MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL JUNE
21, 2011

The regular meeting of the Boone Town Council was called to order at 6:30 p.m. on Tuesday, June 21, 2011 in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Andy Ball, Rennie Brantz, Jamie Leigh and Stephen Phillips. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Town Clerk Freida Van Allen, Public Utilities Director Rick Miller, Public Works Director Blake Brown, Fire Chief Jimmy Isaacs, Finance Director Amy Davis, Police Chief Dana Crawford, Planning Director Bill Bailey, Planner Jane Shook and Assistant to the Manager Jim Byrne.

ANNOUNCEMENTS

Mayor Clawson announced that the Doc Watson Festival will be held on King Street on Friday, June 24, 2011 from 4 until 8 p.m. Mayor Clawson invited the community to attend and be a part of the celebration.

TENTATIVE AGENDA ADOPTION

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

1. Item 7.R. - Presentation of Pedestrian Plan.
2. Item 14.F. - Requested Appearance - Stacy Sears.
3. Additions to Closed Session: Personnel Matters, Legal Advice-Gang of Five and Legal Advice - Update on Monte Green Settlement.

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

VOTE: Aye-All
Nay-None

CONSENT AGENDA ADOPTION

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

May 2, 2011 - Quarterly Public Hearing.
May 9, 2011 - Special Meeting.
May 17 & 19, 2011 - Regular Meetings.

Approval of Special Event Permit - 2011 Grandfather Mountain Marathon.

Adoption of Code Amendment - Incorporation of Water and sewer Use Ordinance into the Town of Boone Comprehensive Code of Ordinances.

Approval of Encroachment Agreement - Splendiferous Gallery & Gifts.

STATE OF NORTH CAROLINA ENCROACHMENT AGREEMENT
COUNTY OF WATAUGA

THIS ENCROACHMENT AGREEMENT is made and entered into this the 21st day of June, 2011, by and between the TOWN OF BOONE, party of the first part; and Splendiferous Gallery & Gifts, 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: 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.

Tax Releases - May, 2011.

TAX RELEASES
MAY 2011

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

ADOLPHOUS HILTON, ALLEN JAMES HILTON, TINA JANE	2010	14.90	TURN IN TAG
FEDERAL EXPRESS CORPORATION	2010	76.18	PUBLIC UTILITY STATUS-EXEMPT FROM REGULAR BILLING
HORTON, BARRY HORTON, INGRID	2010	12.95	TRANSPOSED VALUE FROM 2009
RUSHING, KIMBERLY HELSETH RUSHING, DYKES TAYLOR JR	2010	29.29	TURN IN TAG
		133.32	

VOTE: Aye-All
Nay-None

PUBLIC HEARING- CDBG GRANT SUBMISSION

Mayor Clawson opened the public hearing at 6:32 p.m. Assistant to the Manager Jim Byrne said this second and final public hearing is for the development of a $600,000 CDBG project which will provide $560,000 in Flood and Drainage Improvements and will be used to partially match a $2.5 million Army Corps Section 206 project that will restore a reach of the South Fork of the New River. Mr. Byrne said the application is due by June 30, 2011. There being no public comment, the hearing closed at 6:33 p.m.

DISCUSSION & ACTION ON TABLE OF PERMISSIBLE USES

Planning and Inspections Director Bill Bailey said the Planning Commission did not discuss the table of permissible uses at its last meeting. Council members Phillips and Ball agreed to attend the July 11th Planning Commission to continue discussion.

PRESENTATION OF PLANNING & INSPECTIONS MONTHLY REPORT

Planning and Inspections Director Bill Bailey presented the Planning and Inspections Monthly Report **(permanently on file in the June 2011 Town Council Packet.)**

PRESENTATION OF POTENTIAL OVERLAY DISTRICTS

Planner Jane Shook presented information about two potential overlay districts. The first district is located primarily along Blowing Rock Road, from the intersection of Highway 105 to Highway 421. The second district is located in the Deerfield Road area. The full report is **permanently on file in the June 2011 Town Council packet file**. Planning and Inspections Director Bill Bailey felt these two areas are best suited for the Town to experiment with overlay districts and asked for direction from Council as to which of the areas Council would like to implement first. Mr. Bailey explained that once direction is received, the planning staff will prepare a more in depth study of the area chosen and bring those standards back to Town Council for inclusion at a future zoning public hearing. Council discussed at length the concept of overlay districts and which area should be implemented first. On a motion by Council member Ball, seconded by Council member Leigh, Council moved to develop plans for both overlay district areas which will be presented by the Planning staff at the August Town Council meeting. Council expressed that the development of these overlay districts should not interfere with the revision of the table of permissible uses that is currently ongoing.

VOTE: Aye-All
Nay-None

APPROVAL OF ZONING TEXT AMENDMENT

CASE 20110228 - Text amendment to modify language in the Unified Development Ordinance, Article III, Administrative Mechanisms regarding Board/Commission appointments. Planning and Inspections Director Bill Bailey reported that the Planning Commission voted to approve the text amendment; however the text was modified to allow the Board of County Commissioners the right to appoint ETJ members. Town Attorney Sam Fugiuele reminded Council that this text amendment was developed after the County Commissioners appointed town residents to ETJ positions. Council member Mason pointed out this is not an arbitrary text amendment and that Town boards need ETJ representation. Council member Leigh agreed. On 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 clarifies the ETJ process which is critical to the application and enforcement of the Town's comp plan and all other adopted plans.

VOTE: Aye-All
Nay-None

On a motion by Council member Mason, seconded by Council member Ball, Council members moved to approve the proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because it clarifies the number of members for the Town and the ETJ, and it clarifies the adjustment of any ratio for the Town and ETJ, the appointment process, qualifications, quorums and voting requirements and that the authorizing legislation mandates that the Town ensure proportional representation.

VOTE: Aye-All
Nay-None

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

ADOPTION OF FISCAL YEAR 2011/2012 BUDGET ORDINANCE

Town Manager Greg Young presented the Fiscal Year 2011/2012 budget for adoption. On a motion by Council member Ball, seconded by Council member Leigh, Council moved to discuss the Outside Agency funding allocation separately and excuse Council member Mason from discussing and voting on this matter.

VOTE: Aye-All
Nay-None

Town Manager Greg Young explained how the Outside Agency Funding Committee awarded the funding based upon a scoring system. Council member Brantz commented that the Committee did a good job; however, Council member Brantz felt that the Arts Council should receive the $7,000 funding as requested. Council member Brantz pointed out the various ways the Arts Council supports local citizens and felt that funding the Arts Council is a vote of confidence from the Town Council. Council member Leigh argued that if the Town Council wants to fund the Arts Council it should review the Outside Agency Funding pool of funds rather than allocate additional funding to that pool or give separate funding to the Arts Council. Council member Ball agreed that to fund the Arts Council separately will set a precedent. After some discussion, on a motion by Council member Ball, seconded by Council member Leigh, Council moved to adopt the Outside Agency Funding as presented in the FY 2011/2012 budget.

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

Council member Brantz then made a motion to allocate an additional $7,000 from the fund balance to the Arts Council contract line item within the Jones House budget. Council member Mason seconded. Before voting, Council member Ball pointed out this motion is premature since the Town does not have a contract with the Arts Council. Council member Leigh also pointed out that since the Arts Council advised that the $7,000 was used for matching grant funds, allocating additional funds to a contract will not be seen as community support. Council member Mason offered a compromise and suggested that the Arts Council approach Council for matching funds as grants are submitted.

