

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
DECEMBER 14, 2010**

A regular meeting of the Boone Town Council was called to order at 5:00 p.m. on Tuesday, December 14, 2010 in the Council Chambers, 1500 Blowing Rock Road. Mayor Pro-Tem Lynne Mason presided. Council members present were 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 Resource Director Peri Moretz, Finance Director Amy Davis, Assistant to the Manager Jim Byrne, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Public Works Director Blake Brown, Public Utilities Director Rick Miller and Planning and Inspections Director Bill Bailey.

Mayor Pro-Tem Mason asked for a moment of silence to honor Viola Guy, Mayor Clawson's mother, who passed away on December 10, 2010.

Mayor Pro-Tem Mason announced that the Town of Boone Christmas parade is scheduled for Saturday, December 18, 2010 at 10:00 a.m.

TENTATIVE AGENDA ADOPTION

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

- Addition of Item 7.M.(1) - Announcement of Board Vacancy - Sustainable Development Task Force.
- Addition of Item 7.Y. - Schedule Special Meeting for the Water Use Committee.
- Addition of Item 7.Z. - Schedule Special Meetings for Workshop for Permitted Use Table revisions.

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

VOTE: Aye-All
Nay-None

CONSENT AGENDA ADOPTION

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

November 1, 2010 - Quarterly Public Hearing
November 10, 2010 - Special Meeting
November 15, 2010 - Special Meeting
November 16/18, 2010 - Regular Meeting
November 17, 2010 - Special Meeting

Adoption of Resolution - Creation of a Rural Fire Station Capital Reserve Fund.

**RESOLUTION FOR
CREATION OF A
RURAL FIRE STATION CAPITAL RESERVE FUND**

WHEREAS, the Rural Fire Service District Board has recognized the need for the purchase of real estate and construction of a fire station in the rural fire district.

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

- Section 1. The Governing Body hereby creates a Rural Fire Station Capital Reserve Fund for the purpose of using a portion of accumulated funds towards costs associated with the purchase of real estate and construction of a fire station in the rural fire service district.
- Section 2. The fund will remain in operation until provisions are made to satisfy the

identified needs.
Section 3. This resolution shall become effective upon adoption.

ADOPTED this 14th day of December, 2010.

ATTEST: Mayor

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 153)

VOTE: Aye-All
Nay-None

DISCUSSION OF NCLM ADVOCACY GOALS CONFERENCE

Council member Mason explained that the North Carolina League of Municipalities(NCLM) is holding an Advocacy Goals Conference in January, 2011. Council member Mason plans to attend and requested that Council give her direction regarding the goals it would like for the NCLM to consider as priorities. After little discussion, on a motion by Council member Ball, seconded by Council member Phillips, Council moved to set a special meeting for January 12, 2011 at 5:00 p.m. in the Town Hall Conference Room to discuss the Town's top 25 priorities.

VOTE: Aye-All
Nay-None

DISCUSSION/POSSIBLE ACTION ON WEBSITE UPDATE

Council member Phillips requested that the "Boards and Commissions" page on the Town's website be moved to the front page of the website. Council member Phillips felt this would be more user friendly to applicants wanting to apply for Town board positions. Council member Brantz felt that the front page of the website was too cluttered and requested that it be streamlined. Finance Director Amy Davis said that would be no problem to reformat. On a motion by Council member Phillips, seconded by Council member Brantz, Council moved to add the Boards and Commissions to the *Important Links* on the front page of the Town's website.

VOTE: Aye-All
Nay-None

PRESENTATION OF PROGRESS REPORT ON WILSON DRIVE GREENWAY CONNECTOR

Town Manager Greg Young provided a progress report on the Wilson Drive Greenway Connector by stating that bid documents have been submitted to the NC Department of Transportation (NCDOT) for review. Town Manager Young said he expects to have any comments or changes back by the end of this week. Once NCDOT grants permission, right-of-way certification must be obtained, then the Town can go to bid in early 2011. Town Manager Young said if this schedule is maintained that construction will begin in mid-spring. Council member Phillips said it would be advantageous to have this project completed before ASU begins next fall.

APPROVAL OF NCDOT U-4020 PROJECT AGREEMENT

Town Manager Greg Young presented an agreement from the NC Department of Transportation (NCDOT) for decorative fencing, concrete pavers and decorative signal heads for the Highway 421 widening project (U-4020). After some discussion regarding the landscaping planned for the

project, on a motion by Council member Brantz, seconded by Council member Ball, Council moved to adopt the following agreement:

NORTH CAROLINA
SUPPLEMENTAL AGREEMENT
WATAUGA COUNTY

DATE: 10/29/2010

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

TIP #: U-4020

AND

WBS ELEMENTS: CON 30515.3.1

TOWN OF BOONE

OTHER FUNDING:
CFDA #: 20.205

TOTAL SUPPLEMENTAL FUNDS [NCDOT PARTICIPATION] \$0

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department", and the Town of Boone, hereinafter referred to as the "Municipality";

WITNESSETH:

WHEREAS, the Department and Town of Boone, on 10/13/2008, entered into a certain Locally Administered Project Agreement for the original scope: Widen US 421 (King Street) from US 321 (Hardin Street) to east of NC 194 (Jefferson Road), programmed under Project U-4020; and,

WHEREAS, the Municipality has requested additional work to be included in this Project; and,

NOW THEREFORE, the parties wish to supplement the aforementioned Agreement whereby the following provisions are amended:

7. FUNDING

- E. Upon completion of the work, the Municipality shall reimburse the Department one hundred percent (100%) for additions to the Project which includes Black Powder Coat Overhead Sign Structure "A" and "B", Stamping and Coloring Concrete Islands, Powder Coat Double Mast Arm with Metal Pole, Powder Coat for Pedestrian Pedestal, Powder Coat for Decorative Bases, Decorative Base Cover for Mast Arm Pole Assembly, Decorative Base Cover for Pedestrian Pedestal and Contract Fence Item. The estimated cost to the Municipality is \$410,013.03. The Municipality understands this is an estimated cost and is subject to change.
- F. Reimbursement to the Department shall be made in one final payment upon completion of the work and within sixty days of invoicing by the Department.
- G. In the event the Municipality fails for any reason to pay the Department in accordance with the provisions for payment herein above provided, North Carolina General Statutes 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to said Municipality by the General Statutes of North Carolina, Section 136-41.1 until such time as the Department has received payment in full under the reimbursement terms set forth in this Agreement. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23.

12. MAINTENANCE

The Municipality, at no expense or liability to the Department, shall assume all maintenance responsibilities for the addition(s).

13. GIFT BAN

By Executive Order 24, issued by Governor Perdue, and NCGS 133.-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environmental and Natural Resources, Health and Human Resources, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

Except as hereinabove provided, the Agreement heretofore executed by the Department, and Town of Boone on the 10/13/2008, is ratified and affirmed as therein provided.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Town of Boone by authority duly given.

VOTE: Aye-All
 Nay-None

APPROVAL OF DBDA AGREEMENT

Town Attorney Sam Furgiuele presented an agreement for the Downtown Boone Development Association (DBDA). Mr. Furgiuele explained that this contract is for the period January 1, 2011 to June 30, 2011. Council member Leigh requested that a budget be presented and approved in conjunction with this contract. Council member Leigh then asked if sign and facade grants using MSD funds is illegal. Town Attorney Furgiuele responded that he can not find any basis that using MSD funds for these grants is legal. Council discussed at length whether or not MSD funds could be used for sign and facade grants. Town Attorney Furgiuele said he would contact the NC School of Government for its interpretation of the law regarding use of MSD funds, but suggested that Council add the following language to the contract:

MSD funds will not be used for sign or facade grants unless specifically authorized by the Boone Town Council.

On a motion by Council member Brantz, seconded by Council member Ball, Council moved to approve the contract with the DBDA subject to the above mentioned language change and that funding be withheld from the DBDA until such time as a budget is submitted and approved by the Boone Town Council.

