

**MINUTES-REGULAR MEETING
BOONE TOWN COUNCIL
FEBRUARY 15, 2011**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m. on Tuesday, February 15, 2011, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Stephen Phillips, Jamie Leigh, Andy Ball, and Rennie Brantz. Town Attorney Sam Furguele was also present. Staff members present were Town Manager Greg Young, Deputy Town Clerk Kim Brown, Assistant to the Manager Jim Byrne, Finance Director Amy Davis, Police Captain Jim Wilson, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Human Resources Director Peri Moretz, Planning & Inspections Director Bill Bailey, and Planner Jane Shook.

ANNOUNCEMENTS

Mayor Clawson announced that any persons wishing to address the Council on a non-agenda item should sign in to speak during the Public Comment period. She voiced her appreciation for all of the firefighters who have been battling the forest fires around the area.

TENTATIVE AGENDA ADOPTION

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

1. Addition of Item 4.C. - Adoption of Resolution - New Hospitality House Facility.
2. Addition of Item 7.S. - Scheduling of Special Meeting - Discussion of MSD Recommendations.
3. Addition of Item 7.T. - Discussion and Creation of Agenda - Upcoming Special Meetings.
4. Deletion of Item 13.B. - Approval of Special Event Permit - Sigma Kappa’s Memory Walk for Alzheimer’s Association.

Council Member Leigh noted that she did not receive two of the board applications in time to properly review them and requested that the Board Appointments be tabled until Thursday’s meeting. Upon a motion by Council Member Ball, seconded by Council Member Mason, Council approved the agenda, as amended.

VOTE:Aye - All
Nay - None

CONSENT AGENDA ADOPTION

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

Minutes: January 12, 2011 - Special Meeting.
 January 18, 2011 - Regular Meeting.
 January 24, 2011 - Special Meeting.
 January 26, 2011 - Special Meeting.
 January 31, 2011 - Special Meeting.

Tax Releases & Refunds: January 2011:

**TAX RELEASES
JANUARY 2011**

Taxpayer	Year	Amount	Description
YATES, DOROTHY C	2010	69.82	INCORRECT SITUS
MODERN TOYOTA SCION OF BOONE	2010	207.47	EXEMPT

METZCUS, MEGAN NICOLE	2010	6.71	SOLD VEHICLE
FOLEY, MICHAEL LEE FOLEY, EDGAR MICHAEL	2010	26.12	INCORRECT SITUS
BAKER, SUZANNE WILLIS	2010	45.33	INCORRECT REGISTRATION
NEW RIVER BUILDING SUPPLY	2010	55.72	NOT IN TOB
EGGERS, JOHN LEE	2010	3.70	ADJ PER BILL OF SALE
HAYNES, LEANNE	2010	27.54	SOLD/TURNED IN PLATE
POE, HAROLD KENNETH POE, HERLINDA ESTRELLA	2010	9.25	INCORRECT VALUE
		451.66	

**TAX REFUNDS
JANUARY 2011**

Taxpayer	Year	Amount	Description
POWERS, LYNN M AND BETTY	2010	185.00	FAILED TO RECEIVE FULL AMT FOR OLD AGE EXEMPTION
		185.00	

Adoption of Resolution - New Hospitality House Facility:

**Resolution Congratulating The Hospitality House Upon the Dedication of its New Facility
on February 4, 2011**

WHEREAS, The Hospitality House of the Boone Area has assisted homeless individuals and families in Boone, Watauga County, and six other surrounding counties for the last 25 years; and

WHEREAS, the Boone Hospitality House continues to meet the basic needs of a growing number of homeless persons in our community and surrounding counties; and

WHEREAS, the Hospitality Executive Director Lynne Mason, her excellent staff, supporting agencies, volunteers, and hundreds of caring community members have raised over three million dollars to build a new shelter; and

WHEREAS, the Boone community, surrounding counties, and funding agencies have succeeded in building a carefully planned new Hospitality House that reflects the caring and concern of our entire community;

NOW, THEREFORE, BE IT RESOLVED that the Town of Boone does hereby congratulate the Hospitality House, its staff, and the people of Boone on the occasion of the dedication of this new facility on February 4, 2011, and pledges its continued support for the excellent work of this important community agency.

ADOPTED the 15th day of February, 2011.

ATTEST:

Mayor

Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 156)

VOTE: Aye - All
Nay - None

PUBLIC COMMENT

Mike and Lindsay Dicker appeared before the Council to inform the Council that they plan to request a variance to allow the installation of a kitchen in the basement area of their home so that their elderly parents can occupy the living space. Planner Jane Shook invited Mr. and Mrs. Dicker to visit the Planning & Inspections office to discuss what is needed to accomplish their request.

Greg Simmons, a resident of Delmar Street, appeared before the Council to express his appreciation of the proactive planning and support from the Town in making the opening of the new Watauga High School a smooth transition for residents of the surrounding neighborhoods.

PUBLIC HEARING - CLOSEOUT OF CDBG GRANT 08-C-1854

Mayor Clawson opened a public hearing at 6:41 p.m. to hear public comment on the closeout of CDBG Grant 08-C-1854. Assistant to the Manager Jim Byrne indicated that this action was for improvements at the Winkler's Creek water intake. He noted that the project removed 92% of the sediment from behind the dam. With no public comment offered, Mayor Clawson closed the public hearing at 6:44 p.m.

ADOPTION OF UDO TEXT AMENDMENTS

Case 20090571 Recycling Containers Text Amendment - Amend the Town of Boone Unified Development Ordinance (UDO) Article 2, Section 15 Definitions, Article 15, Section 199 Definitions, and Section 269 Sites for and Screening of Dumpsters and Article 21, Section 363 Buffer and Screen Requirements, to incorporate new solid waste enclosure requirements and recycling requirements for multi-family projects. Planner Jane Shook presented the staff report.

Vote #1

Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to this application because it supports 2006 Comprehensive Plan policies 2.1.1 Economic Development; 2.2.5 Environmental Quality, and 2.3 The Community.

VOTE: Aye - All
Nay - None

Vote #2

Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved to approve the following proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because recycling has broad-based, community support and is a critical part of a plan to address solid waste management in our community:

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

VOTE: Aye - All
Nay - None

Case 20100658 Sign Heights Text Amendment - Amend UDO Article 18 to amend the language regarding the general regulations for awnings, canopies and signs which project over a public sidewalk. Planner Jane Shook presented the staff report.

Vote #1

Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to this application because it supports 2006 Comprehensive Plan policies 2.1.1 Economic Development and 2.3.1 Community Appearance.

