variation. Council member Mason felt this compromise will allow the Town to "build bridges" with the DBDA. Town Attorney Sam Furgiuele pointed out that if the Town amends the selection of the DBDA Board of Directors, the entire membership must vote on this amendment. Council member Leigh expressed her disappointment in the Town Council and stated that all the Town Council accomplished was waste a lot of people's time, especially if the Town Council is not going to accept the MSD Special Task Force recommendations. Council member Ball made a motion to accept the MSD Special Task Force recommendations as presented above. Council member Leigh seconded.

VOTE: Aye-2 (Ball, Leigh)
Nay-3 (Brantz, Mason, Phillips)

On a motion by Council member Mason, seconded by Council member Phillips, Council moved to accept the MSD Task Force recommendations with the exception of creating a new non-profit agency. The following conditions were also adopted:

1. The DBDA must accept all the recommendations by the January Council meeting; otherwise, Council will establish a new non-profit agency.
2. The DBDA must also accept the following general agreements and conditions as set forth by the MSD Special Task Force:

   A. *Qualifications of Administrator: Experience with downtown revitalization and historic preservation; outgoing personality with excellent communication skills; skilled at event management for downtown promotional events such as the Boone Boo, parades, Art Crawl; etc.; familiarity with Main Street or other downtown promotional programs; grant writing and fundraising experience; experience with arts, cultural and heritage programming; experience with economic development and revitalization efforts; good negotiation and facilitation skills, and ability to work with diverse numbers of people.*

   B. *Membership definition and Composition of Non-Profit Board and Articles of Incorporation: The general membership should be composed of MSD property owners, business owners or tenants and MSD residents as long as they have a current lease and have resided within the MSD for more than two years. It will be the property owner's responsibility to inform tenants that they are eligible to be a part of the non-profit membership. The Board composition will be 12 members (six appointed by Town Council via application process and 6 appointed by Non Profit Board of Directors via membership vote) composed of MSD*

property owners, retail, service, restaurant and arts or entertainment owners with attention being given to geographic location with MSD.

C. Planning for the newly created Non-Profit Organization. The Municipal Service District Special Task Force will remain active until spring of 2011; meet on a monthly basis beginning in December, 2010 and have final plan details prepared for Council's adoption at the May 2011 regular Town Council meeting. Budget priorities and funding will be completed by March 1, 2011 in order to be included in the FY 11/12 Town of Boone budget. The Town Council will also revisit the original motion creating the Task Force to decide if a super-majority is needed for these deliberations and to reconstruct language of the purpose of the Task Force to match the planning work proposed in this recommendation.

D. Effect on MSD tax funds: beginning in FY 11/12 the MSD funds will be used for promotion and physical infrastructure; the Town will fund the administrator position from the general fund; during the budget process, other questions on use of MSD funds and general funds will be discussed.

VOTE: Aye-3 (Brantz, Mason, Phillips)
Nay-2 (Ball, Leigh)

ADOPTION OF ZONING MAP AMENDMENT - GH WINKLER REZONING

Case 20100530 GH Winkler Family Ltd. - A General Use District Zoning Map Amendment Petition has been filed by Anna W. Phillips and Barbara W. Dunnigan on behalf of the GH Winkler Family Limited Partnership to rezone the B-3 General Business portion of 115 Highway 105 Extension (Watauga County PIN: 2910-36-7347-000) to R-3 Multiple Family. Currently the property is split zoned with B-3 General Business and R-3 Multiple Family.

On a motion by Council member Brantz, seconded by Council member Ball, Council moved to excuse Council member Phillips from discussion and voting on this map amendment.

VOTE: Aye-All
Nay-None

On a motion by Council member Ball, seconded by Council member Mason, Council moved to reopen the public hearing on this map amendment at 7:04 p.m.