VOTE:Aye-All
 Nay-None

DISCUSSION/POSSIBLE ACTION ON SIGNAGE ENCROACHMENTS IN DOWNTOWN

Town Attorney Sam Furgiuele explained the current conflict between the UDO and the Town Code regarding signage heights. Town Attorney Furgiuele said the Town Code requires a ten-foot clearance and the UDO requires an eight foot clearance. Mr. Furgiuele suggested that Town Council amend the Town Code to require that if signage is placed less than the ten-foot minimum that the Town of Boone will not be responsible for any damage to the sign. After little discussion, on a motion by Council member Brantz, seconded by Council member Ball, Council moved to authorize the Town Attorney to draft an amendment to the Town Code regarding the signage height and encroachment agreement.

VOTE:Aye-All
 Nay-None

APPROVAL OF ENCROACHMENT AGREEMENT - GLUG PROJECTING SIGN

Planning and Inspections Director Bill Bailey presented an encroachment agreement for a projecting sign for GLUG. Mr. Bailey said the sign meets all the requirements of the UDO; however it will not be ten feet above the sidewalk. After little discussion, on a motion by Council member Leigh, seconded by Council member Brantz, Council moved to adopt the

following encroachment agreement subject to a disclaimer regarding the Town's responsibility in case of damage:

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the 14th day of December, 2010, by and between the TOWN OF BOONE, party of the first part; and GLUG Beverages, party of the second part.

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

THAT WHEREAS, the party of the second part desires to encroach on public land designated as (CHOOSE ONE) a public sidewalk/public street/public park/public land (hereinafter referred to as the "public land") located at 432 West King Street with the following: a projecting sign (hereinafter referred to as "the encroaching facility"); and

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

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

That the party of the second part complies with all pertinent provisions of the North Carolina State Building Code, the Town of Boone Unified Development Ordinance and Town of Boone Municipal Code, and such other laws, regulations and ordinances which might apply;

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

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

That to the extent permitted by law, the party of the second party shall be responsible for all liability associated with the encroachment and encroaching facility. In furtherance of such responsibility, the party of the second part agrees to indemnify and hold harmless the party of the first part from and against any claim by any third party based upon any action or omission occurring during construction and maintenance of the encroaching facility, as well as from and against any and all claims, demands, suits, causes of action, or other assertion of responsibility, however denominated, for personal injury, damage to property, losses and expenses, including court costs and attorney's fees, arising out of or in any way related to the encroachment or encroaching facility;

That where pertinent and requested by the party of the first part, the party of the second part agrees to name the party of the first part as an additional insured on its and/or its contractor's general liability insurance policies applicable to the encroachment or encroaching facility.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such encroaching facility as the party of the first part carries out its construction and maintenance operations, and the party of the second party expressly waives all claims of liability or responsibility against the party of the first party for any damage that may be caused to the encroaching facility as the result of the Town carrying out any construction and maintenance operations. The party of the second part acknowledges that with regard to canopies, awnings, signs and similar encroachments, even where same fully comply with the Town of Boone Unified Development Ordinance, when placed less than ten feet above the surface of a public sidewalk, such obstructions are at great risk of damage by the equipment of the party of the first part during snow removal and general sidewalk construction and maintenance, and the party of the second part understands that by placing the encroaching facility less than ten feet above the surface of a public sidewalk, the party of the second part is knowingly and intentionally assuming that heightened risk of damage.

That the party of the second part agrees to be bound by such other and additional conditions as the Town Council may impose in connection with the encroaching facility.

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

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

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

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

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

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

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

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

TOWN OF BOONE

BY: _____
Mayor

ATTEST:

Town Clerk

BY: _____
President/Member-Manager/Owner

Printed Name: Party of the Second Part

ATTEST:

Secretary/Witness

VOTE: Aye-All
Nay-None

APPROVAL OF ENCROACHMENT AGREEMENT - ANNA BANANA'S

Planning and Inspections Director Bill Bailey presented an encroachment agreement for a canopy sign for Anna Banana's. Mr. Bailey said the sign meets all the requirements of the UDO; however it will not be ten feet above the sidewalk. After little discussion, on a motion by Council member Leigh, seconded by Council member Brantz, Council moved to adopt the following encroachment agreement subject to the disclaimer regarding the Town's responsibility in case of damage:

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the 14th day of December, 2010, by and between the TOWN OF BOONE, party of the first part; and Anna Banana's, party of the second part.

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

THAT WHEREAS, the party of the second part desires to encroach on public land designated as (CHOOSE ONE) a public sidewalk/public street/public park/public land (hereinafter referred to as the "public land") located at 641 West King Street with the following: a projecting sign (hereinafter referred to as "the encroaching facility"); and

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

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

That the party of the second part complies with all pertinent provisions of the North Carolina State Building Code, the Town of Boone Unified Development Ordinance and Town of Boone Municipal Code, and such other laws, regulations and ordinances which might apply;

That the said party of the second part binds and obligates itself, its successors and assigns, to install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said public land, nor obstruct nor interfere with the proper maintenance thereof, to reimburse the party of the first part for the costs incurred for

any repairs or maintenance to its roadways, sidewalks and other structures resulting from the installation and existence of the encroaching facility of the party of the second part, and if at any time the party of the first part shall require the removal of or changes in the location of the encroaching facility, that the said party of the second part binds itself, its successors and assigns, to promptly remove or alter the said encroaching facility in order to conform to the said requirements of the party of the first part, without any cost to the party of the first part.

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

That to the extent permitted by law, the party of the second party shall be responsible for all liability associated with the encroachment and encroaching facility. In furtherance of such responsibility, the party of the second part agrees to indemnify and hold harmless the party of the first part from and against any claim by any third party based upon any action or omission occurring during construction and maintenance of the encroaching facility, as well as from and against any and all claims, demands, suits, causes of action, or other assertion of responsibility, however denominated, for personal injury, damage to property, losses and expenses, including court costs and attorney's fees, arising out of or in any way related to the encroachment or encroaching facility;

That where pertinent and requested by the party of the first part, the party of the second part agrees to name the party of the first part as an additional insured on its and/or its contractor's general liability insurance policies applicable to the encroachment or encroaching facility.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such encroaching facility as the party of the first part carries out its construction and maintenance operations, and the party of the second party expressly waives all claims of liability or responsibility against the party of the first part for any damage that may be caused to the encroaching facility as the result of the Town carrying out any construction and maintenance operations. The party of the second part acknowledges that with regard to canopies, awnings, signs and similar encroachments, even where same fully comply with the Town of Boone Unified Development Ordinance, when placed less than ten feet above the surface of a public sidewalk, such obstructions are at great risk of damage by the equipment of the party of the first part during snow removal and general sidewalk construction and maintenance, and the party of the second part understands that by placing the encroaching facility less than ten feet above the surface of a public sidewalk, the party of the second part is knowingly and intentionally assuming that heightened risk of damage.

That the party of the second part agrees to be bound by such other and additional conditions as the Town Council may impose in connection with the encroaching facility.

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

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

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

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

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

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

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

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

TOWN OF BOONE

BY: _____
Mayor

ATTEST:

Town Clerk

BY: _____
President/Member-Manager/Owner

Printed Name: Party of the Second Part

ATTEST:

Secretary/Witness

VOTE: Aye-All
Nay-None

APPROVAL OF ENCROACHMENT AGREEMENT - OUR DAILY BREAD

Planning and Inspections Director Bill Bailey presented an encroachment agreement for a canopy sign for Our Daily Bread. Mr. Bailey said the sign meets all the requirements of the UDO; however, it will not be ten feet above the sidewalk. On a motion by Council member Leigh, seconded by Council member Brantz, Council moved to adopt the following encroachment agreement subject to the disclaimer regarding the Town's responsibility in case of damage:

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the 14th day of December, 2010, by and between the TOWN OF BOONE, party of the first part; and Our Daily Bread, party of the second part.