VOTE:Aye - All
Nay - None

Vote #2

Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to approve the following proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because it clarifies discrepancies between the Town Code and UDO and makes the sign application process easier for the staff to administer and easier for citizens to understand:

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

VOTE:Aye - All
Nay - None

Case 20110001 Pavement Sealant Standards Text Amendment - Amend UDO Article 19, Section 350 Vehicle Accommodation Surfaces to incorporate standards for asphalt and pavement sealants. Planner Jane Shook presented the staff report. Upon a motion by Council Member Phillips, seconded by Council Member Ball, Council moved to re-open a public hearing on the proposed text amendment.

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

Eric Chance, 9115 Highway 105 South, voiced his appreciation to the Council for its consideration of the effects of coal-tar based sealants and the proposed regulations regarding the use of coal-tar based sealants. He urged the Council to consider banning the use of coal-tar based sealants.

Benji Burrell, 157 Stoneybrook Drive Apt. C-3, pointed out several safety concerns regarding the use of coal-tar based sealants and also urged the banning of such products.

Jeff Deal, 247 Old Bristol Road, thanked the Council for its pro-active actions regarding the use of coal-tar based sealants.

In regard to the proposed permitting fees for the proposed amendments, Planning Director Bill Bailey informed the Council of the proposed charges: \$40 for residential permits (non coal-tar based sealant), \$75 for business/commercial permits (non coal-tar based sealant), and \$2,000 for permits using any coal-tar based product. He stated that after researching the fees charged in other jurisdictions, these are the proposed fees he has recommended to the Town Manager. Council Members Mason and Leigh suggested a reduced fee for residential permits so as not to create a burden on home-owners or to discourage adherence to the permitting requirements. Council Member Leigh also questioned the permit fee amount for the use of coal-tar based products. In addition, Mr. Bailey also pointed out that the department is planning to create an educational brochure to be distributed to businesses and placed with the product. In regard to penalties, Mr. Bailey stated that the penalty regulations as currently contained in the UDO will be followed. Town Attorney Sam Furguele cautioned that an outright ban of the use of coal-tar based products could prove to be problematic for the town and advised that the Council retain a second opinion if it should choose to consider such a ban. Discussion ensued as to determining an effective date for the implementation of the proposed regulations.

Shea Tuberty, no address given, stated that he disagreed with the Town Attorney about information regarding pH levels. With no other public comment, Mayor Clawson closed the public hearing at 7:35 p.m.

Vote #1

Upon a motion by Council Member Leigh, seconded by Council Member Ball, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to this application because it provides for the health, safety, and welfare for the citizens and protects our natural environment from damage and destruction.

VOTE:Aye - All
Nay - None

Vote #2

Upon a motion by Council Member Leigh, seconded by Council Member Ball, Council moved to approve the following proposed amendment to the Town's zoning ordinance effective April 1, 2011 and believe approval is reasonable and in the public interest because it protects the community from adverse health effects and environmental damage known to be caused from haphazard and inappropriate sealant applications:

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

VOTE:Aye - All
Nay - None

REQUEST TO SCHEDULE PUBLIC HEARING - MR. BRIAN MUELLER - CONDITIONAL DISTRICT ZONING

Mr. Brian Mueller appeared before the Council to request the scheduling of a special public hearing in order to consider his request for a conditional district rezoning for property at 183 Delmar Street. He stated the his proposal is for an Architecturally Integrated Subdivision that will contain three solar home sites and two duplex sites with a shared green space area. Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to schedule a special public hearing on Monday, February 28, 2011, at 7:00 p.m. in the Council Chambers in order to receive public comment on Mr. Mueller's request for conditional district rezoning.

VOTE:Aye - All
Nay - None

PRESENTATION OF P&I MONTHLY REPORT

Planning & Inspections Director Bill Bailey presented the P&I Monthly Report **(permanently on file in the February 2011 Town Council Packet.)**

APPROVAL OF LEASE AGREEMENT - DANIEL BOONE NATIVE GARDENS LEASE

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to approve the following lease:

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF WATAUGA

THIS LEASE AGREEMENT is made this the 1st day of February, 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 statutory 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 February 1, 2011 and ending on January 31, 2036, 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 sixty-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.

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. At least once each calendar year during the term of this Lease, between October 1 and November 1, Lessee shall submit a written report to Lessor regarding its activities on the premises. Among other matters, Lessee shall disclose: (A) The gross receipts collected since its prior report in connection with the use of the premises; (B) the amount of funds spent by Lessee on the premises since its prior report; and (C) statistical information concerning the use of the premises, including but not limited to the number of paid events which have taken place, the number of visitors utilizing the Native Gardens, and what number or percentage of such visitors are residents of the Town of Boone and what number or percentage of such visitors are residents of Watauga County. In addition, Lessee shall describe the types of events which have taken place on the premises and the dates of such events. The first report submitted pursuant to this paragraph shall account for the requested information from the inception of the Lease until the date of the report. Subsequent to its submission of its written report and before the end of the calendar year, a representative of Lessee shall appear before the Boone Town Council to discuss the activities of Lessee and to provide a status report on the state of the premises.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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: The Garden Club of North Carolina, Incorporated
P.O. Box 33520
Raleigh, NC 27636-3520

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.

VOTE: Aye - All
Nay - None

APPROVAL OF FEE SCHEDULE - DANIEL BOONE NATIVE GARDENS

Ms. Kit Fischer appeared before the Council to present the fee schedule for the Daniel Boone Native Gardens. Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to approve the following fee schedule:

Daniel Boone Native Gardens Fees as of January 1, 2011

Entrance fees are \$2.00 per person and children under 12 are free.

A season pass is \$15.00.

Wedding/Event Fees:

*Rental rates are per site, four hours per site, chairs and other equipment not include3d. You may rent two sites for more space. Rates include rehearsal time.

*Extra small weddings: \$75 - 20 persons or fewer, one hour only, by reservation, Rockery or lower allee.

*Small weddings: \$150, 20 persons or fewer, Rockery or lower allee.

*Standard wedding: \$300, 200 persons maximum; second site for reception \$200.

*Reception only: \$300, 200 persons maximum.

*Community groups and tours: \$35 to reserve date, then \$2.00 per adult. Two hours max.

*Deposits for weddings: A \$100 deposit reserves a date and site(s), balance is due 30 days before wedding.

*Refunds: \$50 of deposit is refundable in case of cancellation 30 days ahead.