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

On a motion by Council member Ball, seconded by Council member Leigh, Council moved to adopt the Fiscal Year 2011/2012 budget ordinance.

(BUDGET ORDINANCE IS LOCATED IN ORDINANCE BOOK 4, PAGES 8-14)

VOTE: Aye-All
Nay-None

Mayor Clawson declared a break at 8:28 p.m. Council reconvened at 8:40 p.m.

EXPANSION OF JONES HOUSE HOURS OF OPERATION

Council member Brantz reported that the Jones House Advisory Board met and agreed to extend the operating hours of the Jones House. Council member Brantz said the Jones House will now be open from 10:00 a.m. to 2:00 p.m. on Saturdays from July, 2011 to December, 2011 on a trial basis. Ms. Jimmie Owen, representative of the Jones House Advisory Board, recommended that the contract between the Town and the Watauga County Arts Council reflect the additional hours and that the Arts Council be compensated either by additional Town funding or by rentals. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to include within the Arts Council contract and lease the expanded hours of the Jones House for Saturdays 10:00 a.m. to 2:00 p.m., with the exception of previously scheduled events and the holiday decorating period on a trial basis from July 1, 2011 to December 31, 2011. After a very lengthy discussion regarding the contract and lease, Council member Leigh offered as a friendly amendment that the Jones House Advisory Board incorporate the expanded hours by shifting week-day hours. Council member Brantz agreed to this friendly amendment.

VOTE: Aye-All
Nay-None

REQUEST FOR MORATORIUM - RELOCATION OF DBDA OFFICE TO JONES HOUSE

Council member Brantz commented that he felt that Council acted hastily last month by relocating the DBDA office within the Jones House. Council member Brantz felt that the Jones House Advisory Board, Downtown Boone Development Association and Watauga County Arts Council boards should have discussed the office relocation beforehand. Council member Brantz also pointed out that Mazie Jones Levenson, the previous owner of the Jones House, said she was worried about the compromise of the cultural component of the Jones House. Council member Brantz made a motion to institute a three-month moratorium on the relocation of the DBDA office to the Jones House. Council member Mason seconded. Before voting, Mayor Clawson questioned the motion. Town Attorney Sam Furgiuele ruled that the motion was out of order since Council member Brantz was requesting a rescission of a decision that Council made last month. Town Attorney Furgiuele explained that since the action request form does not request a rescission, the agenda must be amended in order to consider a rescission motion. Council member Mason said this is a complicated issue, with a pending contract and lease, and that all parties should be involved as well as alternative locations discussed. Council member Leigh and Ball questioned why the issue is such a "big deal" since all the Town is requesting is an office space in a building that is owned by the Town of Boone. After a lengthy discussion regarding procedural motions, Council member Brantz withdrew his motion. Council member Mason agreed to the withdrawal. Council member Mason then made a motion to amend the agenda to **Rescind the Decision to Relocate the DBDA Office to the Jones House**. Council member Phillips seconded.

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

The motion failed pursuant to §30.06 (e) of the Code of Ordinances.

REQUEST FOR ALLOCATION OF FUNDS - REPLACEMENT OF HEAT PUMPS

Council member Brantz said there is a mistake in the Council board book in the amount of funding needed to replace the heat pumps. On a motion by Council member Brantz, seconded by Council member Mason, Council moved to allocate $8,500 to cover the costs to replace two heat pumps at the Jones House. Before voting, Town Manager Greg Young commented that the Town's energy audit recommends that the Town install natural gas to all facilities if available. Town Manager Young suggested installing a natural gas furnace which will have higher up-front costs but will cost less in the long-term. There was no vote recorded on the first motion. Council member Brantz then made a motion to allocate $4,900 from the fund balance for the emergency heat pump that was purchased for the Jones House last July, 2010. Council member Leigh seconded.

VOTE: Aye-All
Nay-None

On a motion by Council member Brantz, seconded by Council member Leigh, Council moved to allocate $8,000 from the fund balance for the purchase of a natural gas furnace for the Jones House.

VOTE: Aye-All
Nay-None

APPROVAL OF CODE AMENDMENT - CHAPTER 30 LIMITING SPECIAL MEETINGS

Town Attorney Sam Furgiuele said this code amendment will set a goal for Council to limit the number of special meetings it has per month. Council member Mason expressed her concerns about the amendment and felt that if Council needs to hold a special meeting, it should not be restricted by a code amendment. Town Attorney Furgiuele said this code amendment is not binding and more of a goal to help Council be more efficient. On a motion by Council member Leigh, seconded by Council member Brantz, Council moved to adopt the following code amendment:

§ 30.03 SPECIAL MEETINGS.

(A) A special meeting is any non-emergency meeting of the Council held at any time other than that specified in § 30.02. **The Council acknowledges that special meetings of the Town Council, although sometimes needed for the effective governance of the Town, create significant burdens on Town staff and may impose significant costs on the Town. Excluding quarterly public hearings, budget workshops and properly called emergency meetings under § 30.04, and recognizing the provisions of N.C. Gen. Stat. § 160A-71 regarding the calling of a special meeting, in order to control those burdens and costs, Council shall seek to limit the number of special meetings called in any calendar year to twelve or fewer, with the goal of no more than three such meetings held each calendar quarter. To facilitate this end Council shall ordinarily refrain from scheduling a special meeting when the item of business for which a special meeting is considered may be adequately addressed at another meeting of the Council. In general, special meetings shall be used for matters involving the following:**

(1) Decisions, although not constituting an emergency, which must be made prior to another scheduled meeting of the Council;

(2) Issues of such scope or complexity that they can not be accommodated within the available times for other scheduled meetings of the Council; or

(3) Matters which due to their nature require the attendance of non-staff guests who are unavailable at other scheduled meetings of the Council.

VOTE: Aye-All
Nay-None

APPROVAL OF CODE AMENDMENT - CHAPTER 30 SERVING ON COMMITTEES

Council member Ball explained that he proposed this code amendment in order to make sure that citizens, not council members, are leading committees. Council member Mason voiced her concerns about the amendment, and stated that Council is elected to serve the citizens, and indicated that she does not see the benefit of not allowing Council to vote on a committee. Council member Brantz said he was concerned about the impact of this code amendment on committees and felt this amendment is over-reaching. Council discussed the matter at great length. Town Attorney Sam Furgiuele clarified that the amendment will govern all Town appointed committees. Finally, after striking some language from the amendment Council member Ball made a motion to adopt the following code amendment. Council member Mason seconded.

CHAPTER 30: TOWN COUNCIL

§ **30.51 APPOINTMENTS.**

(A) All appointments made by the Council shall be made in open session. The Council may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the Town Council or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.

(B) ~~**Unless mandated by statute or when designated as a member of a body not created by the Town, Council members shall not be appointed as voting members of subordinate boards commissions, task forces, advisory bodies or committees. Instead, they shall be designated as ex-officio, non-voting members and shall act as liaisons to those bodies to which they are appointed**~~. The Council shall use the following procedure to appoint individuals to various subordinate boards commissions, task forces, advisory bodies or committees but this shall not apply to the designation by the Council of one or more of its own members ~~**to participate in such body:**~~ to participate or act as liaison to boards, commissions, task forces, advisory bodies, committees or other entities of its own creation or designation or appointment of one more of its own members to participate or act as liaison to other bodies not created by the Town:

. . .

CHAPTER 35: BOARDS, COMMISSIONS, TASK FORCES, ADVISORY BODIES, COMMITTEES AND OTHER SUCH ENTITIES

. . .