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

THAT WHEREAS, the party of the second part desires to encroach on public land designated as (CHOOSE ONE) a public sidewalk/public street/public park/public land (hereinafter referred to as the “public land”) located at 627 West King Street with the following: a canopy sign (hereinafter referred to as “the encroaching facility”); and

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

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

That the party of the second part complies with all pertinent provisions of the North Carolina State Building Code, the Town of Boone Unified Development Ordinance and Town of Boone Municipal Code, and such other laws, regulations and ordinances which might apply;

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

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

That to the extent permitted by law, the party of the second party shall be responsible for all liability associated with the encroachment and encroaching facility. In furtherance of such responsibility, the party of the second part agrees to indemnify and hold harmless the party of the first part from and against any claim by any third party based upon any action or omission occurring during construction and maintenance of the encroaching facility, as well as from and against any and all claims, demands, suits, causes of action, or other assertion of responsibility, however denominated, for personal injury, damage to property, losses and expenses, including court costs and attorney’s fees, arising out of or in any way related to the encroachment or encroaching facility;

That where pertinent and requested by the party of the first part, the party of the second part agrees to name the party of the first part as an additional insured on its and/or its contractor’s general liability insurance policies applicable to the encroachment or encroaching facility.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such encroaching facility as the party of the first part carries out its construction and maintenance operations, and the party of the second party expressly waives all claims of liability or responsibility against the party of the first party for any damage that may be caused to the encroaching facility as the result of the Town carrying out any construction and maintenance operations. The party of the second part acknowledges that with regard to canopies, awnings, signs and similar encroachments, even

where same fully comply with the Town of Boone Unified Development Ordinance, when placed less than ten feet above the surface of a public sidewalk, such obstructions are at great risk of damage by the equipment of the party of the first part during snow removal and general sidewalk construction and maintenance, and the party of the second part understands that by placing the encroaching facility less than ten feet above the surface of a public sidewalk, the party of the second part is knowingly and intentionally assuming that heightened risk of damage.

That the party of the second part agrees to be bound by such other and additional conditions as the Town Council may impose in connection with the encroaching facility.

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

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

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

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

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

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

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

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

TOWN OF BOONE

BY: _____
Mayor

ATTEST:

Town Clerk

BY: _____

President/Member-Manager/Owner

Printed Name: Party of the Second Part

ATTEST:

Secretary/Witness

VOTE: Aye-All
Nay-None

Council also agreed to amend the UDO language regarding sign encroachments.

ADOPTION OF CODE
TOWN SEAL

On a motion by Council
Leigh, Council moved to



Section

- 36.01 Town Logo Designated
- 36.02 Use of Town Logo
- 36.03 Enforcement

AMENDMENT - PROTECTION OF

member Ball, seconded by Council member
adopt the following code amendment:

CHAPTER 36: TOWN LOGO

§ 36.01 TOWN LOGO DESIGNATED.

(A) The following is the official logo for the Town of Boone:

§ 36.02. USE OF TOWN LOGO.

(A) *Use by Employees of the Town.* Any employees of the Town is authorized to reproduce the Town logo on letterhead, agendas, minutes of meetings, brochures, electronic communication, and other forms of communication used for official correspondence or communication by an employee on behalf of the Town. A Department Head may authorize the reproduction of the Town's logo on equipment which is owned or being purchased by the Town and on signs identifying real and personal property of the Town. Any other use of the Town logo by a Town employee or Department Head must be approved by the Town Manager or Town Council. No employee may authorize any other person to reproduce the Town's logo without the express authorization of the Town Manager.

(B) *Authorization by Town Manager.* Except for those matters expressly reserved to the Town Council, the Town Manager may authorize the reproduction and display of the Town logo, including but not limited to clothing and other items for distribution by the Town to Town Employees or other persons.

(C) *Use as part of a publication, design or other item in which another person or entity claims intellectual property rights.* Except pursuant to the express approval by the Town Council, the Town's logo may not be used or reproduced in any publication, design or other item

in which another person or entity claims intellectual property rights. Furthermore, even with Town Council approval, it is the policy of the Town that no person may reserve or claim intellectual property rights in any publication, design or other item which includes or incorporates the Town's logo unless the Town is simultaneously licensed for the unlimited reproduction of the publication, design or other item without any further approval required.

(D) *Reproduction of Town Logo by Third Persons.* Unless explicitly authorized by the Town, a person who is not authorized hereunder to reproduce the Town's logo may not do so. The Town expressly reserves all rights to its logo.

(E) *Use of Town logo in Signs.* No person or entity may include the Town's logo in a sign, as that term is defined in the Town's Unified Development Ordinance, Article 18, without action by the Town Council approving such use.

§ 36.03 ENFORCEMENT.

(A) The Town is authorized to take all necessary action to protect its logo, including but not limited to the initiation of a civil action and pursuit of an injunction to prohibit or stop the unauthorized display, reproduction or other use of the Town's logo. Should the Town initiate a civil action to protect its logo, it shall be entitled to recover its court costs, including attorney's fees against a person or entity who has improperly displayed, reproduced or used the Town's logo.

(B) Pursuant to G.S. § 14-4, a person found guilty of violation of Sections 36.02 (C) or 36.02 (D) shall be guilty of a Class 3 misdemeanor and shall be fined not more than five hundred dollars (\$500.00).

CHAPTER 37: CONTRACTS

Section 37.01 through Section 37.05 Reserved

Section 37.06 Contracts in Which Party Reserves Intellectual Property Rights

§ 37.06 CONTRACTS IN WHICH PARTY RESERVES INTELLECTUAL PROPERTY RIGHTS.

(A) The Town shall not enter into any contract in which another party reserves intellectual property rights unless the Town is concurrently licensed for the unlimited use of the subject matter of the contract, including the right to reproduce or reuse the items

(B) No contract may bind the Town to use a single source, party or entity to reproduce or supply equipment, personal property or other items for which the Town may have a future need. Any provision in any contract to which the Town is party which seeks to bind the Town in such manner is declared null and void.

VOTE:Aye-All

Nay-None

PLANNING & INSPECTIONS MONTHLY REPORT

Planning and Inspections Director Bill Bailey presented the P & I monthly report. **(Permanently on file in the December 2010 Boone Town Council Packet.)** Council member Ball suggested that the sign ordinance be reviewed and amended as soon as possible. Council agreed. Council discussed at length the need for a "theme" for Boone. Council member Leigh

felt that by the Committees discussing the “theme” that the issue is backwards in that Council should set the “theme”.

REQUEST APPROVAL OF SINGLE SOURCE PURCHASE OF E911 RECORDER

Police Chief Dana Crawford requested permission to purchase from a single source a new E911 recorder for the Communications division. Mr. Crawford said this purchase was approved for the FY 10/11 budget and that E911 funds pay for the purchase. On a motion by Council member Ball, seconded by Council member Leigh, Council moved to approve the purchase of the E911 recorder from Wireless Communications in the amount of \$34,887.60.

VOTE:Aye-All
Nay-None

CONFIRMATION OF WATER USE COMMITTEE APPOINTMENT

Planning and Inspections Director Bill Bailey explained that the Planning Commission has nominated Kimberly Marland as the Planning Commission’s representative on the Water Study Committee. On a motion by Council member Ball, seconded by Council member Brantz, Council moved to confirm that Kimberly Marland is the Planning Commission’s representative on the Water Study Committee.

VOTE:Aye-All
Nay-None

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Pro-Tem Mason announced the ASU student position is vacant on the Sustainable Development Task Force. The Clerk will advertise the vacant position.

AFFORDABLE HOUSING TASK FORCE APPOINTMENT

On a motion by Council member Ball, seconded by Council member Leigh, Council moved to amend the agenda to discuss the qualifications for the vacant position on the Affordable Housing Task Force.

VOTE:Aye-All
Nay-None

QUALIFICATIONS FOR VACANT POSITION ON THE AFFORDABLE HOUSING TASK FORCE

Council member Leigh felt that this last vacant position should be occupied by someone that seeks or resides in affordable workforce housing and requested that the advertisement reflect the same. Council member Ball agreed and made a motion to change the advertisement for the remaining vacant position to “one that seeks or resides in affordable workforce housing.” Council member Leigh seconded.