*In case of inclement weather, \$50 of deposit and any balance already paid are refunded.

Alcohol permit and handling fee: \$100, with a \$50 payment to the North Carolina Alcoholic Beverage Control Commission, in full compliance with North Carolina law, and \$50 for staff time and handling.

VOTE: Aye - All
Nay - None

Lila Petersen, on behalf of the Garden Club of North Carolina, appeared before the Council to explain the association of the Daniel Boone Native Gardens with the Garden Club of NC.

DISCUSSION OF SATURDAY & GAME-DAY PARKING

Town Manager Greg Young presented a report detailing the revenue generated by the Saturday & Game Day parking plan implemented by the Town during the 2010 fall season (**copy of report permanently on file in the February 2011 Town Council Supplemental Packet.**) He noted that he had anticipated a better revenue flow than what actually occurred. Mr. Young recommended to the Council to place this item on the Annual Retreat agenda for further review and discussion. Council Member Mason requested that the recommendations from the Parking Task Force be included in the information packet for the retreat. It was the consensus of the Council to place this item on the Annual Retreat agenda for further discussion and review.

SCHEDULE SPECIAL MEETING - ANNUAL TOWN COUNCIL RETREAT

Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to schedule the following Special Meetings:

- \$ Planning Retreat/Committee Reports - Wednesday, March 30, 2011, 9:00 a.m.-4:00 p.m. in the Council Chambers
- \$ Annual Council Retreat - Wednesday, April 6, 2011, 9:00 a.m.-4:00 p.m. in the Council

Chambers.

VOTE:Aye - All
Nay - None

SCHEDULE SPECIAL MEETING - WORK SESSION WITH WATAUGA COUNTY COMMISSIONERS

Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to schedule a special meeting in order to attend a work session being held by the Watauga County Board of Commissioners on Tuesday, February 22, 2011, at 5:00 p.m. in the Commissioner's Board Room, 814 West King Street, to discuss the Town of Boone's Water Intake Project.

VOTE:Aye - All
Nay - None

Mayor Clawson declared a break at 8:14 p.m. Council reconvened at 8:27 p.m.

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Clawson announced the following board vacancies:

-Meghan Baker has resigned her position on the Greenway, Parks & Gardens Committee. Her term will expire July 31, 2012.

-One term on the Boone ABC Board expires in March 2011.

She noted that the Clerk will advertise these vacancies in the usual venues.

APPROVAL OF CONTRACT - WINKER'S CREEK PROJECT - SEDIMENT CONTROL & STREAM BANK STABILIZATION

Assistant to the Manager Jim Byrne presented a contract for sediment control and stream bank stabilization for the Winkler's Creek Project. He noted that the contract is subject to review and changes by the Town Manager and the Town Attorney. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to approve the following contract:

STATE OF NORTH CAROLINA

WATAUGA COUNTY

CONTRACT

THIS CONTRACT, made and entered into this 15th day of February, 2011, by and between the Town of Boone, a body politic, organized and existing under virtue of the laws of the State of North Carolina, party of the first part, and the National Committee for the New River, Inc., a non-profit corporate entity, organized and existing under virtue of the laws of the State of North Carolina, party of the second part.

WITNESSETH:

WHEREAS, the party of the first part is recipient of a Rural Center Grant #2009-388-40101-122; and

WHEREAS, it is the desire of the party of the first part to contract with the part of the second part to provide landscaping and stream bank stabilization functions of said Rural Center Grant for a fee of \$19,800; and

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

GENERAL PROVISIONS:

1. The party of the second part shall assist in the performance of the following services:
 - a.) Provide all labor, equipment, and materials to complete this project.
 - b.) Provide Certificates of Liability Insurance, Workman's Compensation Insurance, and insurance on all motorized vehicles in the amount required by the Town of Boone, prior to start of construction.

- c.) Obtain all licenses and permits as required.
- d.) All work shall be carried out in compliance with OSHA, NC DEHNR, and any other state and federal regulations that may apply.
- e.) All work will be in accordance to project specifications, know, as Attachment A.

Perform all duties necessary to satisfactory complete all grant activities. This contract can be terminated without cause by either party giving 10-days written notification. The party of the first part will compensate the party of the second part for the percentage of project completion at termination. The contract can also be terminated if the party of the second part fails to comply with the terms of the contract.

IN WITNESS THEREOF, the parties of this CONTRACT have executed it in duplicate originals, the day and year first written above.

Town of Boone

National Committee for the New River

Mayor

Director

VOTE: Aye - All
Nay - None

TRANSPORTATION COMMITTEE RECOMMENDATION - SIDEWALK CONSTRUCTION PRIORITY LIST

Public Works Director Blake Brown presented a list of priorities for sidewalk construction (**Exhibit A**) as recommended by the Transportation Committee. He explained that the list was developed based on connecting current sidewalk infrastructure where missing sections exist, engineering software that details populated areas, as well as incorporating the existing Alternative Transportation Plan. After brief discussion, Council Member Brantz moved to approve the tentative list as presented. Council Member Mason seconded the motion.

VOTE: Aye - All
Nay - None

APPROVAL OF CODE AMENDMENT - CHAPTER 91 COMMUNITY IMPROVEMENT & CHAPTER 96 RECYCLING

Public Works Director Blake Brown presented amendments to Chapter 91 Community Improvement and Chapter 96 Recycling of the Town Code. He explained that the proposed amendments will make the Town Code consistent with the recently updated UDO amendments regarding Multi-Family Dwellings to provide recycling sites on premises. Furthermore, he stated that the proposed amendment includes the integration of Chapter 96 Recycling into Chapter 91 Community Improvement to assure no overlap between chapters. Discussion ensued regarding the meaning of various terms such as “recyclables,” and Council requested that Mr. Brown provide pictures or images of the proposed layout of the containment area, recycling, and screening. Mr. Brown indicated that he will send this information to Council via e-mail. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to adopt the following proposed amendments to Chapters 91 Community Appearance and 96 Recycling with the incorporation of definitions for the terms “recyclables” and “recyclable materials” and with the inclusion of diagrams showing the different container sizes. (**Code Amendment Permanently on File in the February, 2001, Boone Town Council Packet**).