§ 35.02 PROCEDURE FOR CREATION OF BOARDS, COMMISSIONS, TASK FORCES, ADVISORY BODIES, COMMITTEES AND OTHER SUCH ENTITIES.

. . .

(B) The Council shall appoint the members of each board, commission, task force, advisory body, committee and other entity (hereafter, "the body") in accordance with the Town's Unified Development Ordinance and §30.51, *supra*, as appropriate, and unless a different procedure is established by an enabling ordinance specific to the body, shall designate the Chair and Vice-Chair of each such body. **A Council member may not serve as Chair or Vice-Chair of a Town body.**

. . .

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

. . .

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

(1) A quorum shall be 50% of the persons initially appointed to the body or sub-committee. ~~**Any Town Council member appointed as liaison or ex officio, non-voting member shall not be considered in determining the number of persons constituting a quorum, nor should such member be counted to determine if a quorum is present.**~~

(2) In the absence of the chair, the vice-chair shall conduct any meeting of the body or sub-committee, and in the absence of both officers, the Mayor may designate a person to act as chair for the meeting in question.

(3) The agenda of the body or sub-committee shall include only those matters within the responsibilities and powers of the body or sub-committee which have been conferred upon it by the Council.

(4) The business of the body or sub-committee shall be conducted in such manner as to afford all members an opportunity to speak. However, no member shall generally address the body until first recognized by the chair, and members of the committee, task force, or advisory body shall be respectful to each other and shall avoid interrupting each other.

(5) The role of a Town Council member appointed as liaison or ex officio, non-voting member shall be:

(a) to provide direction to the body or sub-committee regarding the relationship between the Town Council and the body or sub-committee;

(b) to assist with procedural matters;

(c) to serve as a resource; and

(d) to communicate concerns and initiatives of the body back to the full Town Council.

~~(5)~~**(6)** Minutes of the body or sub-committee shall be subject to revision and adoption by the group as a whole.

~~(6)~~**(7)** All actions or recommendations of the body or sub-committee shall require the presence of a quorum and are only effective or adopted upon majority vote, following a motion and second. ~~**A Town Council member appointed as liaison or ex officio, non-voting member shall not be entitled to vote.**~~ When ~~such~~ **an** action is to be reported to the Town Council, the committee, task force, or advisory body shall not only report the action or recommendation adopted, but the vote by which it was adopted.

~~(7)~~**(8)** Meetings of the body or sub-committee shall proceed in the following order: adoption of an agenda, approval of the minutes, unfinished business, new business, informal discussion, and public comment, when public comment is to be accepted. By majority vote of the members of the body or sub-committee in attendance, the order of business may be altered.

~~(8)~~**(9)** At any meeting of the body or sub-committee, if the meeting is opened for public comment, any person wishing to address the body or sub-committee shall state his or her name and whether or not he or she is a resident of the town.

VOTE: Aye-All
Nay-None

SCHEDULING OF PROPOSED TEXT AMENDMENT

Town Attorney Sam Furguiele said this UDO text amendment is presented in conjunction with the previous code amendment just adopted. After little discussion, on a motion by Council member Mason, seconded by Council member Ball, Council moved to redraft the UDO text amendment to coincide with the previous code amendment and to have the Historic Preservation Commission report to Council regarding its activities.

VOTE: Aye-All
Nay-None

APPROVAL OF CODE AMENDMENT - CHAPTER 110 TAXICABS

Town Attorney Sam Furgiuele said this code amendment will allow the Police Department to perform compliance inspections on taxi cabs. On a motion by Council member Brantz, seconded by Council member Mason, Council moved to adopt the following code amendment:

CHAPTER 110: TAXICABS AND OTHER VEHICLES FOR HIRE

Section

§ 110.01 DEFINITIONS.

TAXICAB when used in this chapter shall be defined as any motor vehicle seating nine or fewer passengers operated upon any street or highway on call or on demand, accepting or soliciting passengers indiscriminately for hire between such points along streets or highways as may be directed by the passenger so being transported.

OPERATOR OF A BUSINESS INVOLVING VEHICLES FOR HIRE when used in this chapter shall mean an owner or manager of a business, other than one all of whose vehicles are regulated under N.C. Gen. Stat. Chapter 62, operated by a Regional Transportation Authority created or operating under N.C. Gen. Stat. Chapter 160A, Articles 26 or 27, or any transportation service operated by a governmental entity, which involves one or more vehicles for hire operated at any time within the corporate limits of the Town, including a taxicab business, whether or not the individual actually drives such vehicle, and whether or not the business is engaged in other activities. If such business is owned by a corporation, it shall be every person given corporate authority for making decisions regarding the day to day functioning of the business. If such business is owned by a limited liability company, it shall be every member-manager of the limited liability company.

VEHICLE FOR HIRE when used in this chapter shall mean any motor vehicle, including but not limited to a taxicab, accepting or soliciting one or more passengers for hire between any two locations, during at least a portion of which it is operated upon a public street or highway, other than those vehicles regulated under N.C. Gen. Stat. Chapter 62, vehicles owned and operated by a Regional Transportation Authority created or operating under N.C. Gen. Stat. Chapter 160A, Articles 26 or 27, or vehicles owned and operated by a governmental entity.

§ 110.02 PERMIT REQUIRED.

Every operator of a business involving vehicles for hire is required to obtain a permit from the Town prior to operating said business. Every driver of a vehicle for hire, including a taxicab, operating over any public street within the corporate limits of the town is required to obtain a permit from the town prior to engaging in said activity.
Penalty, see § 10.99

§ 110.03 APPLICATION.

The application required of each applicant to operate a business involving vehicles for hire or to drive a vehicle of hire, including a taxicab, shall be made upon a form furnished by the town for such purpose and shall, among other things, require the full name, any other name by which the person has been known, complete physical and mailing address, physical condition, physical description, full name and contact information for every former employer within the last ten years, court record, chauffeur's license number, if applicable, and such other identifying information as may be needed to conduct a State or national background check. Such application shall be signed and sworn to by the applicant in front of a North Carolina Notary Public. Each applicant shall further appear at the office of the Police Department for the purpose of having his or her fingerprints taken and photograph made, both of which shall constitute a part of the application. Each applicant shall be required to sign a form consenting to the check of his criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories in order to conduct such check.

§ 110.04 INVESTIGATION.

The Chief of Police or his designee shall investigate the facts stated in each application, and in addition may subject such an applicant to a national criminal history background check, including through the use of FBI records. All information collected pursuant to the investigation shall be privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes. The applicant must pay the fee, if any, for any such background check. The Chief of Police or designee may also require an applicant to submit to a controlled substance examination for which the applicant must pay the actual costs. Following his investigation, the Chief of Police or his designee shall report his findings and recommendations to the Town Council, but any privileged or confidential information shall only be shared with the Town Council in a properly called closed session.

§ 110.05 CONDITIONS OF PERMIT; ISSUANCE AND FEE.

(A) The Town Council may refuse to issue the permit if it finds, as the result of information which it concludes is reliable, that the applicant:

(1) Has been convicted of a felony against the State of North Carolina, or has been convicted of any offense against another state which would have been a felony if committed in this North Carolina;

(2) Has violated of any federal or State law relating to the use, possession, or sale of alcoholic beverages or narcotic or barbiturate drugs;

(3) Is addicted to or an habitual user of alcoholic beverages or narcotic or barbiturate drugs;

(4) Has violated any federal or State law relating to prostitution;

(5) Is not a citizen of the United States or permanent resident alien;

(6) Is in habitual violation of traffic laws or ordinances; or

(7) Is not a careful and prudent driver.