VOTE:Aye-All
Nay-None

PUBLIC HEARING - ONE-WAYING OF HOWARD STREET

Mayor Pro-Tem Mason opened a public hearing at 6:46 p.m. regarding the possibility of one-way on Howard Street. Public Works Director Blake Brown said the Chamber of Commerce had approached the Transportation Commission about reviewing options to improve pedestrian safety along Howard Street. Mr. Brown said letters had been sent to all property owners and renters along Howard Street (from Water to Appalachian Streets) about a temporary solution of

one-way on Howard Street. This would allow for pedestrian walkways until such time as the Howard Street project is completed.

Pete Catoe of 277 Howard Street spoke in favor of the temporary measures and said it was a miracle that a pedestrian has not been injured. Mr. Catoe expressed his disappointment in the lack of progress of the Howard Street project and felt that the project would never be completed.

Crae Morton, owner of the Custard Depot, thanked Council and Staff for reviewing the temporary option.

Mr. Brown read a letter from Fulton Lovin, a property owner on Howard Street, who questioned the “temporary” nature of the one-way.

There being no further comments, the public hearing closed at 7:04 p.m.

BOARD OF ADJUSTMENT APPOINTMENTS

There were no applications for the three vacant positions. Town Attorney Sam Furguele said the vacancies were beginning to cause problems for the board regarding quorums.

COMMUNITY APPEARANCE COMMISSION APPOINTMENT

Council member Ball nominated Janet Miller to a position on the Community Appearance Commission. There being no further nominations Ms. Miller was appointed by acclamation. Her term will expire June 30, 2012.

OUTSIDE AGENCY FUNDING COMMITTEE APPOINTMENTS

There were no applications for the two vacant positions.

PLANNING COMMISSION APPOINTMENT

There were no applications for the one vacant position.

WATAUGA COUNTY RECREATION COMMISSION APPOINTMENT

There were no applications for the one vacant position.

WATER STUDY COMMITTEE APPOINTMENT

An application was received by the National Committee for the New River for a vacant position on the Water Study Committee. After a very lengthy discussion, on a motion by Council member Brantz, seconded by Council member Phillips, Council moved to amend the agenda to discuss the Water Study Committee position criteria.

VOTE:Aye-All
Nay-None

DISCUSSION OF WATER STUDY COMMITTEE POSITION CRITERIA

After some discussion, on a motion by Council member Leigh, seconded by Council member Brantz, Council moved to allow the National Committee for the New River to hold one position on the Water Study Committee.

VOTE:Aye-All
Nay-None

WATER STUDY COMMITTEE APPOINTMENT

On a motion by Council member Leigh, seconded by Council member Brantz, Council moved to appoint George Santucci of the National Committee of the New River to the Water Study Committee. Mr. Santucci may send a designee to represent the National Committee for the New River and the Committee may have one proxy vote.

VOTE:Aye-All

Nay-None

REQUEST CREATION OF PEDESTRIAN PLAN STEERING COMMITTEE

Public Works Director Blake Brown requested the creation of a Pedestrian Plan Steering Committee which is required as part of the agreement for receiving pedestrian planning grant funds. Mr. Brown requested that members of the Alternative Transportation Subcommittee be a part of this committee, as well as one downtown property or business owner, one senior citizen, one ASU student and one Watauga County School representative. Mr. Brown expected that the Pedestrian Plan Steering Committee will be in existence for about 18 months and will adhere to all public meeting requirements. After a little discussion, on a motion by Council member Ball, seconded by Council member Brantz, Council moved to form the Pedestrian Plan Steering Committee and advertise for the following positions:

5 members of the Alternative Transportation Subcommittee.

1 downtown property or business owner.

1 senior citizen that resides in the Town of Boone.

1 ASU student that resides in the Town of Boone.

1 member of the Greenway Committee that resides in the Town of Boone.

1 neighborhood representative that resides in the Town of Boone.

1 Watauga County Schools representative that resides in the Town of Boone.

1 Town Council representative.

Council also moved to appoint Lynne Mason as the Town Council representative and requested that all minutes and agendas from this committee be forwarded to the Transportation Committee and Town Council. Council also clarified that staff (Blake Brown, Jane Shook and Eric Gustaveson) does not count within a quorum and that the Committee will expire December 31, 2012 or upon completion of the tasks of the Steering Committee.

VOTE:Aye-All

Nay-None

REQUEST STREET MAINTENANCE FOR ELI HARTLEY DRIVE

Public Works Director Blake Brown asked permission to accept street maintenance of Eli Hartley Drive. Mr. Brown said the Town will require a one-year warranty from the date of acceptance. Town Manager Greg Young expressed his concern about snow removal on the road and the damage that may inflict on the road. Mr. Young said the Town needs to make it very clear that it is not responsible for road failure. Town Attorney Sam Furguele suggested moving this item to Closed Session to discuss the legal ramifications. On a motion by Council member Ball, seconded by Council member Leigh, Council moved discussion of this item to Closed Session.

VOTE:Aye-All

Nay-None

APPROVAL OF BID - TRAK SKID STEER LOADER

On a motion by Council member Brantz, seconded by Council member Ball, Council moved to award a bid for a Track Skid Steer Loader with grapple bucket, 4n1 bucket and pallet forks to Carolina Caterpillar for the amount of \$58,652.00.

VOTE:Aye-All
Nay-None

WATER COMMITTEE RECOMMENDATION - STAGE 1 WATER RESTRICTIONS

Public Utilities Director Rick Miller said the Water Study Committee recommended that the Town Council permanently adopt Stage I Water Restrictions until such time as the water intake project is completed at a future date. On a motion by Council member Brantz, seconded by Council member Ball, Council moved to accept the Water Study Committee recommendation.

VOTE:Aye-All
Nay-None

POSSIBLE AMENDMENTS TO WATER & SEWER CODE

Public Utilities Director Rick Miller said the Water Study Committee had recommended that the Town Council adopt amendments to the Water and Sewer Code regarding water shortage restrictions. After making one minor change, on a motion by Council member Brantz, seconded by Council member Ball, Council moved to adopt the following water and sewer code amendments.

Section 7-5. Specific Conservation Methods and Recommendations Applicable to All Water Shortages.

Stage I Water Shortage Restrictions

A. During Stage I Water Shortage each method shall be voluntary unless it is superceded explicitly by the mandatory provisions of Sections 7-7 or 7-9:

1. Reusing water whenever possible unless such reuse is prohibited under this code, e.g., black water or grey water;
2. Minimizing vehicle washing;
3. Limiting lawn, garden, and plant watering to the minimum necessary for such vegetation to survive;
4. Minimizing use of potable water to wash down outside areas such as sidewalks, patios, parking lots, service bays, or aprons, etc.;
5. Refraining from allowing faucets to run while shaving or rinsing dishes;
6. Limiting the use of washing machines and dishwashers, and when used, operating only fully loaded;
7. Taking showers instead of baths, and limiting showers to no more than four (4) minutes;
8. Avoiding flushing toilets with each single use;
9. Using flow restrictive and water saving devices as much as possible;
10. Limiting hours of operation of water-cooled air conditioners;
11. Taking all other measures which the customer or Director recognizes will conserve water use.

During Stage I, Stage II, and Stage III Water Shortages, the above nonexclusive conservation methods shall be encourage or required.

Section 7-6. Reserved.

Section 7-7. Stage II Water Shortage Restrictions.