VOTE: Aye-3 (Ball, Brantz, Mason)
Nay-1 (Leigh)
Excused-1 (Phillips)

Mr. Jimmy Deal, attorney for the applicant, reminded Council that the applicant is requesting a down-zoning as the B-3 allows for more development. Mr. Deal said the project that is being envisioned for the property can be constructed without rezoning but may negatively affect the neighborhoods by creating a more dense project in the R-3 area. Mr. Deal concluded by saying it make sense for the entire property to be zoned R-3.

Ms. Cathy LaMarre of Olancha Drive said the only access to this property is through the single-family residential neighborhoods and that Council should consider the impact of a business versus multi-family housing into what is already a high traffic area.

There being no further comments, Mayor Clawson closed the public hearing at 7:14 p.m.

Town Attorney Sam Furgiuele read the UDO text regarding zoning map amendments and reminded Council that a valid protest petition had been received on this case. Council member Leigh felt that a general rezoning is not appropriate for this property and suggested the applicant pursue conditional use rezoning. Council members Ball and Mason agreed.

On a motion by Council member Leigh, seconded by Council member Ball, Council moved that the proposed amendment to the Town's zoning map is not consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because this is one of the few remaining parcels of land inside the town limits a fact

which makes it imperative that we take great care to make sure it is developed in coordination with our comprehensive plan in a way that promotes the health, safety and welfare of our community as a whole.

VOTE: Aye-All
Nay-None

On a motion by Council member Leigh, seconded by Council member Ball, Council members moved to deny the proposed amendment to the Town's zoning map and believe denial is reasonable and in the public interest because it is imperative that we take great care to make sure it is developed in a way that promotes health, safety and welfare of the community and the contiguous R-1 neighborhoods.

VOTE: Aye-All
Nay-None

REQUESTED APPEARANCE - TERENCE MILSTEAD

Planning and Inspections Director Bill Bailey spoke to Mr. Milstead's request to be excused from his Planning Commission duties for the remainder of 2010. Mr. Bailey explained that Mr. Milstead is teaching in Asheville on Monday nights throughout the remainder of 2010. On a motion by Council member Leigh, seconded by Council member Brantz, Council moved to excuse Mr. Milstead from the remaining Planning Commission meetings in 2010.

VOTE: Aye-All
Nay-None

REQUESTED APPEARANCE - ROCKY NELSON FOR WATAUGA COUNTY

Watauga County Manager Rocky Nelson appeared before Council to request waiver of a $1,100 zoning permit and $600 special use permit fee which is associated with extension of the Town's greenway along the Brookshire Park. Mr. Nelson said that two-thirds of this project is located within the Town's limits. Town Manager Greg Young said he is only authorized to waive fees up to $500. Town Attorney Sam Furgiuele said the Town Council does not have the authorization to waive the fees, but can amend the agenda to increase the threshold that the Town Manager can waive. On a motion by Council member Brantz, seconded by Council member Mason, Council moved to amend the agenda to add **Increase of Fee Waiver Threshold for Town Manager** to the agenda.

VOTE: Aye-All
Nay-None

INCREASE OF FEE WAIVER THRESHOLD FOR TOWN MANAGER

On a motion by Council member Brantz, seconded by Council member Mason, Council moved to increase the fee waiver threshold of the Town Manager to $2,000.

VOTE: Aye-All
Nay-None

REQUESTED APPEARANCE - RANDY JONES, ARCHITECT

Mr. Randy Jones, architect for the downtown Post Office renovations, appeared before Council to present revised plans for the post office renovations. Mr. Jones said he incorporated comments made at the last presentation before Council. Mr. Jones said the renovations will keep the historical windows intact and match any new windows as close as possible to the originals. **The drawings presented are permanently on file in the November 16/18, 2010 Boone Town Council packet**. Mr. Jones said that Ms. Jennifer Cathey of the Asheville office of the NC State Historic Preservation Office has reviewed the drawings and made comments and suggestions. For the most part Council was pleased with the new drawings; however, Council member Brantz asked local historian Chuck Watkins to comment on the drawings. Mr. Chuck Watkins, a