VOTE: Aye-All
Nay-None

WATER COMMITTEE RECOMMENDATION - ORDINANCE #05-01 AMENDMENTS

Public Utilities Director Rick Miller presented a recommendation from the Water Study Committee for the amendment of Ordinance #05-01 for language simplifications. Upon a motion by Council Member Brantz, seconded by Council Member Leigh, Council moved to amend Ordinance #05-01 in its entirety:

ORDINANCE #11-01 (FORMERLY ORDINANCE #05-01)

WHEREAS, the Town of Boone has adopted a water system hydraulic analysis and

master plan completed by W.K. Dickson; and

WHEREAS, the water system hydraulic analysis and master plan has revealed that the Town of Boone has a very limited remaining capacity in its current water distribution system; and

WHEREAS, the Town of Boone has begun planning for alternative raw water sources and possible water treatment plant expansion, but at this time does not know whether, to what extent, and within what time frame the Town may be able to add to its raw water sources; and

WHEREAS, The Town of Boone Water and Sewer Use Ordinance provides for the provision by the Town of water and sewer services both within the corporate limits and outside the corporate limits, including with the extra-territorial jurisdiction (ETJ) of the Town and beyond the boundaries of the Town and its ETJ; and

WHEREAS, during its planning process and until new sources for raw water are developed, the Town must closely monitor and prioritize the distribution of water to new applicants for water service; and

WHEREAS, the Town of Boone's water system was designed to provide water service only in the primary pressure zone, but through *ad hoc* decisions made with respect to individual requests, water service has at times been extended into the secondary pressure zone without the Town having studied the overall effects and costs of the general extension of water services into the secondary pressure zone, and those extensions have caused unexpected construction, engineering and fire protection problems; and

WHEREAS, during the administration of this Ordinance since it was first adopted in 2005 a number of issues have arisen relating to the applicants reserving water for extended periods without following through on proposed projects; and

WHEREAS, the Boone Town Council desires to amend the existing policies in the Town of Boone Water and Sewer Use Ordinance so as to establish priorities for the availability of water to new customers and to afford itself the necessary time within which to determine the future ability of the Town to serve the needs of its citizens and to assess the desirability of permanently amending the Water and Sewer Code to prioritize the future distribution of services; and

WHEREAS, the many amendments to this ordinance have increased its complexity and the Boone Town Council wishes to simplify this Ordinance;

NOW, BE IT THEREFORE RESOLVED that pursuant to its police powers created under N.C. Gen. Stat. ' 160A-174, in order to provide for the health and welfare of the citizens of Boone, and pursuant to N.C. Gen. Stat. ' 160A-312, which confers upon the Town the authority to protect and regulate its water distribution system through the adoption of reasonable rules, the Boone Town Council hereby amends its policy concerning the provision of water service to new customers for its stated duration, unless extended, as follows:

1. Term and Applicability of Ordinance:

- a. This ordinance shall control the approval of new water or sewer connections to the extent specified herein during the period beginning January 1, 2008 through December 31, 2011 or such other end date as the Town Council may by majority vote designate. To the extent its provisions create any conflict with the Town of Boone Water and Sewer Use Code this ordinance shall supercede and control. To the extent the provisions of this ordinance do not conflict with or otherwise supercede the Town of Boone Water and Sewer Use Code, that Code remains in full force and effect.

2. Amount of Water which may be Allocated:

- a. **Annual Amount Which May Be Allocated.** The amount of water available for allocation and attributable to any designated calendar year during the term of this ordinance shall be 50,000 gallons per day, collectively referred to as "the water census." The Town shall always reserve at least 10,000 gallons per day from its available water supply for possible allocations to existing vacant lots within the corporate limits of the Town.

- b. **Determination of the Amount of Water to be Allocated and Deducted if a Request is Granted.** The water usage predicted for each application and thus deducted from the available water from the year(s) to which it is attributed shall be determined by multiplying the usage predicted by the North Carolina Discharge Rate (NCDRS) Schedule by .60, even in cases where an applicant asserts that actual use will be less than the predicted use.

i. **Deductions for Subdivision Approvals.** When an application for water service to either a proposed minor or major residential subdivision is approved, the Director of Public Utilities (“the Director”) shall subtract an amount of water from the available water census which reflects the projected amount of water when all residences in the proposed subdivision are fully constructed and occupied.

- c. **Designation of Year from Which Allocation Is Made.**

i. Depending upon which is given authority to approve an application, the Town Council or the Director shall designate the calendar year(s) from which an allocation shall be deducted.

ii. An approval of water service by the Director shall always be attributed to the calendar year in which it is approved.

iii. An approval of water service by the Town Council shall ordinarily be attributed to the calendar year in which it is approved; however, the Town Council may designate that a particular approval of water service shall be attributed to the available allocation from another year within the term of this resolution or may apportion the allocation over two or more years.

- d. **Water Remaining at End of Year.** Any unused allocation from a prior calendar year may be made available in any subsequent calendar year(s).

- e. **Water Shortage Declarations.** When either a Stage II or Stage III water shortage is declared pursuant to Article VII of the Town of Boone Water and Sewer Code or imposed on the Town by the State of North Carolina, the Town Council may suspend its consideration and approval of any new water applications for the duration of the water shortage, and it may direct the Public Utilities Department (hereafter, “the Department”) to suspend its consideration or approval of any new water applications until further action by the Town Council.

- f. **Adjustment of Water Census.** Each year while this ordinance is in effect the Town shall review actual water usage records to determine whether changes should be made to the allocation allotments for subsequent years either because more water is being used than was predicted or less water is being used. At any time the Town Council may increase or decrease any yearly allocation amount based on actual usage information concerning remaining capacity.

3. **Who May Allocate Water:**

- a. **Allocations by Director.** Until the Town has allocated two-thirds or more of the full water allotment for the year during which the request is made, the Director may approve new applications for water serving property within the corporate limits of the Town (“the Town limits”) when the predicted water usage is three thousand (3,000) gallons per day or less. Once more than two-thirds of the full water allotment for the year has been approved, the Director may approve new applications for water serving property within the Town limits when the predicted water usage is no more than five hundred (500) gallons per day.

- b. **Allocations by Town Council.** Except those allocations which may be approved by the Director, every other request for a new allocation of water serving property within the Town limits or within the Town’s planning extra-territorial jurisdiction (“ETJ”) must be approved upon action, by majority vote, of the Boone Town Council acting in its *quasi* judicial capacity. Any request for a new water allocation serving property outside the Town limits and ETJ of the Town, without regard to the amount of the request, must be approved by a two-thirds super-

majority of the Town Council members present and not excused from the vote.