- A. During Stage II Water Shortage, it shall be unlawful and prohibited for any Town customer, including residential, commercial, and institutional users, or any other entity, to use or permit the use of water from the Town water system for the following purposes:
1. Watering an athletic field, golf course, park, lawn, grass, shrubbery, tree, flower, outside plant, or garden except in accordance with a schedule approved by the Director of Public Utilities, who, in the Director's sole discretion, shall ordinarily only allow such watering by hand-held hose or container or by drip irrigation system, but may prohibit such activities entirely;
 2. Delaying new landscape work until the water shortage has ended; and utilize Xeri-Scaping and/or water efficient landscaping wherever landscaping work is installed. (Xeri-Scaping is the use of native plants.);
 3. Filling or refilling a swimming pool or wading pool, hot tub, or spa;
 4. Washing an automobile, truck, trailer, boat, airplane, or any other type of mobile equipment or motor vehicle unless a permitted water reclamation or reuse system is used;
 5. Washing down an outside area including but not limited to a street, driveway, service station apron, parking lot, office building, exterior of existing or newly-constructed home or other building, sidewalk, or patio, except pursuant to specific authorization by the Town of Boone;
 6. Using water from a public or private fire hydrant for any purpose other than fire suppression, testing, maintaining water quality, or similar public emergency;
 7. Operating or inducing water into any ornamental fountain, pool, or pond or other structure making similar use of water;
 8. Serving drinking water in a restaurant, cafeteria, or other food establishment, except upon request;
 9. Operating a water-cooled air conditioner or other equipment that does not recycle cooling water, except when the user has a diagnosed and legitimate health need for the equipment;
 10. Using in commercial eating establishments, utensils and plates that must be washed if disposable or biodegradable utensils and plates can be effectively used;
 11. Using water for any unnecessary purpose after being warned by the Director or designee to discontinue such use; and
 12. Wasting water intentionally.
- B. During a Stage II Water Shortage:
1. All commercial and institutional customers are encourage to undergo a water audit by the Director or his designee, and following such audit, come into full compliance with the audit recommendations.
 2. Total water consumption may be limited and a surcharge imposed upon water system customers by specific action of the Town Council.

Section 7-8. Reserved.

VOTE:Aye-All
Nay-None

APPROVAL OF CHANGE ORDER #1 - ORCHARD STREET SEWER REPLACEMENT PROJECT

On a motion by Council member Ball, seconded by Council member Brantz, Council moved to adopt change order #1 to the Orchard Street Sewer Replacement project to Freestone Construction in the amount of \$133,200.

VOTE:Aye-All
Nay-None

APPROVAL OF CHANGE ORDER #1 - WINKLER’S CREEK RESTORATION PROJECT

On a motion by Council member Ball, seconded by Council member Brantz, Council moved to adopt change order #1 to the Winkler’s Creek Restoration Project to Cavanaugh and Associates for a \$4,015.50 decrease in the original contract price.

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 December 2010 Boone Town Council meeting packet.)**

APPROVAL OF SAHA FUNDING REQUEST

Finance Director Amy Davis requested Council’s reaffirmation to provide support to SAHA in the amount of \$15,000 to supplement loss of revenue from the parking contract with ASU for fiscal year 2010/2011. On a motion by Council member Brantz, seconded by Council member Ball, Council moved to allocate \$15,000 to SAHA for fiscal year 2010/2011.

VOTE:Aye-All
Nay-None

APPROVAL OF BUDGET AMENDMENTS

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

DESCRIPTION	ACCOUNT #	TO:	FROM:
TREE PLANTING PROJECT (SPECIAL PROGRAMS)	010-411-000-549128	\$2,500	
MISCELLANEOUS SUPPLIES (POLICE)	010-500-300-519900	\$1,000	
EXPENDABLE EQUIPMENT (FIRE)	010-500-350-514110	\$1000	
MISCELLANEOUS REVENUE (GENERAL FUND)	010-000-000-489900		(\$2,500)
CONTRIBUTIONS/DONATION S (GENERAL FUND)	010-000-000-482200		(\$2,000)
TRANSFER FROM CAPITAL RESERVE - LAND	010-000-000-498016	\$14,350	
CAPITAL OUTLAY-LARGE TRUCKS (FIRE)	010-500-350-573300	\$2,395	
SALE OF SURPLUS PROPERTY (GENERAL FUND)	010-000-000-481200		(\$16,745)
MAINTENANCE & REPAIR- BUILDING (BROWN BUILDING)	010-408-000-525101	\$895	
MISCELLANEOUS REVENUE (GENERAL FUND)	010-000-000-489900		(\$895)

VOTE:Aye-All
Nay-None

SCHEDULING OF WATER STUDY COMMITTEE MEETING

On a motion by Council member Ball, seconded by Council member Leigh, Council moved to schedule a Water Study Committee meeting for Monday, January 24, 2011 at 5:30 p.m. in the Council Chambers.

VOTE:Aye-All
Nay-None

SCHEDULING OF WORKSHOP TO DISCUSS TABLE OF PERMITTED USES

On a motion by Council member Brantz, seconded by Council member Ball, Council moved to schedule two joint worksessions with the Planning Commission to discuss the revised table of permitted uses for Wednesday, January 26, 2011 at 5:30 p.m. and for Monday, February 28, 2011 at 5:30 p.m. Both meetings will be held in the Council Chambers.

VOTE:Aye-All
Nay-None

RECESS

On a motion by Council member Brantz, seconded by Council member Ball, Council moved to recess the meeting at 8:55 p.m. until Thursday, December 16, 2010 at 6:30 p.m. in the Council Chambers.

VOTE:Aye-All
Nay-None

CALL TO RECONVENE

A recessed meeting from Tuesday, December 14, 2010 was called to order at 6:30 p.m., Thursday, December 16, 2010, in the Council Chambers, 1500 Blowing Rock Road. Mayor Pro-Tem Mason presided. Council members present were Stephen Phillips, Jamie Leigh, Andy Ball, and Rennie Brantz. Town Attorney Sam Furguele was also present. Staff members present were Town Manager Greg Young, Town Clerk Freida Van Allen, Deputy Town Clerk Kimberly Brown, Assistant to the Town Manager Jim Byrne, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, Human Resources Director Peri Moretz, and Planning Director Bill Bailey.

ANNOUNCEMENTS

Mayor Pro-Tem Mason asked that Mayor Clawson and her family be kept in everyone's thoughts as they mourn the death of her mother.

Mayor Pro-Tem Mason stated that any persons wishing to address the Council should sign in to speak during the Public Comment period. She also announced that the Boone Christmas Parade will be held this Saturday, December 18th, beginning at 10:00 a.m.

TENTATIVE AGENDA ADOPTION

Town Manager Greg Young announced the following change to the agenda:

1. Additions to Closed Session NCGS§143-318.11(a)(3):
-Legal Advice - Stormwater N.O.V.

-Legal Advice - Request for Street Maintenance - Eli Hartley Drive.

-Legal Advice - Transportation Service to Village at Meadowview Complex.

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

VOTE: Aye - All

Nay - None

PUBLIC COMMENT

There was no one present to speak under public comment.

REQUESTED APPEARANCE - KENDAL MCDEVITT

Kendal McDevitt appeared before the Council to present an update on Town/Gown projects. She presented a power-point including maps for the Council to view. **(Copy of power-point and maps are permanently on file in the Clerk's Office.)** Council Member Brantz suggested a type of "welcoming event" for ASU students be held in the downtown area and could include involvement of the merchants with specials and student discounts. He stated that this action would help to welcome the students to Boone. Council Member Ball suggested that the Town/Gown Committee consider aspects of the joint planning process between the Town and ASU. Council Member Leigh asked that the Town's zoning map be incorporated with the maps presented by Ms. McDevitt so that the Council can see if any of the "trouble spots" involving alcohol, noise, and zoning complaints are located in R-1 zoned areas. The Council expressed appreciation for Ms. Devitt's and the Town/Gown Committee's efforts and work.