This section, however, shall not prohibit the Town from issuing a permit to a person who, although not fully meeting each of the foregoing criteria, has otherwise demonstrated the ability to safely engage in the business of transporting passengers for hire, as demonstrated to the town Police Department and determined by the Town Council.

(B) If the Town Council approves the issuance of a permit to the applicant, no permit may be issued until the applicant:

(1) Pays a fee in the amount of $15.00;

(2) Pays any other amounts due in connection with the investigation of the application;

(3) If the applicant is the operator of a business involving vehicles for hire, shows that he has policies in place by which he will maintain control over each driver working in the business with respect to the fares to be charged and the drivers behavior while transporting passengers; ~~and~~

(4) Signs a consent for periodic and random inspections of taxicabs and other vehicles for hire for safety, and compliance with this ordinance; and

(5)~~(4)~~ Meets the following requirements, as applicable:

(a) If the applicant is an operator of a business involving taxicabs, files with the town proof of financial responsibility as required by G.S. § 20-280 maintained on all vehicles to be used for hire;

(b) If the applicant is a driver of a taxicab, files with the town proof of financial responsibility which meets the requirements of G.S. § 20-280 on each vehicle which the driver will operate;

(c) If the applicant is an operator of a business involving vehicles for hire other than taxicabs, files with the town a certificate of insurance from a carrier duly authorized to do business in the State of North Carolina, certifying that there is in effect a policy of liability insurance insuring the owner and operator of the business, his agents and employees while in the performance of their duties, against loss from any liability imposed by law for damages, including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident and arising out of the ownership, use or operation of such vehicles, to limits (exclusive of interests and costs) with respect to each such motor vehicle as follows: thirty thousand dollars ($30,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, sixty thousand dollars ($60,000) because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident;

(d) If the applicant is a driver of a vehicle for hire other than a taxicab, files with the town a certificate of insurance from a carrier duly authorized to do business in the State of North Carolina certifying that there is in effect a policy of liability insurance insuring him while in the performance of his duties, on each vehicle which he will operate, against loss from any liability imposed by law for damages ,including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident and arising out of the ownership, use or operation of such vehicles, to limits (exclusive of interests and costs) with respect to each such motor vehicle as follows: thirty thousand dollars ($30,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, sixty thousand dollars ($60,000) because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident;

(e) Maintains all vehicles for hire which are currently available for hire and within his control in a safe and sanitary condition, and maintains current North Carolina safety inspections on all vehicles for hire within his control.

§ 110.06 COMPLIANCE INSPECTIONS.

Any person issued a permit under this Chapter shall allow random inspections by the Chief of Police or his designee of any vehicle currently available for hire. Such inspections shall be for the following purposes:

(a) To insure that the vehicle is maintained in a safe and sanitary condition; provided, such inspections shall not be considered a substitute for required State safety inspections, and shall not constitute a guarantee or assurance to any person by the Town that a vehicle for hire is safe or sanitary;

(b) To ascertain compliance with this Chapter, including but not limited to:

(1) Determining that the permit, schedule of fares, and a photograph of the driver are displayed as required;

(2) Determining that there is a permanent sign at a conspicuous place on each taxicab or vehicle for hire showing that it is a taxicab or vehicle for hire;

(3) Determining that the vehicle's State safety inspection is current; and

(4) Determining that the driver of the vehicle is in possession of a valid driver's license, registration, and proof of insurance.

§ 110.0~~6~~7 REVOCATION.

(A) At any time after the issuance of a permit to any person to operate a business involving vehicles for hire or to drive a vehicle for hire, the Town Council may revoke such permit:

(1) If the person holding such permit, or any driver employed by such person is convicted of a felony, or

(2) The person holding such permit, or any driver employed by such person:

(a) Violates any federal or State statute relating to the use, possession or sale of intoxicating liquors;

(b) Violates any federal or State statute relating to the use, possession or sale of narcotic drugs;

(c) Repeatedly violates any traffic laws or ordinances;

(d) Violates any State or federal statute relating to prostitution;

(e) Becomes an habitual user of intoxicating liquors or narcotic drugs; or

(f) The operator of the business fails to maintain a policy of liability insurance as required by G.S. § 20-280 and this Chapter; or

(g) **Refuses to submit to a random compliance search pursuant to Section 110.06, or upon inspection, the Chief or his designee determines that a vehicle currently available for hire is not being maintained in a safe or sanitary condition.**

§ 110.0~~7~~8 DISPLAY OF PERMIT, SCHEDULE OF FARES, DRIVER'S PHOTOGRAPH.

All drivers and operators of businesses involving vehicles for hire shall prominently display in each vehicle for hire, so as to be visible to the passengers, the permit, the schedule of fares, and a photograph of the driver.
Penalty, see § 10.99

§ 110.0~~8~~9 SIGNS IDENTIFYING VEHICLE AS VEHICLE FOR HIRE OR TAXICAB.

Every person operating a business involving vehicles for hire or driving a vehicle for hire shall have permanent signs at conspicuous places on each taxicab or vehicle for hire showing that it is a taxicab or vehicle for hire.
Penalty, see § 10.99

§ 110.~~09~~10 NON-TRANSFERABILITY OF PERMIT.

A permit issued under this Chapter is not transferable.

VOTE: Aye-All
Nay-None

APPROVAL OF CODE AMENDMENT - NOISE ORDINANCE

Town Attorney Sam Furgiuele said this code amendment is a major overhaul of the noise ordinance and that Council may want to conduct a public hearing to receive citizen input. Town Attorney Furgiuele explained some of the changes to the ordinance, such as businesses that have outdoor entertainment must obtain an annual permit for a fee of $1,000. Town Attorney Furgiuele also pointed out that the penalties are heavy with an ordinance violation and that all investigations are complaint driven. Council discussed the code amendment at length and suggested that the Town Attorney add “jake brakes” as a prohibited noise and add later times for the use of power equipment in section 93.02(c)(8). On a motion by Council member Ball, seconded by Council member Mason, Council moved to conduct a public hearing on the proposed code amendment to the noise ordinance on Thursday, July 21, 2011 at 6:30 p.m.

VOTE: Aye-All
Nay-None

ADOPTION OF RESOLUTION - SUPPORTING THE TRANSFER OF THE TATUM COLLECTION TO SAHA

Council member Brantz reported that ASU has already agreed to transfer the Tatum collection but that there is no harm in the Town adopting the resolution. On a motion by Council member Brantz, seconded by Council member Ball, Council moved to adopt the following resolution:

**RESOLUTION OF SUPPORT TRANSFER
OF TATUM COLLECTION TO
SOUTHERN APPALACHIAN HISTORICAL ASSOCIATION, INC.**

WHEREAS, the Town of Boone (hereafter, “the Town”) has recognized, contractually and otherwise, that the Southern Appalachian Historical Association, Inc. (hereafter, “SAHA”) is the rightful owner of a number of historical structures located on Town property commonly referred to as the “Hickory Ridge Homestead”; and

WHEREAS, among the historical buildings at Hickory Ridge Homestead is the “Tatum Cabin,” a log cabin considered the oldest in Watauga County and one of, if not the oldest in the State of North Carolina, which was donated to SAHA in 1958 by the descendants of Revolutionary War officer, James Tatum; and