4. **Requests for Service in the Town's Secondary Pressure Zone.** Requests for extensions and connections into the Town's secondary pressure zone may only be approved if the following additional criteria are satisfied. For purposes of this paragraph, an "extension" refers to the continuation of a water main beyond its currently existing limits while a "connection" is defined as the linking of pipes serving a single customer to an existing water main.
 - a. **Requests for Extensions into the Secondary Pressure Zone.** No service extensions into the secondary pressure zone shall be considered for approval unless:
 - i. The property for which service is requested was located inside the Boone Town limits on or before March 8, 2007; and
 - ii. The applicant agrees to adhere to Town of Boone secondary pressure zone specifications, and among other things, agrees at its expense to:
 - A. Use minimum eight-inch minimum pipe diameter;
 - B. Provides all needed booster pumping station(s) of EFI design with fire pumping capabilities;
 - C. Provides a minimum 100,000 gallon welded joint steel storage tank;
 - D. Installs pressure protection for each individual water service; and
 - E. Install Dataflow Systems radio telemetry compatible with existing Town of Boone system is provided; and
 - iii. All portions of a proposed extension are below 3,620 feet in elevation.
 - b. **Request for Connections into the Secondary Pressure Zone.** A connection to an existing water main in a secondary pressure zone may be approved by the Town Council in cases in which such connection:
 - i. Creates no negative impact on the Town's distribution system;
 - ii. Allows adequate pressure to be maintained as may be necessary to comply with the requirements of the Boone Fire Department and applicable fire codes;
 - iii. Results in no additional costs to the Town; and
 - iv. Otherwise complies with the requirements of the Town of Boone Water and Sewer Code for connection to the Town's water system.
5. **Sewer Only Approvals.** During the term of this ordinance, Section 3-10(G) of the Town of Boone Water and Sewer Code, which prohibits the discharge into the Town's sanitary sewer system of any discharge from private water systems other than the system of Appalachian State University, is suspended as to those applicants whose application for both water and sewer connections cannot be granted because the request for water service has been denied by the action of the Town Council in applying this ordinance.
6. **What information Must be Provided by an Applicant for Water or Sewer Service.** At the time of application, an applicant for water service shall designate and describe the following:
 - a. The name and address of the applicant;
 - b. The specific location of the property to be served so that it may be determined

whether it is in the Town limits or ETJ, whether any portion of it is within the secondary pressure zone, and the relative location of available water and sewer connections;

- c. The name and address of the owner of the property if the applicant is not the owner of the property;
- d. If the applicant is not the owner of the property, a description of the legal rights of the applicant to apply for and obtain service and proof of those rights, as requested by the Director;
- e. If water rights have previously been approved for a property and are currently vested, a written relinquishment of previously granted water rights signed by the owner or other person with legal authority to do so.
- f. A site specific development plan for the property for which service is requested in sufficient detail to enable the Town to assess the factors which may be considered under this ordinance; and
- g. Any technical information needed by the Director to determine compliance with this ordinance or the Water and Sewer Use Code.

7. **Town Council Priorities in the Allocation of Water.**

- a. **Requests Considered on a First-Come, First-Served Basis.** The Town shall ordinarily provide water service to future customers within the Town limits on a “first-come, first-served,” basis. Hearings on requests shall be conducted by the Town Council in the order in which completed applications have been received by the Department, unless a case has been tabled to a later date for consideration either at the request of the applicant or by action of the Town Council.
- b. **Requests for Service in Town Preferred over Other Requests.** Requests for water service serving properties within the Town limits shall be preferred over other requests. Ordinarily, only requests for service connections to property which is in the Town limits will be granted.
- c. **Smaller Requests are Preferred over Larger Requests.** Ordinarily, the Town Council shall prefer small requests over large requests for water, and a request may be denied based on the determination by the Town Council that a particular request, if approved, would too greatly reduce the remaining water to be allocated.
- d. **Compliance by Applicant with Other Conditions Required by this Ordinance and the Water and Sewer Use Code.** The Town Council may also deny a request because an applicant has not complied with any other requirement of this ordinance or the Water and Sewer Use Code.

8. **Additional Factors Which the Town Council May Consider When Deciding Whether to Grant a Request for Water.** In addition to the priorities and considerations described in paragraph 7, the Town Council can consider the following in deciding whether to grant or deny a request for water or sewer service:

- a. Any factor which may make the predicted actual use different from the NCDRS predicted use;
- b. The amount of water usage in gallons per day previously approved during the calendar year and the amount still left to be allocated for the year;
- c. Whether in its opinion the application is for a land use which is consistent with the Town’s adopted policies concerning growth and development; and
- d. Such other factors as may be identified by the Town Council in its deliberations, which either suggest that a particular application promotes or undermines the public health or safety, or the general welfare of the Town.

9. **Conditions.** The Town Council may place conditions upon a successful application for

water or sewer service. Without limitation and by way of example only, the Town Council may require:

- a. That an applicant whose property is partly or wholly outside the Town limits petition the Town for annexation in accordance with the requirements of North Carolina General Statutes and the Town of Boone's ordinances before service is provided.
- b. That an applicant whose property is partly or wholly outside the Town limits comply with designated development policies of the Town in order to receive and continue to receive service.
- c. That an applicant granted the right to connect to the sanitary sewer system agree to connect into the Town's water system should the Town later request that such a connection be made, and that the applicant sign a statement of commitment to that effect which will remain on file with the Town's Public Utilities Department.

10. Vesting of Water Rights.

- a. **Rights Vest to Property, Not Applicant.** Any vesting of water rights which is obtained through a successful application during the term of this ordinance vests to the property itself for the specific project rather than to the applicant personally. Therefore, any change in ownership or change in legal rights subsequent to approval shall not affect the vesting of the water rights, the time periods described herein, or the payment or retention of required fees.
- b. **Rights not Transferrable.** Water rights may not be transferred from the property designated in the application to a different piece of property, even for the same or a similar site specific development plan.
- c. **Vesting Does Not Occur until Required Fees Are Paid.** No vesting of water or sewer rights occurs until the fees required by this ordinance are paid.
- d. **Initial Payment of Fees.** Within thirty days of the time an application is approved and at the applicant's option, the applicant must pay either ten percent (10%) or twenty percent (20%) of the availability fee for the approved site specific development plan. Such fee is non-refundable, but will be credited against the availability fee charged at the time of the actual connection to the Town's system if the site specific plan is constructed as proposed.
 - i. **Fees are Non-Transferrable to Another Property.** A fee paid pursuant to this paragraph may not be transferred from one property to another property.
 - ii. **Fees May not be Transferred to Another Project on the Same Property.** A fee paid pursuant to this paragraph may not be transferred from one site specific development plan to another, even if both are on the same property, if the subsequent plan represents a substantial change, as defined in paragraph 11, below, from the plan which has been approved.
- e. **Initial Vesting Period.** If an applicant pays ten percent (10%) of the availability fee for the approved site specific development plan, the applicant shall be entitled to a one year initial vesting period; if an applicant pays twenty percent (20%), the applicant shall be entitled to a two year initial vesting period, dated from the date of approval by the Town Council or Director of the application.
- f. **Lapse of Vesting after Initial Period of Vesting.** Unless extended by the payment of full availability fees, any applicant granted the right to connect to the Town's water distribution system must obtain all needed development permits within the initial vesting period or said approval will expire and the allocated water usage shall return into the water census for redistribution. For purposes of this section the term "development permits" shall mean the following:
 - i. In the case of applicants for water service for a minor subdivision, the minor subdivision plat approval and recording of the approved plat with the Watauga County Register of Deeds, and any associated zoning and