REQUESTED APPEARANCE - RONNIE HOLSTE/ABC BOARD

Ronnie Holste appeared before the Council to present a resolution in regard to the privatization of the North Carolina Alcohol Beverage Control System. He distributed to each member of Council a copy of a letter from Jon P. Carr, a lobbyist for the NC Association of ABC Boards, which urges opposition of the privatization of the ABC System. Furthermore, he presented reasons why the Town of Boone should support the resolution and a list of the reasons why proponents of privatization seek this change. **(Copies of the Jon Carr letter and the lists presented by Mr. Holste are permanently on file in the Clerk's Office.)** Upon a motion by Council Member Phillips, seconded by Council Member Brantz, Council moved to adopt the following resolution:

RESOLUTION IN SUPPORT OF NORTH CAROLINA'S CURRENT PUBLIC ALCOHOLIC BEVERAGE CONTROL SYSTEM

WHEREAS, Chapter 18B of the North Carolina General Statutes addresses the regulation of alcoholic beverages in our State; and

WHEREAS, current North Carolina law establishes a uniform system of control over the sale, purchase, transportation, manufacture, consumption, and possession of alcoholic beverages in North Carolina; and

WHEREAS, local government control is central to the current alcoholic beverage control system; it is a local decision to establish and operate ABC stores, and local government, acting through an appointed local ABC Board, balances the control, profits, and availability of spirits in its jurisdiction; and

WHEREAS, local voters approved liquor sales for off-premises consumption, the voters did not vote to allow liquor to be sold in private retail establishments, but only through publicly controlled local ABC stores; and

WHEREAS, current law provides that profits from ABC Store sales are returned to local government and this revenue stream is a critical source of local government funding; and

WHEREAS, it is a priority to maintain current sources of revenue, especially in the current challenging economic times;

NOW, THEREFORE BE IT RESOLVED that the Town of Boone does hereby support the continuance of the Alcoholic Beverage Control System and opposes any efforts to privatize the ABC System, diminish local control or diminish the local government revenue stream afforded from local ABC store profits.

ADOPTED this the 16th day of December, 2010.

ATTEST:

Mayor

Deputy Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 154)

VOTE: Aye - All

Nay - None

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

WATER & SEWER REQUEST - JOHN WINKLER

Town Attorney Sam Furguele opened a public hearing at 7:15 p.m. to hear sworn testimony from Jason Gaston of Valor Engineering and Planning & Inspections Director Bill Bailey on a request for water and sewer service to property located at 603 Blowing Rock Road. Mr. Gaston, acting as agent on behalf of the property owner, referred to information contained in the Town Council meeting packet which states that the project will have 150 bedrooms; he clarified that the project will contain 130 bedrooms. He stated that the project will be a mixed-use building that will contain multi-family units including 130 bedrooms and 16,000 square feet of retail space. Mr. Gaston reiterated that the applicant is waiting until any proposed changes to the density regulations are adopted by Council in order to proceed with the development. He asked to table the request until the anticipated changes are adopted by the Council. Planning Director Bill Bailey stated that discussion regarding the building footprint will be part of the upcoming workshops in which the Council, Planning Commission, and Planning Staff will be discussing changes to the UDO Table of Permitted Uses. With no other testimony, Mr. Furguele closed the public hearing at 7:24 p.m. Upon a motion by Council Member Ball, seconded by Council Member Brantz, Council moved to table consideration for 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 March 2011.

VOTE: Aye - All

Nay - None

WATER & SEWER REQUEST - HACKETT PROPERTIES INC.

Town Attorney Sam Furguele opened a public hearing at 7:24 p.m. to hear sworn testimony regarding a request for water and sewer service for property located on Park Street. He pointed out a request from Chelsea Garrett, attorney for Hackett Properties, Inc., to table this request because the applicant has made some changes to the development plans and feels it appropriate to reappear before the Board of Adjustment before presenting the plans to the Council. With no one present to speak regarding this request, Mr. Furguele closed the public hearing at 7:25 p.m. Council Member Leigh questioned if it is appropriate to table this request if the applicant then

comes back before the Council to present a plan substantially different from the plan or concept initially presented to the Council. Mr. Furguele stated that Ordinance #05-01 contains no prohibition for an applicant to make an application and presentation, then requesting the Council to table the request; however, he explained that penalties may be involved if there is a deviation from an approved allocation based upon a site-specific plan. He explained that a deviation would be either a ten-percent change or a change in use as outlined in Ordinance #05-01. Mr. Furguele stated that if the request is denied, there is no regulation contained in the Water & Sewer Code that will prohibit the applicant from reapplying. Council Member Ball questioned if this item is scheduled on the January or February Board of Adjustment meeting agendas. Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to re-open the public hearing at 7:28 p.m.

VOTE:Aye - All

Nay - None

Planning Director Bill Bailey stated that there is no request from this applicant or for this property on the agenda for the January 2011 Board of Adjustment meeting and pointed out that the deadline for being on the January 2011 BOA agenda has already passed. Roger Wright, being duly sworn, stated that it seems that the project being presented to the Council is different from what was approved by the Board of Adjustment. Council Member Ball agreed that there is no specific indication of what the changes to the plan may be. With no other testimony, Mr. Furguele closed the public hearing at 7:31 p.m. Council Member Brantz moved to table the request until the February 2011 meeting. Since Council Member Leigh requested discussion of the request to table this item, Council Member Brantz withdrew his motion. Council Member Leigh stated that she feels by tabling this request, the Council could be allowing applicants to abuse the process by submitting applications for one project, asking the Council to table the request, appearing before the Board of Adjustment to gain approval for changes to the project all the while keeping place in line to receive water allocations. She stated that she does not believe that this was the intent of Ordinance #05-01. Furthermore, she stated that there has not been enough information presented regarding any proposed changes to the plan to warrant tabling the request. Mr. Furguele cautioned the Council that if the request is denied, then Council should avoid contact with anyone involved with this application in anticipation of the submission of a new request. Upon a motion by Council Member Phillips, seconded by Council Member Leigh, Council moved to deny the request from Hackett Properties, Inc. for 22,500 gallons per day for property located on Park Street.

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

Nay - 1 (Brantz)

WATER & SEWER REQUEST - SPENCER BRYANT

Town Attorney Sam Furguele opened a public hearing at 7:37 p.m. to hear sworn testimony from Planning & Inspections Director Bill Bailey and Town Clerk Freida Van Allen regarding a request for water and sewer service to property located on Deerfield Road. Council Member Brantz asked if any additional information regarding this request had been received by staff subsequent to the last Council meeting. Mr. Bailey indicated that he had not received any additional information regarding this request since the last meeting. Town Clerk Freida Van Allen stated that an agenda for this meeting was mailed to the applicant, Spencer Bryant. With no other testimony, Mr. Furguele closed the public hearing at 7:40 p.m. Upon a motion by Council Member Leigh, seconded by Council Member Brantz, Council moved to deny the request from Spencer Bryant for 4,800 gallons per day for property located on Deerfield Road.

VOTE:Aye - All

Nay - None

WATER & SEWER REQUEST - CHUCK LUDDEKE

Town Attorney Sam Furguele opened a public hearing at 7:41 p.m. to hear sworn testimony from the applicant, Chuck Luddeke, regarding a request for water allocation to property located

on Water and King Street. Mr. Luddeke stated that the reason the availability fee was not paid on his previous water allocation was that the lease for that location had not been signed, and he did not have the funds to pay the non-refundable availability fee. He stated that the lease had now been signed and that the plans have not changed from what was presented and approved at the September Council meeting. Roger Wright, being duly sworn, voiced support for the request and expressed appreciation for Mr. Luddeke's entrepreneurial endeavor in the downtown area. With no other testimony, Mr. Furgiuele closed the public hearing at 7:44 p.m. Upon a motion by Council Member Ball, seconded by Council Member Phillips, Council moved to approve the request from Chuck Luddeke for 4,231 gallons per day from the 2010 allotment for property located on Water and King Streets.

VOTE:Aye - All

Nay - None

CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to enter Closed Session at 7:44p.m. pursuant to NCGS 143-318.11a(3)5) in order to discuss the following matters:

- \$ Legal Advice - Water Intake Project.
- \$ Legal Advice - Lease of Town property.
- \$ Update on Daniel Boone Native Garden lease.
- \$ Possible Property Acquisition on King Street.
- \$ Legal Advice - Stormwater NOV's.
- \$ Legal Advice - Request for Street Maintenance - Eli Hartley Drive.
- \$ Legal Advice - Transportation Service to Village at Meadowview Complex.