WHEREAS, the Town is informed that Appalachian State University (“ASU”) is in possession of a collection of artifacts from the Tatum family which was originally on display in and around the Tatum Cabin, labeled the “Tatum Collection”; and

WHEREAS, due to the discontinuation of the Appalachian Cultural Museum, ASU is in the process of seeking a new home or homes for the Tatum Collection; and

WHEREAS, the Town Council of Boone believes that the Tatum Collection should not be divided and should be reunited with the Tatum Cabin; and

WHEREAS, the Town Council of Boone supports the reunification of the Tatum Collection and Cabin, and believes that it will provide the public, scholars of Appalachian and regional history, students of ASU, and the citizens of Boone and Watauga County with a unique opportunity to observe and study the Tatum Collection in its natural setting, offering an important historical context to the collection; and

WHEREAS, the Town Council of Boone recognizes the responsible leadership of SAHA, and is confident that if the collection is returned to the Tatum Cabin, all necessary measures will be undertaken to protect the collection;

NOW, THEREFORE, BE IT RESOLVED that the Boone Town Council supports and encourages the transfer by Appalachian State University of the Tatum Collection to the Southern Appalachian Historical Association, Inc., for display at the Tatum Cabin and Hickory Ridge Homestead.

ADOPTED this the 21st day of June, 2011.

ATTEST:

_______________________ _______________________

Loretta Clawson, Mayor
Town of Boone

Frieda Van Allen
Clerk to the Board

(RESOLUTION TO BE TYPED IN BOOK <u>3,</u> PAGE <u>160</u>)

VOTE: Aye-All
Nay-None

<u>SCHEDULING OF SPECIAL MEETING - WATER USE COMMITTEE</u>

On a motion by Council member Brantz, seconded by Council member Mason, Council moved to schedule a special meeting meeting of Water Use Committee for Monday, July 25, 2011 at 5:30 p.m. in the Council Chambers.

VOTE: Aye-All
Nay-None

<u>MONTHLY WATER USE STATUS REPORT</u>

Public Utilities Director Rick Miller presented the monthly water-use status report. **(Permanently on file in the June 2011 Boone Town Council meeting packet.)**

<u>APPROVAL OF BUDGET AMENDMENTS</u>

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

DESCRIPTION	**ACCOUNT #**	**TO:**	**FROM:**
Professional Services-Legal	010-404-000-509100	$65,000.	
Appropriated Fund Balance	010-000-000-499900		$65,000.
Boone Housing Authority	010-411-000-549101	$16,336.	
FEMA Reimbursement	010-000-000-448030		$16,336.
Lobbyist	010-411-000-549126	$6,000.	

Appropriated Fund Balance	010-000-000-499900		$6,000.
Maint. & Repair-Vehicles	010-500-300-525301	$4,818.	
Misc. Revenue-General Fund	010-000-000-489900		$4,818.
Misc. Supplies (E911)	011-500-304-574000	$12,915.	
Capital Outlay-Other Equip (E911)	011-500304-574000	$136,410.	
Capital Outlay-Software (E911)	011-500-304-574100	$23,885.	
Appropriated Fund Balance	011-500-000-499900		$173,210.
Contracted Services-Public Utilities	030-700-801-577000	$250,000.	
Transfer from Water/Sewer Infrastructure	030-000-000-498033		$250,000.
Sludge Dryer - Heat	030-700-805-523122	$15,000.	
Appropriated Fund Balance-W/S	030-000-000-499900		$15,000.
Transfer to Water Cap. Reserve	030-700-890-598031	$158,490.	
Transfer to Sewer Cap. Reserve	030-700-890-598032	269,100.	
Impact/Avail. Fee-Water	030-000-000-467301		$158,490.
Impact/Avail. Fee-Sewer	030-000-000-467302		269,100.
Group Medical Insurance-Claims	035-430-000-535611	$60,000.	
Insurance Revenue-COBRA	035-430-000-450001		$10,000.
Appropriated Fund Balance-Health Insurance Fund	035-430-000-499900		$50,000.

VOTE: Aye-All
Nay-None

PRESENTATION OF PEDESTRIAN PLAN

Mr. Jason Reyes of Alta Greenways presented a powerpoint presentation outlining the steps in development of a pedestrian plan **(permanently on file in the June, 2011, Town Council packet file)**. Mr. Reyes said adopting the plan does not mean that the Town must fund the plan and that final comments from the NC Department of Transportation are expected soon. Mr. Reyes said once DOT comments are received the next step will be for Council to adopt the plan. After little discussion, on a motion by Council member Ball, seconded by Council member Mason, Council moved to conduct a public hearing on the plan at the July 19, 2011 meeting and consider adoption of the plan at the August 16, 2011 meeting.

VOTE: Aye-All
Nay-None

RECESS

On a motion by Council member Mason, seconded by Council member Leigh, Council moved to recess at 11:32 p.m. until Thursday, June 16, 2011 at 6:30 p.m.

VOTE: Aye-All
Nay-None

CALL TO RECONVENE

A recessed meeting from Tuesday, June 21, 2011 was called to order at 6:30 p.m., Thursday, June 23, 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, Rennie Brantz, and Andy Ball. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Deputy Town Clerk Kimberly Brown, Assistant to the Town Manager Jim Byrne, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, Human Resources Director Peri Moretz, Planning Director Bill Bailey, Planner Jane Shook, and Building Inspector Todd Miller.

ANNOUNCEMENTS

Mayor Clawson stated that any persons wishing to address the Council should sign in to speak during the Public Comment period.

TENTATIVE AGENDA ADOPTION

Town Manager Greg Young announced that he had no changes to the agenda to present. Council Member Brantz asked that the Council amend the agenda to add an action item for further discussion of the relocation of the DBDA Coordinator's office to the Jones House. 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 during public comment.

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Clawson announced the following board vacancies:

Greenway, Parks & Gardens Committee - There will be six community member positions available at the end of July.

BOARD APPOINTMENT - AFFORDABLE HOUSING TASK FORCE

There were no applications submitted for this vacancy.

BOARD APPOINTMENT - BOARD OF ADJUSTMENT

Council member Ball nominated Fred Hay for reappointment to the Board of Adjustment as a resident member with the term expiring June 30, 2014. By unanimous vote, the Council approved the appointment of Fred Hay. Council deferred appointments to the ETJ and ETJ alternate positions until the next regular meeting and directed staff to contact Dr. Harvard Ayers to determine if he is still interested in serving on the Board of Adjustment.

BOARD APPOINTMENT - COMMUNITY APPEARANCE COMMISSION

There were no applications submitted for these vacancies.

BOARD APPOINTMENT - DBDA BOARD OF DIRECTORS

It was the consensus of the Council to defer appointments to this board until after nominations are received from the current DBDA Board of Directors.

BOARD APPOINTMENT - GREENWAY, PARKS & GARDENS COMMITTEE

It was the consensus of the Council to defer appointment and continue to accept applications.

BOARD APPOINTMENT - HISTORIC PRESERVATION COMMISSION

There were no applications submitted for this vacancy.

BOARD APPOINTMENT - OUTSIDE AGENCY FUNDING COMMITTEE

There were no applications submitted for this vacancy.

BOARD APPOINTMENT - PEDESTRIAN PLAN STEERING COMMITTEE

There were no applications submitted for this vacancy. Council member Mason indicated that this committee has almost completed its tasks and that further advertising for the vacancy is not necessary.

BOARD APPOINTMENT - PLANNING COMMISSION

Council member Phillips nominated Dr. Cameron Lippard to the Planning Commission as an ETJ representative with a term expiring on June 30, 2015. By unanimous vote, the Town Council approved the appointment of Dr. Cameron Lippard.

