

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
MARCH 18, 2004**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, March 18, 2004, in the Council Chambers, 1500 Blowing Rock Road. Mayor Velma C. Burnley presided. Council members present were Mayor Pro-Tem Loretta Clawson, Graydon Eggers, Lynne Mason and Bunk Spann. Council member Dempsey Wilcox was absent due to family illness. Town Attorney Sam Furgiuele was also present. Staff present were Town Manager Greg Young; Town Clerk Freida Van Allen; Resource Director Jim Byrne; Finance Director Joyce Watson; Public Utilities Director Rick Miller; Police Major Curtis Main; Public Services Director Blake Brown; Planning Director John Spear; Fire Chief Reggie Hassler and Resource Director Jim Byrne.

ANNOUNCEMENTS

Mayor Burnley made the following statement:

Joyce Watson began work with the Town of Boone as an Accounting Technician on December 28, 1981. She was then promoted to the position of Finance Director on January 1, 1995. She will retire on March 31, 2004.

As you well know, Joyce is the epitome of a number of attributes: efficiency, accountability, tact, intuition, warmth, congeniality, effectiveness.... And the list goes on...

I have had the distinct pleasure of working with Joyce during her tenure here. To a job well done she added perfection. She was and is a friend, a mentor, a teacher, an inspiration. She will surely be missed.

May I invite you to Joyce's reception at the Jones House on Wednesday, March 31. Please drop by any time between 1:30 and 4:00 and join in celebrating her employment with the Town of Boone.

TENTATIVE AGENDA ADOPTION

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

Item 6.K. - Adoption of Water Study Proposals.

Item 6.L. - Scheduling of Community Meeting on Howard Street Project.

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

VOTE: Aye-All

Nay-None

CONSENT AGENDA ADOPTION

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

Minutes: February 12, 2004, Quarterly Public Hearing
February 19, 2004, Regular Meeting
Tax Releases: February, 2004

Taxpayer	YEAR	AMOUNT	DESCRIPTION
Hunter E. Ives	2003	5.85	Adj. per bill of sale
Nancy J. Pozorski	2003	5.30	Turned in plates
State of North Carolina	2003	248.82	Exempt
Brian E. Crouch	2003	2.98	Sold vehicle
William T. Grimes	2003	44.30	Not in TOB
EAR Technologies Inc.	2003	39.62	New owner
Bruce W. & Nanette L. Franklin	2003	7.69	Sold vehicle
C. Fred & Anne O. Morgan	2003	56.47	Not in TOB
Jacob L. Davis, Jama N. Hyett	2003	9.61	Vehicle totaled / tag turned in
CFC Investment Company	2003	52.26	Turned in tag
Susan M. Salmon	2003	4.48	Turned in plate
TOTAL		\$477.38	

Tax Refunds: February, 2004

TAXPAYER	YEAR	AMOUNT	DESCRIPTION
Ann W. & Larry G. Keeter	2003	8.54	Sold vehicle / turned in tag
Mindy L. Mecho	2003	10.49	Sold vehicle / turned in tag
GMAC	2002	3.52	Turned in tag
TOTAL		\$22.55	

Adoption of Code Amendments:

§92.12 FIRE INSPECTIONS.

All businesses and multi-tenant residential dwellings must obtain a fire inspection, in accordance with NC State Law.

Council member Mason questioned how often fire inspections would be performed now. Fire Chief Reggie Hassler replied that the frequency of inspections is dependant upon the type of business as to whether it is inspected every one to three years.

§95.06, Fees; Cost Incurred by Town.

Delete all text and replace with the following text:

- (A) *The applicant for a permit under Sections 95.02 and 95.03, if such permit is for a parade, activity or public event (hereafter referred to as "event") which requires the temporary closing or obstruction of all or a portion of any street, shall, prior to the issuance of a permit, pay a fee in the following amount, as applicable, unless such fee is partially or fully waived by the Town Council in accordance with this section:*

(1) An event sponsored by the Town, including the 4th of July parade, Christmas parade, homecoming parade for Appalachian State University and homecoming parade for Watauga High School, or other event designated by the Town Council as one that is sponsored by the Town – no fee;

(2) An event not sponsored by the Town which requires the temporary closing or obstruction of all or a portion of any street for less than one hour – \$250.00;

(3) An event not sponsored by the Town which requires the temporary closing or obstruction of all or a portion of any street for one hour or more – \$1,500.00.

- (B) *The fees imposed by Section 95.06 (A) may be partly or wholly waived by action of the Town Council. In waiving such fees in part or in full, the Town Council may consider, among others, the following factors:*

(1) The capacity of the event sponsor to defray the costs of the fee through admission fees, participation fees, advertising fees and/or sponsorship contributions;

(2) The number of people the event is likely to bring into the Town and the expected economic impact of the event on the Town and Town merchants;

(3) The possible and expected impact of the event upon the Town's image and reputation;

(4) Any features of the event which will either reduce or increase the normal expenditures of services and equipment which the Town must utilize in connection with the event; and

(5) Such other factor as the Town Council may determine justifies the Town's bearing of a portion or the full costs of the extraordinary services or equipment necessitated by the event.