grading compliance certificates;

ii. In the case of applicants for water service for a major subdivision, a special use permit, and associated zoning and grading compliance certificates;

iii. In the case of a commercial development project, all permits required for the physical development of the land, plus those permits necessary for the building. These may include some or all of the following: a special use permit, a zoning permit and a building permit.

g. **Extension of Period of Vesting upon Payment of Full Availability Fees.** Upon payment made prior to the expiration of the initial vesting period of the full remainder of the availability fee predicted for the site specific development plan for which approval has been granted, the approval of a water application will be extended for an additional period matching the vesting period of approved development permits for the site specific development plan, but not less than one additional year from the expiration of the initial vesting period, and any additional vesting of development permits which is obtained during the additional vesting period shall automatically extend the water rights to match that vesting period.

i. **Availability Fee Payment Non-Refundable.** The funds paid pursuant to this section are non-refundable, but will be credited against the availability fee charged at the time of the actual connection to the Town's system if the site specific plan is constructed as proposed.

ii. **Availability Fee Payment Non-Transferrable.** The funds paid pursuant to this section are non-transferrable, as described. Such funds may not be transferred as a credit from one property to another property, and they may not be transferred from one site specific development plan to another, even if both are on the same property, if the subsequent plan represents a substantial change, as defined in paragraph 11, below, from the approved plan.

iii. **Adjustment in Availability Fee at Time of Connection.** If the required availability fee at the time of the connection to the Town's system is more than the amount which has been previously paid, the remainder of the then current availability fee must be paid before a connection will be allowed; if the required current availability fee at the time of the connection to the Town's system is less than the amount which has been previously paid, no refund shall be due.

h. **Expiration of Vesting.** Without regard to the payment of fees and term of vesting, should any applicant whose development project requires a special use permit or zoning permit allow the special use permit or zoning permit to expire, the applicant's water rights will also immediately expire. Likewise, should any applicant whose development project acquires a building permit allow the building permit to expire, the applicant's water rights will also immediately expire.

11. **Changes in Development Plan after Approval.**

a. **Substantial Changes Prohibited.** When an application has been approved for water or sewer service and fees paid to vest the approval, a substantial change may not be made in the site specific development plan designated in the application without a new application and appropriate payment of fees if approved. A "substantial change" is one for which a different type of principal zoning use is proposed, e.g. multi-family to commercial, or there is more than a ten percent (10%) change, plus or minus, in the predicted water use for the site specific development plan, as determined by the calculations prescribed in paragraph 2(b), provided that a reduction in predicted use which is the result of a change to a site specific development plan initiated and mandated by the Board of Adjustment in a special use permit proceeding, or one which is the result of conditions or modifications agreed upon by the Town Council in a conditional district zoning proceeding shall not be considered a "substantial change" for purposes of this ordinance.

- 12. Monthly Water Reports.** The Director shall provide a monthly report to the Boone Town Council concerning the number and predicted volume of each water connection request approved during the term of this Resolution.

Adopted this the 15th day of February, 2011.

Mayor

Attest:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 4, PAGES 1-7)

VOTE:Aye - All
Nay - None

WATER COMMITTEE RECOMMENDATION - REALLOCATION OF WATER TO 2011 ALLOCATION POOL

Public Utilities Director Rick Miller presented a recommendation from the Water Study Committee for the reallocation of 26,573 gallons per day to the 2011 allocation pool after review of the actual versus predicted water usage numbers from 2010. He noted that will bring the 2011 allocation to a total of 141,889 gallons per day. Upon a motion by Council Member Branz, seconded by Council Member Ball, Council moved to reallocate 26,573 gallons per day to the 2011 allocation pool.

VOTE:Aye - All
Nay - None

WATER COMMITTEE RECOMMENDATION - SCHEDULE SPECIAL MEETING

Public Utilities Director Rick Miller presented a recommendation from the Water Study Committee for the scheduling of a special meeting in order to discuss allocation alternatives for the old high school property and possible commercial use changes in relation to predicted usage numbers. Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved to schedule a special meeting of the Water Study Committee for Thursday, March 10, 2011, at 5:30 p.m. in the Council Chambers.

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 February 2011 Boone Town Council meeting packet.)**

APPROVAL OF BUDGET AMENDMENTS

Upon a motion by Council Member Ball, seconded by Council Member Brantz, Council moved to approve the following budget amendments:

DESCRIPTION	ACCOUNT#	TO:	FROM:
PROFESSIONAL SERVICES- GOVERNING BODY	010-400-000-509100	\$1,850	
APPROPRIATED FUND BALANCE-GENERAL FUND	010-000-000-499900		(\$1,850)

SNOW & ICE REMOVAL SUPPLIES-STREET DEPT.	010-600-401-514304	\$92,650	
APPROPRIATED FUND BALANCE-GENERAL FUND	010-000-000-499900		(\$92,650)

VOTE:Aye - All
Nay - None

**SCHEDULING OF SPECIAL MEETINGS - DISCUSS MSD TASK FORCE
RECOMMENDATIONS**

Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved to schedule the following special meetings in order to further discuss the Municipal Service District Special Task Force recommendations:

- \$ Thursday, February 24, 2011 - 7:00 p.m. in the Council Chambers
- \$ Wednesday, March 2, 2011 - 5:30-7:00 p.m. in the Council Chambers.