BOARD APPOINTMENT - SUSTAINABLE DEVELOPMENT TASK FORCE

Mayor Clawson informed the Council that applications for the vacant position had been submitted by Brian Allenduff, Rossie Izlar, and Jordan Duke. Council member Ball nominated Jordan Duke to serve on the Sustainable Development Task Force. By unanimous vote, the Council approved the appointment of Jordan Duke to the Sustainable Development Task Force.

BOARD APPOINTMENT - TREE BOARD

There were no applications submitted for the vacancy.

BOARD APPOINTMENT - WATER STUDY COMMITTEE

There were no applications submitted for these vacancies.

REQUESTED APPEARANCES - RANDY JONES

Randy Jones of David R. Jones Architecture presented a request for an additional $4,917.77 for work included in the revisions/changes to the Preliminary Design Drawings to the Downtown Boone Post Office as requested by the Boone Town Council. He noted that this work was outside the original contract scope of work. Upon a motion by Council member Leigh, seconded by Council member Mason, Council moved to approve a request from Randy Jones for $4,9177.77 payment for additional work on revisions/changes to the Downtown Boone Post Office renovation project to be taken from the Town of Boone General Fund.

VOTE: Aye - All
Nay - None

Mr. Jones informed the Council that he has not received any response from the State Historical Review office about a time frame for review of the plan modifications.

REQUESTED APPEARANCES - BUNK SPANN, VICE-CHAIR, GREENWAY COMMITTEE

Bunk Spann, vice-chair of the Greenway, Parks & Gardens Committee, appeared before the Council to present a request for the Council's support of a Hospitality House/Casey Lane Greenway Trail Connector. He explained that the proposed connector will link the current Boone Greenway (ending at the wastewater treatment facility) with the newly constructed Hospitality House and can be completed in four phases:

1. Easement acquisition.
2. Design and permitting.
3. Construction.
4. Maintenance.

Mr. Spann presented information about the specifics of the proposed project as outlined in a letter from Eric Woolridge, of the Watauga County TDA, to the Town of Boone Greenway Committee **(letter permanently on file in the June 2011 Town Council information packet.)** Council member Mason pointed out that the Hospitality House is not specifically included in the request and that other entities are also located near the proposed project. Town Manager Greg Young stated that there are possible issues with the expenditure of tax funds outside the town limits and explained that the Town is exploring the option of installing and converting the Wastewater Treatment Facility from propane to natural gas. He suggested that a way to coordinate both projects might be considered. Mr. Spann agreed that a majority of the proposed project is located outside the Town limits and owned by Watauga County. Council member Leigh stated that she recommends a prioritization of possible areas of expansion for the Greenway Trail similar to the sidewalk priorities plan. Town Attorney Sam Furgiuele also cautioned that there are permitting issues that need to be considered in such a project. Assistant to the Town Manager Jim Byrne indicated that there is an issue with other parties applying for grant funds for the Town's Greenway that are competing with efforts from the Town itself applying for grant funds. He suggested that any applications for grants for the Town should be specifically authorized by the Town Council. Upon a motion by Council member Ball, seconded by Council member Leigh, Council moved to direct the Greenway Committee to further study the proposed project and to develop a priority list for Greenway Trail expansions.

VOTE: Aye - All
Nay - None

Council member Leigh stated that the Town Council should be the only entity that can grant authority for application for grant funds for the Town of Boone.

APPROVAL OF ZONING TEXT AMENDMENT - CASE 20110229 TEMPORARY USES

Case 20110229 - Text amendment request to modify language in the Unified Development Ordinance regarding temporary uses. Planner Jane Shook informed the Council that the Planning Commission recommends approval of the text amendment with some modifications. She reviewed each of the proposed modifications for the Council.

Vote #1

Upon a motion by Council member Ball, seconded by Council member Brantz, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to this application because as amended to include both Planning Commission and Planning Staff modifications, these text changes move the Town toward the 2006 Comprehensive Plan goal of making development regulations and permit applications more predictable, timely, and clear and are organized to easily fit the UDO revisions currently underway.

VOTE: Aye - All
Nay - None

Vote #2

Upon a motion by Council member Ball, seconded by Council member Brantz, Council moved to approve the proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because as amended to include both Planning Commission and Planning Staff modifications, the proposed text amendments creates new, specific temporary use that is needed but not contained in the existing UDO and clarifies and makes more predictable the language regarding temporary uses in the Town of Boone.

VOTE: Aye - All
Nay - None

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

REQUESTED APPEARANCES - REBECCA KAENZIG

Rebecca Kaenzig, chairperson of the Daniel Boone Native Gardens, appeared before the Council to explain an issue of noise resulting from broken bottles during the use of the Town's recycling center located in the Horn in the West parking lot. She stated that the noise is disruptive to wedding ceremonies and other events being held in the Daniel Boone Native Gardens and during productions at the Horn in the West amphitheater. She asked the Council for some type of signage that can be placed at the location or for possible relocation of the recycling center. Upon a motion by Council member Ball, seconded by Council member Phillips, Council moved to direct Public Works Director Blake Brown to work with members of the SAHA and the Daniel Boone Native Gardens to create temporary, movable signage to be used at the Town's recycling center during events.

VOTE: Aye - All
Nay - None

DISCUSSION OF RELOCATION OF DOWNTOWN DEVELOPMENT COORDINATOR OFFICE TO THE JONES HOUSE

Upon a motion by Council member Brantz, seconded by Council member Mason, Council moved to clarify the following issues:

1. To set a certain time for the temporary relocation of the Downtown Development Coordinator's office at the Jones House.
2. To establish security arrangements at the Jones House to secure the art galleries and the offices.
3. To clarify the room assignment for the Downtown Development Coordinator.

It was decided that the Downtown Development Coordinator will be located in the small office immediately to the left at the top of the front staircase where the copier is currently located. It was also agreed that interns for the Jones House can be temporarily located in the basement at Town Hall. In regard to a certain time for the temporary occupancy of the room, it was the consensus of the Council that the Downtown Development Coordinator will vacate the office within sixty days from the date of the completion of the Downtown Post Office Renovation. Also, it was determined that the security arrangement can be worked out by the Town Manger, the Downtown Development Coordinator, and the Jones House Director and that there be a good working relationship among all parties involved. Finally, it was agreed that until a final contract and lease are agreed on, a month-to-month contract and lease agreement be used with suspension of the current provision for the office space used by the Watauga Arts Council.

VOTE: Aye - All
Nay - None

Mayor Clawson declared a break at 8:08 p.m. Council reconvened at 8:19 p.m.

Upon a motion by Council member Mason, seconded by Council member Ball, Council moved to amend the agenda to hear from Pilar Fotta and to hear the request from Stacy Sears prior to the Notice of Appeal request.

VOTE: Aye - All
Nay - None

REQUESTED APPEARANCES - PILAR FOTTA/DBDA

Interim DBDA Director Pilar Fotta appeared before the Council to discuss the following:

$ **Request input on possible locations for the Downtown Maps and Business Directories:**

1. King & Waters Street - Island in High Country Bank parking lot. Pole-mounted sign placed at an angle so that it is visible from both directions.
2. King & Waters Street - Pole-mounted sign in flower bed next to building.