VOTE:Aye - All

Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to exit Closed Session at 10:39 p.m.

VOTE:Aye - All

Nay - None

POSSIBLE ACTION FOLLOWING CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Leigh, Council moved to table the request for maintenance for Eli Hartley Drive.

VOTE:Aye - All

Nay - None

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to add the following item to the agenda for the January 12, 2011 Special Town Council meeting: Schedule Special Council meeting.

VOTE:Aye - All

Nay - None

Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to approve the following Daniel Boone Native Gardens lease as changed and presented by the Town Attorney and to offer the lease to the Daniel Boone Native Gardens:

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF WATAUGA

THIS LEASE AGREEMENT is made this the 1st day of January, 2011, by and between the Town of Boone, a North Carolina Municipal Corporation, hereinafter referred to as "Lessor" and The Garden Club of North Carolina, Incorporated, a North Carolina non-profit corporation, hereinafter referred to as "Lessee," collectively referred to as the "parties."

1. Leased Premises: The Lessor hereby leases to the Lessee that certain piece, parcel or lot of land situated, lying and being in Boone Township, Watauga County, North Carolina, and improvements thereto, more particularly described as follows, with boundaries defined by an attached map, attached as Attachment "A," hereinafter referred to as "the premises:"

BEGINNING on an iron stake on the southeastern edge of a thirty foot paved street, said point being the northwestern corner of the James Winkler property and runs thence with the southeastern margin of said thirty foot street north 50° 40' east 333.55 feet to a stake at the intersection of said street with a sixty foot right of way of Horn in the West Drive; thence with the south margin of the right of way of Horn in the West Drive, south 58° 36' east 85.83 feet to a stake; thence leaving the Horn in the West Drive south 31° 23' east 231.11 feet to an iron stake set in concrete; thence south 05° 56' west 118.31 feet to an iron stake by an 18 inch tree; thence north 86° 08' west 231.83 feet to an iron stake in the fence line; thence south 06° 01' west 88.07 feet to an iron stake in the fence; thence south 54° 51' east 67.83 feet to an iron stake in a fence; thence south 49° 30' west 105.08 feet to a stake; thence south 61° 57' east 208.77 feet to an iron stake; thence south 73° 32' east 199.87 feet to an iron stake; thence south 04° 12' east 93.75 feet to an iron stake by an 16 inch oak; thence north 63° 04' west 442.24 feet to an iron stake; thence south 58° 31' west 39.04 feet to a stake; thence north 30° 58' west 248.15 feet to an iron stake; thence north 53° 55' east 9.30 feet to an iron stake; thence north 54° 22' east 121.11 feet to an iron stake; thence north 25° 27' east 89.87 feet to an iron stake; thence north 74° 52' west 152.50 feet to the BEGINNING, according to a plat by James A. Dugger, registered land surveyor #L-1121, dated February 12, 1974.

2. Ownership of Structures: Subject to the following exceptions, all structures on the premises, whether existing at the time of this lease or placed or constructed on the premises by either party shall be the property of Lessor. This provision shall not pertain to statuary or trade fixtures placed on the premises by Lessee, unless abandoned by Lessee at the conclusion of its tenancy, and it shall not apply to other structures constructed or placed there by Lessee, if prior to placing or constructing the structure on the premises Lessee has notified Lessor of its intention to construct or place the structure on the premises, the Boone Town Council has duly recognized the intention of Lessee to retain or claim ownership of the structure and has endorsed Lessee's retention of ownership, and the structure can be removed from the premises without causing significant damage to the premises.

3. Term: The term of this Lease shall be twenty-five (25) years, commencing on January 1, 2011 and ending on December 31, 2035, but it may be renewed from time to time for additional terms by the parties. Should either party wish to discontinue the relationship of landlord and tenant between the parties at the end of the lease term, it shall notify the other six months prior to the end of the term. Failure to notify the other party six months prior to the end of the term shall not prevent a subsequent termination, but continued occupancy of the premises by Lessee following the end of the term shall be on a month to month basis and shall be subject to the terms of this Lease and subject to termination upon six months notice by either party.

4. Rent: The rent for the above-described premises is one dollar (\$1.00) per year, and shall be due and payable in full upon the execution of this Lease, and on or before the same date in each subsequent year during the term of this Lease. There shall be no penalty for pre-payment of rent in whole or part.

5. Abandonment of Lease: Without regard to the payment of rent in advance by Lessee, should it appear to Lessor at any time that Lessee has abandoned its leasehold, Lessor may direct an inquiry to Lessee at the notification address provided in paragraph 26 regarding its continued use of the premises. If no response is received from Lessee within thirty-three days of the

deposit by Lessor of the notice in the United States mail, or if Lessee is unable to provide assurances to Lessor that it continues to maintain and use the property, the Lease will be considered abandoned, and the Lease will immediately terminate.

6. Repairs and Maintenance: The Lessee shall provide all maintenance necessary to keep the premises in good and sanitary condition. Unless expressly assumed by Lessor, Lessee shall also be responsible for all repairs necessary to maintain the premises and improvements in safe, sanitary and good condition. Excluding garden planting and associated maintenance, Lessee agrees to notify Lessor, in writing, of any and all conditions in need of correction or repair. Lessee further agrees that excluding garden planting and associated maintenance, no repairs will be undertaken, and no person or entity hired to undertake any repairs without first notifying Lessor in writing, at least ten days in advance, of Lessee's intention to undertake or make such repairs, or in the event of an emergency, without first notifying Lessor by telephone at (828) 268-6200 of the condition and repairs contemplated. Any repairs made to the premises shall be done in a workmanlike manner and shall become the property of Lessor. In making any repairs, Lessee shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all relevant federal and state laws relating to its operation of a facility and enterprise open to the public, and to its use of paid employees therein. Lessor shall be entitled, at its sole option and whether or not requested to do so by Lessee, to make any repairs to the property and conduct any maintenance to the property as it deems necessary or expedient, but in a non-emergency situation, Lessor shall attempt to give reasonable prior notice, judged by the circumstances of the situation, to Lessee of repairs which it intends to make, and any non-emergency maintenance activities conducted by Lessor shall be done so with an effort to avoid the disruption of Lessee's activities.

7. Alterations: Excluding garden planting and associated maintenance, Lessee agrees to neither make nor arrange for any alterations to the premises without advance written approval of Lessor. Should any alterations be approved by Lessor, they shall be done in a workmanlike manner, and they shall become the property of Lessor. In making any alterations, Lessee shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all relevant federal and state laws relating to its operation of a facility and enterprise open to the public, and to its use of paid employees therein.

8. Compliance with Laws: In particular, and not by way of exclusion, in any and all its actions and activities to the extent each such law applies to Lessee and/or any of its activities, Lessee will comply with and hereby certifies its compliance with (except for such conditions as pre-exist or are otherwise grandfathered with respect to) the Americans with Disabilities Act, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Fair Labor Standards Act, as amended, the Occupational and Health Safety Act, as amended, the North Carolina Employment Security Act, as amended, and the North Carolina Worker's Compensation Act, as amended,. Lessee commits that it will act in accordance with its duly adopted by-laws and will comply with all laws related to its status as a non-profit North Carolina Corporation. Lessee shall provide Lessor with its current by-laws at any time requested by Lessor. Should Lessee's corporate status be revoked by the North Carolina Secretary of State, or should the Lessee's non-profit status be revoked by the United States Internal Revenue Service or otherwise, this lease shall immediately terminate. NOTE: This paragraph is not intended to place responsibilities upon Lessee to comply with federal, State or local laws for which it does not otherwise have the responsibility to comply.