VOTE:Aye - All
Nay - None

DISCUSSION & CREATION OF AGENDA - UPCOMING SPECIAL MEETINGS

Town Manager Greg Young explained that as a result of the special meeting of the Council on February 10th, Council decided to discuss items to be placed on the agenda for the upcoming special meetings. The following list of agenda items was compiled by the Council:

AGENDA TOPICS

February 24, 2011 7:00 p.m. (Town Council only):

- θ Φυνδινγ Σουρχε φορ Νεω Ποσιτιον (Γενεραλ Φυνδ ορ ΜΣΔ Φυνδς)
- θ Νεω Ποσιτιον Αδμινιστρατιπελψ/Φινανχιαλλψ, Ωηατ ις της Προχεσσ?
- θ Θοβ Δεσχριπτιον Αδμινιστρατιπε Ποσιτιον
- θ Λοχατιον οφ Οφφιχε Νεω Ποσιτιον
- θ Χλεαρ Δεφινιτιον οφ Τερμς
- θ Μαιν Στρεετ Βουνδαρψ/ΜΣΔ Βουνδαρψ Αλιγνμεντ οφ Βουνδαριεσ
- θ Προχεδυρε φορ Εσταβλισημεντ οφ Δοωντοων Πριοριτιεσ/Γοαλς
- θ Υνιπερσιτψ Ινπολπεμεντ Ηοω το Ινχλυδε ΑΣΥ? (Εξαμπλε-Χηαπελ Ηιλλ)

March 2, 2011 5:30-7:00 p.m. (Town Council, DBDA, MSD Task Force, other Stakeholders):

- θ Δισχυσσιον οφ ΔΒΔΑ Βψ-Λαωσ (Τιμε-λινε, Τερμς, Ελεχτιον, Προχεσσ, Πολιχψ χηανγεσ)
- θ Παρτνερσηπ ωιτη ΔΒΔΑ Εσταβλισημεντ οφ Μοδελ
- θ Ποσσιβλε Χηαρρεττε το Εσταβλιση ρισιον
- θ Προφεχτ-Βασεδ Βυδγετ/Αχτιπε Γοαλς
- θ Εσταβλισημεντ οφ Βιγ-Ναμε Επεντ Ρεινπιγορατε Δοωντοων (ι.ε., Δανιελ Boone Δαψς)
- θ Ηοω το Χυλτιπατε μορε Δαιλψ Ινπολπεμεντ φρομ της Βοαρδ
- θ Μαιν Στρεετ Προγραμ ανδ Οτηερ Συμπορτ Προγραμς
- θ Σταφφινγ Νεεδς/Σεπαρατε φρομ Αδμινιστρατορ/Νον-Προφιτ
- θ Ποσσιβιλιτψ οφ Παρτ-Τιμε Διρεχτορ Χοστ Σηαρε Ηψβριδ
- θ Υσε οφ Ιντερνς
- θ Εξτερναλ Φυνδραιοινγ
- θ Προξψ ςοτινγ

Mayor Clawson noted that the Clerk will advertise the agendas for the upcoming meetings.

RECESS MEETING

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to recess the meeting at 9:32 p.m., until Thursday, February 17, 2011 at 6:30 p.m.

VOTE: Aye - All
Nay - None

A recessed meeting of the Boone Town Council from Tuesday, February 15, 2011 was called to order on Thursday, February 17, 2011 at 6:30 p.m. in the Council Chambers. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Andy Ball, Rennie Brantz, Jamie Leigh and Stephen Phillips. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Town Clerk Freida Van Allen, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Planning & Inspections Director Bill Bailey, Finance Director Amy Davis, Human Resources Director Peri Moretz, Public Utilities Director Rick Miller, Public Works Director Blake Brown and Assistant to the Manager Jim Byrne.

TENTATIVE AGENDA ADOPTION

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

- Deletion of Recognition of Council Chambers Artwork.
- Deletion of Items 13.B. - Requested Appearance - Emily Wright.

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

PUBLIC COMMENT

Mr. Paul Welch commented that he appreciated the Town Council and all that it does for the Town of Boone.

BOARD APPOINTMENTS

Affordable Housing Task Force

There were no applications received for the vacant position; therefore, the Clerk will continue to advertise.

Board of Adjustment

Council member Ball nominated Dr. Harvard Ayers for the open ETJ position. There being no further nominations Dr. Ayers is nominated for the ETJ position. This term will expire June 30, 2012. Council member Mason requested that the Clerk explain the Town's nominating process when forwarding this nomination to the County Commissioners. Council member Mason also requested that board appointments be placed on the Thursday agenda starting in March. This will allow Council more time to solicit for applications. The Clerk will continue to advertise for the two vacant Alternate ETJ positions.

VOTE: Aye-All
Nay-None

Downtown Boone Development Association Board of Directors

There were no applications received for the six vacant positions; therefore, the Clerk will continue to advertise.

Jones House Advisory Board

Council member Brantz nominated Beth Carrin. There being no further nominations, Council appointed Beth Carrin to one of the three open positions on the Jones House Advisory Board. Her term will expire February 28, 2014. The Clerk will continue to advertise for the two vacant positions.

VOTE: Aye-All
Nay-None

Outside Agency Funding Commission

There were no applications received for the vacant position; therefore, the Clerk will continue to advertise.

Pedestrian Plan Steering Committee

Council member Leigh nominated Andrew Miller and Council member Mason nominated Margie Mansure to two vacant positions on this committee. There being no further nominations, both Andrew Miller and Margie Mansure were appointed to this committee. The Clerk will continue to advertise for the four vacant positions.

VOTE:Aye-All

Nay-None

Planning Commission

Council member Mason nominated Rev. Thomas Brown to the ETJ position open on the Planning Commission. There being no further nominations, Council nominated Rev. Thomas Brown to the ETJ position on the Planning Commission. This nomination will be sent to the Watauga County Commissioners for final appointment. This term will expire June 30, 2014.

VOTE:Aye-All

Nay-None

Sustainable Development Task Force

Council member Ball nominated Tim Hefflinger as the ASU Student representative on the Sustainable Development Task Force. There being no further nominations, Council appointed Tim Hefflinger as the ASU Student representative on the Sustainable Development Task Force. His term will expire February 17, 2014.

VOTE:Aye-All

Nay-None

Water Study Committee

There were no applications received for the vacant position; therefore, the Clerk will continue to advertise.

Watauga County Recreation Commission

Council member Leigh nominated Rick Campbell to the vacant position. There being no further nominations, Council nominated Rick Campbell. This nomination will be sent to the Watauga County Commissioners for final appointment.