3. Howard Street - Flower bed in front of ChaDaThai. Pole-mounted sign.
4. Howard & Depot Street - Wall mount on Custard Depot building (*Property owner does not want sign mounted on building, is not opposed to discussing other possibilities; however he would like to wait until the changes to Howard Street have been completed.
5. Mast General Store - Wall-mounted sign.
6. Shoppes at Farmers - Wall-mounted sign.
7. First Baptist Church or church parking lot.
8. Bulldog Beer & Wine building.
9. Parking lot across from First Baptist Church.
10. King & College Street - Pole-mount sign angled so that it can be seen from both sides of the street.
11. Town Hall - Replace ordinance sign with new map.
12. Daniel Boone Condos retaining wall behind fire hydrant - Wall-mounted sign.

Council directed Ms. Fotta to bring options before the Council to consider at the next meeting.

$ **Request Town Attorney to draft an agreement for DBDA Director to present to property owners outlining terms and granting permission for installation of signs on proposed property locations.**

Upon a motion by Council member Ball, seconded by Council member Leigh, Council directed the Town Attorney and the DBDA Interim Director to identify and secure the necessary easements for the installation of signs on the proposed property locations.

VOTE: Aye - All
Nay - None

$ **Request support for the purchase of four additional pole-mounted signs to complete the project (FY2011-2012 Budget.)** Ms. Fotta informed the Council that the cost for the signs will be $1,500 for each of the four new signs.

$ **Discussion of possible addition of two new non-voting members to the new DBDA Board of Directors.**

Ms. Fotta also requested the addition of two non-voting members to the new DBDA Board of Directors. She explained that these members will be residents of neighborhoods adjacent to the Municipal Service District (MSD) who can provide feedback and information on behalf of the residents affected by projects and events in the MSD. It was agreed upon by Council that one position will be appointed by the Town and the other by the DBDA Board of Directors and that the terms will be limited to one year. Mr. Furgiuele noted that this change will require a contract amendment. Ms. Fotta agreed to present proposed parameters for requirements of the two additional members at the next regular meeting.

$ **Update on Doc Watson Sculpture Unveiling**

Ms. Fotta provided an update regarding the upcoming event.

<u>REQUESTED APPEARANCES - STACY SEARS</u>

Mary Sheryl Horine appeared before the Council to request approval for a special event permit for the 1st Annual Half Marathon Road Race to be held on Saturday, August 27, 2011, from 8:00-9:00 a.m. She also requested a waiver of the $250 application fee and assistance from the Police Department during the event. Upon a motion by Council member Brantz, seconded by Council member Mason, Council moved to approve the request, to waive the $250 application fee, and to provide Police Department assistance during the event.

VOTE: Aye - All
Nay - None

Before deliberating on the next agenda item, Town Attorney Sam Furgiuele questioned the members of the Council on whether or not they had had contact with the appellant or anyone substantively connected to the notice of appeal. All Council members stated that they had not had any significant contact with the appellant or anyone substantively connected to the notice of appeal.

REQUESTED APPEARANCES - JOSEPH C. DELK, III

Town Attorney Sam Furgiuele opened a public hearing at 8:49 to hear sworn testimony regarding a Notice of Appeal for two violations issued by the Town of Boone Building Inspector regarding property located at 784 Blowing Rock Road. Mr. Ashok Patel, being duly sworn, stated that he is the vice president of A.M.P. Enterprises and was present to represent A.M.P. Enterprises. Mr. Furgiuele questioned if Mr. Patel is a licensed attorney in that state of North Carolina. Mr. Patel answered that he is not a licensed attorney. Mr. Furgiuele then advised the Council that there could be a factual and legal question regarding Mr. Patel's authority to or right to represent a corporation. He advised that the Council should bifurcate the hearing to first determine if Mr. Patel has the authority to represent A.M.P. Enterprises. He asked that Council allow either Planning Director Bill Bailey and/or Building Inspector Todd Miller to factually address the issue of Mr. Patel's connection to the corporation. Mr. Furgiuele further advised the Council that he is ethically unable to facilitate the unauthorized practice of law since Mr. Patel is not a licensed attorney and is therefore unable to represent a corporation. Upon a motion by Council member Brantz, seconded by Council member Ball, Council moved to divide the hearing to first determine in what capacity Mr. Ashok Patel is able to represent A.M.P. Enterprises. Mr. Patel stated that he was unaware that this hearing would be held in a quasi-judicial manner.

VOTE: Aye - All
Nay - None

Planning Director Bill Bailey, being duly sworn, stated that in trying to determine the legal owners of the property, he contacted the N.C. Secretary of State website on April 11, 2011, which listed two officers: Jill Atfield, President and Justin Patel, Secretary. He stated that Mr. Ashok Patel was not listed as an officer of the corporation but that in 2008, he was the president of the corporation. Mr. Bailey also informed the Council of telephone conversations between Mr. Patel and himself in which Mr. Patel claimed no ownership in A.M.P. Enterprises. Mr. Bailey then played for the Council an answering machine message from Mr. Patel left on his voice mail on April 11, 2011, as **Town of Boone Exhibit A (copy of audio recording permanently on file in the June 2011 meeting information file.)** Mr. Ashok Patel stated that he was vice president of A.M.P. Enterprises and that his former wife, Jill Atfield was president of the company until the time when he divorced Ms. Atfield, at which time she became president of the corporation, and he resigned as an officer of the company. He stated that at the time that the hotel was shut down and this order issued, he was not an officer of A.M.P. Enterprises. Mr. Patel stated that he did contact the Planning Department about the matter as a private citizen and a local hotel owner. He explained that at the time of the issuance of the condemnation order, his ex-wife, Ms. Atfield, was out of town. Furthermore, he stated that subsequent to the issuance of the orders, a letter was sent by Ms. Atfield and Justin Patel to Bill Bailey authorizing Ashok Patel to represent the company regarding this matter and that since the end of May 2011 he has been appointed the vice president of the company. He stated he would like the Council to continue this case until the July meeting. Mr. Furgiuele asked if Mr. Patel if the Council were to continue the case, would he agree to a condition requiring the continued prohibition of occupancy of the Scottish Inn and to keeping the area secured as best as possible. Mr. Patel agreed by stating that the hotel has been closed and that he will keep the area secured to the best extent possible. Mr. Furgiuele advised that since Mr. Patel is not a licensed attorney, he can provide testimony but cannot be afforded all of the procedural rights that are granted to an attorney representing the appeal. He suggested that the Council may want to hear from the building inspector as to the time frame for the two orders. Todd Miller, being duly sworn, stated that he is the building inspector for the Town of Boone. He stated that the Notice of Violation and Order to Repair or Demolish was issued on May 11, 2011 and that the Order to Vacate and Repair of Demolish Pursuant to N.C. General Statue Section 160A-429 was issued on May 11, 2011. He stated that both the orders will expire on or around July 11, 2011 as per state statue and/or the Town Code requirements. Mr. Patel asserted that the time period did not allow for him to secure the appropriate permits from the various entities needed to remedy the situation. He also noted that the property is within a flood plain and located next to a creek a fact which further complicates the issue. Mr. Miller quoted language contained in the Notice of Violation and Order to Repair or Demolish, beginning with the order regarding the municipal code:

"I am now issuing this Order to Repair or Demolish this structure (which is know as the restaurant where the fire has taken place) within 60 days of receipt of this letter. All conditions cited in the Notice of Violation must be repaired or the building must be demolished and the site made safe. Please note that this time includes the acquisition of all necessary permits. Also note that this time limit is for the completion of repairs or demolition."