9. Assignments, Subleases and Licenses: The Lessee shall not assign, sublease, nor license the use of the premises to another party without the prior written consent of the Lessor. No sublease, assignment or license shall be approved unless the sub-lessee, assignee, or licensee is a non-profit corporation or entity and agrees to provide adequate liability insurance protection for its activities and actions, which insurance protection inures to the benefit of Lessor, and unless the sub-lessee, assignee or licensee agrees to defend, indemnify and hold harmless Lessor from all claims, demands and liability of any kind whatsoever caused by its activities. All proposed subleases, assignments or licenses must be in writing and shall be submitted to Lessor at least thirty days in advance of the proposed effective date of the sublease, assignment or license. Lessor shall have no responsibility to approve any proposed sublease, assignment or license and may reject any such proposal for any reason which Lessor, in its sole discretion, considers

adequate. NOTE: This paragraph is not intended to require Lessee to obtain permission from Lessor for its invitees.

10. Utilities: The Lessee shall be responsible for paying all utility costs incurred in connection with its use of the premises.

11. Keys and Locks: Should Lessee change any of the locks or add any locks to any of the doors, windows or other locked feature of the premises, Lessee shall, at its own expense, immediately provide duplicate keys to all such locks to Lessor. At the end of the lease term, Lessee shall return or turn over all keys which relate to the premises to Lessor.

12. Insurance: The Lessee shall provide and maintain insurance coverage against loss, destruction, or other damage to its own property located on the premises, as well as against all risks for which Lessee is required to indemnify and hold Lessor harmless. Lessee's liability insurance coverage shall provide coverage for personal injury or bodily harm occurring during the term of the lease, whensoever a claim is made, in an amount no less than two million dollars (\$2,000,000.00) per occurrence. Certificates of insurance for each insurance policy required to be obtained by Lessee in compliance with this paragraph shall be filed and maintained with Lessor annually during the term of the Lease. Lessee shall immediately advise Lessor of any assertion of claim or litigation that may result in a claim of liability against Lessor.

13. Lessor's Right to Enter Premises: The Lessor reserves the right and may enter the premises at any reasonable time for the purpose of inspecting said premises, making such repairs as the Lessor, in its sole discretion, desires to make, maintaining the premises and for any other purpose in any way related to Lessor's ownership or Lessee's use of the premises.

14. Use of Premises: The premises are to be used for the operation and maintenance of the Daniel Boone Native Gardens, a botanical garden developed and previously maintained by Lessee, the operation of said premises for the benefit and enjoyment by the public, including gatherings of the public for receptions and similar activities, and such other activities as may be necessary to support those purposes, including parking in appropriate locations on the premises. The parties agree that alcoholic beverages may be served on the premises in the form of wine and malt beverages at weddings and specific receptions with appropriate applications, deposits, licenses, hold harmless agreements and with liability insurance coverage which adequately protects Lessor. Any specific activity beyond those listed shall be subject to the advance approval of Lessor, but Lessor shall not unreasonably withhold approval for any such proposed activities, so long as they are in keeping with the general purposes of this lease and are consistent with Lessee's status as a non-profit corporation and the conservation goals of this lease. The Lessee shall not use or knowingly permit any part of the premises to be used for any purpose which violates any law, and Lessee shall comply with all land use ordinances of Lessor. Lessor reserves the right to use the premises described herein at such times as said premises are not being used by the Lessee. Lessee will take no action(s) which are in any way inconsistent with Lessor's ownership interest in the property. Note: Committee which met with Mayor wants second from the last sentence deleted and contend that the Garden Club uses the Native Gardens "24/7, 365 days each year."

15. Conservation of Premises: The parties specifically acknowledge and agree that the premises are significant for their artistic and cultural qualities and are significant for their natural and scenic beauty. Lessee shall take no action which detracts or impairs from that significance, and specifically, Lessee shall avoid any construction of buildings or roads which interfere with that significance, and shall avoid placement of any signs or advertising on the premises, except as necessary to direct the public in the safe use of the premises and to inform invitees of the various species and characteristics of the plant life existing and maintained on the premises. Lessee shall refrain from any activities detrimental to the drainage, erosion and conservation of the soil on the premises, and shall not change the nature of the demised premises as a garden and conservatory for North Carolina native trees and plants without the express permission of Lessor. This provision shall not be interpreted to prohibit or restrict Lessee from moving or relocating plants, shrubbery and small trees to different locations to enhance their display or the beauty of the premises, and advance approval of Lessor shall not be needed before such movement or relocation.

16. Fees: Lessee may charge and retain appropriate fees for the use of the premises by its invitees and licensees. Any such fees charged to the public at large shall be charged only in accordance with a fee schedule approved in advance by Lessor. However, approval of a proposed fee schedule or individual fee shall not be unreasonably withheld, and this Lease does not and shall not be construed to establish or create a partnership, joint venture, franchise or other form of business association between Lessor and Lessee.

17. Rules for Operation: Lessee shall have the right to promulgate such rules and regulations as it may deem appropriate for the behavior of patrons and its licensees and invitees. Lessee shall provide Lessor with a copy of such rules and regulations as it may promulgate reasonably prior to their effective date.

18. Default: If the Lessee defaults in the payment of rent or in the performance of any of the conditions of this Lease or its responsibilities thereunder, all of which are deemed material, or violates any of the terms of paragraphs 5, 6, 8, 13 or 14 of this lease, the Lessor may give the Lessee written notice of default for the first violation. If the Lessee does not cure said default within thirty (30) days after the receipt of notice thereof, the Lessor may terminate this Lease. In the event of any repeated violation by Lessee of its responsibilities under this Lease, Lessor may terminate the Lease without affording Lessee any further opportunity to cure its violation. On the date specified in any such notice of default (unless the default is cured) or notice of termination, this Lease shall terminate and the Lessee shall at once quit and surrender the premises to the Lessor. If this Lease is terminated by the Lessor, it may thereafter resume possession of the premises by any lawful means and remove the Lessee and any other occupants and their property therefrom.

19. Abandoned Property: Following the termination of this lease by action of Lessor or the expiration of the term without renewal, Lessee shall have a sixty day period to remove any of its property from the premises. Thereafter, such property will be deemed donated to Lessor.

20. Indemnity: The Lessee shall defend, indemnify and hold harmless the Lessor from any and all claims, actions, damages, and liability associated with personal injury and/or damage to property and/or any other matter arising out of any occurrence in, upon or at the premises, or associated with any act or omission of the Lessee, its agents, employees, licensees or invitees, or associated with Lessee's use of the premises. In the event that the Lessor is made a party to any litigation brought against the Lessee or by reason of the Lessee's use or occupancy of the premises, the Lessee shall defend, protect and hold harmless the Lessor from any and all liability that may result therefrom, including Lessor's costs in defending itself against any claim, action, litigation or other assertion of liability. However, Lessee shall be considered to have met these obligations by obtaining and maintaining liability insurance in accordance with paragraph 11 of this Lease.

21. Modification of Lease: This Lease contains all of the terms and conditions agreed to by the Lessor and the Lessee concerning the Lease of the above-described premises. There are no oral terms or conditions agreed to by the parties hereto which are not contained in this written agreement. There shall be no modification of this Lease Agreement unless the modification is in writing and signed by both parties.

22. Waiver: Lessor's failure to strictly enforce its rights under this Lease shall not constitute a waiver of such rights with respect to any violation of the Lease by Lessee, and the parties agree that this provision may itself not be waived by the conduct of the parties.

23. Partial Invalidity: If any term, covenant, condition or provision of this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

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

25. Execution: Lessor and Lessee each represent and warrant to the other that all necessary authorizations and approvals required for execution and performance of this Lease have been

given and that the undersigned individual is duly authorized to execute this Lease and bind the party for which it signs.

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

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

If to Lessee, to: Lila Petersen
The Garden Club of North Carolina, Incorporated

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

Town of Boone, Lessor

Loretta Clawson, Mayor

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

The Garden Club of North Carolina, Incorporated, by

President

Attest: _____ (Seal)
Secretary, The Garden Club of North Carolina, Incorporated.

VOTE: Aye - All

Nay - None

ADJOURNMENT

On a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to adjourn the meeting at 10:43 p.m.

VOTE: Aye - All

Nay - None

Town Clerk

Mayor

Deputy Town Clerk