REQUESTED APPEARANCE - ERIC MARLAND

Mr. Eric Marland, a faculty advisor for the ASU Cycling Club and a member of the Board of Directors of the Boone Area Cyclists, appeared before Council to request adoption of a resolution supporting safe and accessible bicycling in Boone. Mr. Marland suggested a collaboration between the Town, County and ASU to implement bike initiatives. On a motion by Council member Ball, seconded by Council member Mason, Council moved to adopt the following resolution:

Resolution in Support of Safe and Accessible Bicycling in Boone

WHEREAS, cycling is good for Boone's health, tourism, economy, and for the environment; and

WHEREAS, Boone's beauty can be greatly appreciated from a bicycle; and

WHEREAS, the bicycle is a viable and environmentally sound form of transportation and an excellent form of recreation; and

WHEREAS, creating bicycle-friendly communities has been shown to improve citizens' health, well-being, and quality of life, to boost community spirit, to improve traffic safety, and to reduce pollution and congestion; and

WHEREAS, the March 2001 issue of Bicycling Magazine stated that "The western part

of North Carolina is simply some of the best road riding in the world.”; and

WHEREAS, the High Country hosts no fewer than fifteen annual cycling events and series that attract thousands of bicyclists each year; and

WHEREAS, the 13th Annual Blood, Sweat and Gears ride broke a new record registering 700 riders for the 100mile ride in 1 day and 500 riders for the 50 mile ride in 5 days; and

WHEREAS, Lance Armstrong declared "If I ever have any serious problems again, I know that I will go back to Boone and find an answer. I got my life back on those rides"; and

WHEREAS, more than 1,000 volunteer hours have contributed to building trails at Rocky Knob Park, Boone’s first municipal cycling facility that will open this year; and

WHEREAS, Boone Area Cyclists is a 501 c3 non-profit with a growing membership committed to safe and accessible cycling throughout the Boone area

NOW, THEREFORE, BE IT RESOLVED that the Boone Town Council endorses Boone Area Cyclists declaration of 2011 as the Year of the Bicycle in Boone and supports efforts within the community to develop, coordinate, and promote safe and accessible bicycling opportunities throughout the Boone area.

ADOPTED this 17th of February, 2011.

Loretta Clawson, Mayor

Attest:

Freida Van Allen, Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 157)

VOTE:Aye-All
Nay-None

REQUESTED APPEARANCE - ADRIAN TAIT

Mr. Adrian Tait, Chairman of the Community Appearance Commission, appeared before Council to update members on the development of a plan that will provide a unified appearance for the Town of Boone. Mr. Tait said the Community Appearance Commission is working closely with the Historic Preservation Commission to develop this plan and that it should be ready for presentation in March 2011. Council members Mason and Brantz thanked the Community Appearance Commission for all its hard work.

WATER AND SEWER REQUEST - DEREK SCISM

Town Attorney Sam Furguele opened a public hearing at 7:15 p.m. to hear sworn testimony from Dan Zimmerman, Public Utilities Director Rick Miller, and Planning and Inspections Director Bill Bailey on a request for water and sewer to property located off White Oak Lane. Mr. Dan Zimmerman, Scism’s employer, testified that he had permission to speak on behalf of Mr. Scism. Mr. Zimmerman said the lot off White Oak Road can not have a septic system because of a small creek and that to drill a well is impossible because of an existing sewerline. Mr. Scism is wanting to purchase the house formerly located on the AppalCART property and move it to the White Oak Lane lot. Mr. Zimmerman testified several times that unless water and sewer is granted, the vacant lot is useless. Public Utilities Director Rick Miller testified that the Town has a master meter in the White Oak roadway at the entrance to Caldwell Community College. Private water and sewer lines are connected to the main line. Council member Mason questioned the costs associated with extending new lines from the master meter. Public Utilities Director Miller said it would cost about \$50,000; however he indicated that the lot is located within the secondary pressure zone and that extensions into the secondary pressure zone are prohibited by Ordinance #05-01. Public Utilities Director Miller pointed out the only options for

service are to either extend new lines or obtain easements to utilize existing lines. Mr. Zimmerman questioned what the consequences would be if Scism tapped into an existing line. Mr. Miller responded that he was unsure but that the water line might not be large enough to serve two residences. Mr. Miller also stated that the NC Plumbing Code requires a separate connection onto sewer lines. Town Attorney Sam Furgiuele asked how long the lines have been in place. Mr. Miller testified that those lines were put into service during the tenure of Public Utilities Director George Sudderth. Council had some questions regarding annexation of the property. Planning and Inspections Director Bill Bailey said since it is a satellite annexation, if the lot is located within a subdivision, the entire subdivision must agree to the annexation. Mr. Zimmerman commented that all these rules create a hardship for the property owner and buyer. Council member Mason requested clarification regarding the lot. Mr. Bailey testified that the GIS and Watauga County Tax Department show that this is one lot with a 5-bedroom home located on the lot. Council and Mr. Zimmerman discussed at great length the legality of the property lines. Mr. Zimmerman commented that he clearly does not have enough information ready for the Town to grant water and sewer at this time. Town Attorney Furgiuele suggested that Mr. Scism obtain an attorney regarding the property lines. There being no further testimony, the public hearing closed at 8:05 p.m. On a motion by Council member Ball, seconded by Council member Phillips, Council moved to table this request until the March 17, 2011 meeting.

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

CLOSED SESSION

On a motion by Council member Brantz, seconded by Council member Ball, Council moved to enter Closed Session at 8:09 p.m. in order to discuss legal advice on the claim by Gang of Five, LLC, the claim against the Town for wrongful death, UDO enforcement issues, the approved forestry plan, the raw water intake and the old high school property. Discussion will also entail the settlement offer to resolve penalties and to possibly lease town property off River Street and lease of town property to AT&T, pursuant to NCGS 143-318.11a)3.

VOTE:Aye-All
Nay-None

On a motion by Council member Brantz, seconded by Council member Mason, Council moved to exit Closed Session at 11:17 p.m.

VOTE:Aye-All
Nay-None

ACTION FOLLOWING CLOSED SESSION

On a motion by Council member Mason, seconded by Council member Phillips, Council moved to amend the contract with W.K. Dickson in the amount of \$7,370 in order to facilitate the raw water reclassification workshop and hearing as requested by the Watauga County Board of County Commissioners.

VOTE:Aye-All
Nay-None

ADJOURNMENT

On a motion by Council member Mason, seconded by Council member Phillips, Council moved to adjourn at 11:28 p.m.

VOTE:Aye-All
Nay-None

Town Clerk

Mayor

Deputy Town Clerk