Mr. Miller explained that this order pertains to the structure located at 784 Blowing Rock Road which is the southern most half of the building closest to Highway 321 and used to be a restaurant. He noted that the restaurant was involved in a fire in 2003. He clarified that the order was to repair or demolish. Regarding the second order, Mr. Miller listed the following requirements:

"As a result of this hearing I find that the buildings are in a condition that constitutes a fire or safety hazard, and renders it dangerous to life, health and other property. I am therefore ordering that all conditions cited in the Notice of Violations be repaired or that the building be demolished and the site made safe within 60 days. I am also ordering that the building remain vacant until all repairs are completed or the building is demolished.

Mr. Furgiuele asked Mr. Miller to list the specific conditions contained in the order:

<u>Primary Violations</u>

1. The town metal stairways leading to the second floor balcony are heavily rusted and decayed. They are minimally attached to the structure and the north stair shows signs of settlement.
2. There is a noticeable sag in the balcony and roof near the entrance to the ramp in the center of the building. The post that is supposed to support his section is not resting on any structure and has a 2-inch gap at the bottom between it and the ground.
3. There is chemical contamination in Room 107 due to a clandestine methamphetamine lab being operated there several months ago. This room has been padlocked but not remediated to remove the chemicals.

<u>Secondary Violations</u>

1. There is a creek at the rear of the property washing against the foundation.
2. There are issued with lighting fixtures that have been replaced.
3. There is a ramp that needs to have handrails.

Mr. Miller cited the state statute's definition of "condemnation." Town Manager Greg Young stated that the order regarding the municipal code includes a penalty of $100 per each day which accrues from the date of receipt of the Notice of Violation. Mr. Furgiuele explained the following options available to the Council regarding this request:

$ The Council could hear the entire case and make a decision based upon presentation of evidence with the procedural limitations as explained by the Town Attorney.

$ The Council can make a determination that since there is no one in attendance qualified to represent the corporation, that the corporation did not follow through with it's appeal and can dismiss the appeal.

$ The Council can accommodate the request to continue the case as requested by Mr. Ashok Patel.

Upon a motion by Council member Leigh, seconded by Council member Ball, Council moved to table this case until the next regular Council meeting contingent upon the expectation that the applicant will prevent occupancy at the site, provide for security to the best extent possible, and that the attorney representing the corporation will appear before the Council at the next regular meeting.

VOTE: Aye - All
Nay - None

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

WATER & SEWER REQUESTS - BILL ACETO

Town Attorney Sam Furgiuele opened a public hearing at 9:42 p.m. to hear sworn testimony from Bill Aceto (property owner) and Public Utilities Director Rick Miller on a request for water and sewer service to property located on Maplewood Circle. Public Utilities Director Rick Miller noted a correction in the request for water service for 600 gallons per day, not 300 gallons per day as listed in the Council packet. Attorney Don Watson, representing property owner Bill Aceto, began by introducing a copy of email correspondence between Mr. Aceto and Tyler McKethan of the Watauga Health Department **(Aceto Exhibit 1, permanently on file in the June 2011 information file)** which informed Mr. Aceto that he could probably not expand the existing septic system. Mr. Watson explained that Mr. Aceto plans to finish what the previous owner had started an action which will entail finishing the area in the basement. He further stated that the property straddles the secondary pressure zone line but will not have a negative impact on the Town's water system. Mr. Watson entered into evidence as **Aceto Exhibits 2-9 (permanently on file in the June 2011 information file)** pictures of the property, topographical pictures of the property, a floor plan, property record information for the property, and plat maps of the property and area. He clarified that this is a request for a connection to the system, not an extension of the system. Mr. Miller stated that the location of the tap into the Town's system would not be in the secondary pressure zone and that the property will be served by the Charles/Gladys Street tank. Mr. Watson stated that Mr. Aceto will pay all costs, including tap fees and availability charges. He also indicated that Mr. Aceto would be willing to voluntarily annex the property. Discussion ensued regarding the issue of whether or not this property is part of a subdivision. Mr. Watson offered that he will provide an opinion letter regarding the question about the property being in a subdivision. Bill Aceto stated that he is planning to live in the structure and that he is willing to abandon the well and septic system if granted access to the Town's water and sewer system. With no other testimony, Mr. Furgiuele closed the public hearing at 10:21 p.m. Upon a motion by Council member Brantz, seconded by Council member Ball, Council moved to grant the request for water and sewer service from Bill Aceto for 600 gallons per day for property located on Maplewood Circle with the condition that the property be voluntarily annexed if that is deemed appropriate and that the request complies with the intent of the Boone 2030 plan and is a hardship case.

VOTE: Aye - All
Nay - None

CLOSED SESSION

Upon a motion by Council member Brantz, seconded by Council member Ball, Council moved to enter into Closed Session at 10:22 p.m. pursuant to G.S. 143-318.11(a)(3)(5)(6) in order to discuss the following:

A. Legal Advice - Chestnut Street Connector.
B. Legal Advice - Water Intake.
C. Legal Advice - Ron Darbo Settlement Offer.
D. Possible Property Acquisition.
E. Legal Advice - UDO Violation.
F. Personnel Matter.
G. Legal Advice - Gang of Five.
H. Legal Advice - Monte Green Settlement.

VOTE: Aye - All
Nay - None

Upon a motion by Council member Brantz, seconded by Council member Mason, Council moved to exit Closed Session at 12:39 a.m.

VOTE: Aye - All
Nay - None

POSSIBLE ACTION FOLLOWING CLOSED SESSION

Upon a motion by Council member Phillips, seconded by Council member Ball, Council moved to adopt the following resolution regarding the Chestnut Street Connector project and to approve taking the complete loan proceeds from the Water & Sewer Fund in the amount of $328,312 to apply towards the cost of the project:

RESOLUTION ENDORSING THE
CHESTNUT STREET CONNECTOR

WHEREAS, the safety of the citizens of Boone is of the utmost importance to the members of the Boone Town Council; and

WHEREAS, it is the desire of the citizens of the Chestnut and Farthing Street neighborhoods to safely and conveniently access Highway 421/King Street; and

WHEREAS, the U-4020 Project has resulted in the prohibition of executing a left-turn from both Chestnut and Farthing Street onto Highway421/King Street; and

WHEREAS, it is the decision of the Boone Town Council to undertake the construction of a connector street from Chestnut Street to New Market Boulevard to provide the citizens of the adjoining neighborhoods with a safe and practical means in which to access Highway 421/King Street; and

WHEREAS, it is the intention of the Town of Boone to request financial support from the North Carolina Department of Transportation for the construction of a connector street from Chestnut Street to New Market Boulevard;

NOW, THEREFORE BE IT RESOLVED by the Boone Town Council that the Town of Boone fully endorses the construction of a connector street from Chestnut Street to New Market Boulevard in order to provide a safe and practical means of ingress and egress to citizens of the adjoining neighborhoods.

BE IT FURTHER RESOLVED by the Boone Town Council to officially request financial support from the North Carolina Department of Transportation in the amount of $250,000 from NC DOT Division 11 Contingency Funds for the Chestnut Street Connector project and that the Town of Boone will fund the remainder of the cost for said project from Town of Boone funds.

ADOPTED the 23rd day of June, 2011.

ATTEST: ______________________________ Mayor

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Deputy Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE(S)161)

VOTE: Aye - All
Nay - None

ADJOURNMENT

On a motion by Council member Mason, seconded by Council member Ball, Council moved to adjourn the meeting at 12:40 a.m.

VOTE: Aye - All
Nay - None

Town Clerk	Mayor
Deputy Town Clerk	