member of the ASU faculty and of the Historic Preservation Commission, commented that the Downtown Post Office and property is the most important building with the Town of Boone. Mr. Watkins encouraged Council to retain the services of a preservation architect to review the revised plans. Council member Brantz asked where the Town would go to obtain such services. Mr. Watkins said the National Trust for Historic Preservation would be a good place to start. Assistant to the Manager Jim Byrne said he could have a qualified person from the Federal Department of Administration Historic Preservation division review the proposed plans. Council agreed to this suggestion.

Mayor Clawson declared a break at 8:28 p.m. Council reconvened at 8:42 p.m.

REQUEST FOR WATER AND SEWER SERVICE - SPENCER BRYANT

Town Attorney Sam Furgiuele opened a public hearing at 8:42 p.m. to hear sworn testimony from Spencer Bryant, Planning and Inspections Director Bill Bailey and Public Utilities Director Rick Miller on a request for water and sewer service to property located at 1046 Deerfield Road. Mr. Spencer Bryant testified that the property is owned by David Risk and that he has plans to construct affordable housing duplexes for handicapped persons on this property. Mr. Bryant said the project will consist of 16 units, with each unit having two bedrooms and two baths, all handicap accessible.
Council member Ball asked where the units will be located on the property. Mr. Bryant indicated on a map where the units will be located. Council member Ball asked if there were any issues regarding the water and sewer allocation. Public Utilities Director Rick Miller said there was no problem with the sewer tap and water can be obtained with a bore under Deerfield Road; however, the property is located outside the Town's limits. Planning and Inspections Director Bill Bailey presented a floodplain map of the property **(EXHIBIT A)**. Mr. Bailey said the property is also in the watershed district and that Mr. Bryant will face additional development restrictions because of the watershed designation. Council member Leigh said she was concerned about the development obstacles that exist. Council member Mason agreed and said the property is not located within the Town's limits. Mr. Bryant said there is a possibility that he can purchase additional property which would alleviate some of the foreseen problems with development. Mr. Bryant asked Council to table this request. There being no further public comments, the public hearing closed at 9:16 p.m. On a motion by Council member Brantz, seconded by Council member Mason, Council moved to table this request until the December meeting.

VOTE: Aye-All
Nay-None

CLOSED SESSION

On a motion by Council member Brantz, seconded by Council member Ball, Council moved to enter Closed Session at 9:17 p.m., pursuant to NCGS 143-318.11a)3) to discuss lease of town property, legal advice on the water intake project and legal advice on the Templeton Case.

VOTE: Aye-All
Nay-None

On a motion by Council member Ball, seconded by Council member Mason, Council moved to exit Closed Session at 10:44 p.m.

VOTE: Aye-All
Nay-None

ACTION FOLLOWING CLOSED SESSION

On a motion by Council member Mason, seconded by Council member Ball, Council moved to authorize the following regarding the water intake project:

1. The final design be authorized in the amount of $455,110 with the stipulation that the work be completed with 20 months from November 18, 2010.

2. The final design for the transmission line portion affected by the new Highway 421 should not be initiated until the Town gets a commitment from the NC Department of

Transportation that the line will be authorized in Highway 421 as identified in the environmental assessment.

3. The Town submits to USDA for authorization and approval of the additional costs associated with the environmental document. Those costs include archaeology/3D/bathymetric, bathymetric profile #2, mussel relocation and reimbursable expenses.

4. The authorization of geotechnical services in the amount of $25,000 (NTE).

VOTE: Aye-All
Nay-None

ADJOURNMENT

On a motion by Council member Ball, seconded by Council member Mason, Council moved to adjourn at 10:46 p.m.

VOTE: Aye-All
Nay-None

_____ _____

Town Clerk Mayor

_____

Deputy Town Clerk