§71.05 WEIGHT LIMITATIONS ON CERTAIN STREETS.

Whenever the Administrator installs a traffic-control device clearly stating or indicating that ~~through trucks~~ **such vehicles** are not permitted on a street or any portion thereof, no person may drive any ~~truck~~ **vehicle** with a GVW of 33,000 lbs. or more on any such street or portion thereof unless the ~~truck's~~ **vehicle's** destination or point of origin is on that street, **and within the corporate limits of the Town, and there is no alternative street to access the point of origin or destination.**

VOTE: Aye-All

Nay-None

Absent-1 (Wilcox)

PUBLIC HEARING ON AGGRESSIVE PANHANDLING & PUBLIC URINATION ORDINANCE

Mayor Burnley opened the public hearing at 6:35 p.m. Town Manager Greg Young reminded Council that a committee was appointed and met several times on the panhandling/vagrancy issue. The committee recommended to Council that a public hearing be held on the matter before adopting the ordinance. There being no public comments, the public hearing closed at 6:36 p.m.

ADOPTION OF ORDINANCE - AGGRESSIVE PANHANDLING & PUBLIC URINATION

Town Attorney Sam Furguele said this ordinance addresses a wide range of issues and is a balance of different views. He said this ordinance will prohibit extreme behavior, such as public urination and aggressive panhandling. Town Attorney Furguele pointed out that panhandling is a protected activity; however, aggressive panhandling is not protected. Council member Clawson asked how the fine is collected. Town Attorney Furguele said any penalty issued is decided by a judge or magistrate and the ordinance sets a \$50 maximum for the penalty. Council member Spann asked Mr. Furguele if he is satisfied that this ordinance does not violate civil rights. He said yes. Mayor Burnley asked how it will be determined if a sidewalk is being intentionally blocked. Town Attorney Furguele responded a judge will ultimately decide. After little discussion, on a motion by Council member Clawson, seconded by Council member Spann, Council moved to adopt the following ordinance:

ORDINANCE # 04-01

WHEREAS, the Town of Boone (hereafter "the Town") is a municipal corporation organized under the laws of North Carolina and invested with the powers enumerated in Chapter 160A of the North Carolina General Statutes; and

WHEREAS, pursuant to N.C. Gen. Stat. § 160A-174, the Town is given general authority to enact ordinances to promote the health, safety or welfare of its citizens, to promote the peace and dignity of the Town, and to abate nuisances, and specific authority to regulate solicitation and begging pursuant to N.C. Gen. Stat. §§ 160-178 and 179; and

WHEREAS, the Town Council of the Town has been informed and has observed that the proliferation of aggressive panhandlers on the streets and sidewalks of Boone threatens the health, safety and welfare of the citizens of Boone, as well as the peace and dignity of the town, as those phrases are used in N.C. Gen. Stat. § 160A-174; and

WHEREAS, the Town Council of the Town has been informed that a problem exists with respect to certain persons urinating in public, often in such proximity to protected waterways in the Town as to raise concerns about pollution of such waterways, and to conclude that such behavior further constitutes a nuisance to the citizens of Boone, in that the persons engaged in such behavior are subject to observation by persons of the opposite sex and by minors, and

WHEREAS, the Town Council of the Town has been informed and has observed that the proliferation of persons blocking the free flow of pedestrians on the sidewalks of Boone threatens the health, safety and welfare of the citizens of Boone, as well as the peace and dignity of the town, as those phrases are used in N.C. Gen. Stat. § 160A-174, in that persons seeking to navigate the sidewalks of Boone are sometimes forced to walk into the street in order to pass by such persons, despite the current provisions of Chapter 98 of the Town of Boone, North Carolina Code of Ordinances; and

WHEREAS, the Town Council of the Town has been informed and has observed that the proliferation of persons engaged in aggressive begging, panhandling and soliciting within the corporate limits of the Town threatens the peace and dignity of the town and has become a nuisance within the corporate limits of the Town, as that phrase and term are used in N.C. Gen. Stat. § 160A-174; and

WHEREAS, the Town Council has concluded that the aforesaid activities have a detrimental effect on tourism, which is of major economic importance to the Town; and

WHEREAS, the Town Council of the Town has concluded that it will promote the peace and dignity of the Town, protect the health, safety and welfare of its citizens and abate nuisances, to regulate the activities of persons engaged in the foregoing behaviors;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA, THAT THE TOWN OF BOONE, NORTH CAROLINA CODE OF ORDINANCES BE AMENDED, AND IT IS HEREBY AMENDED, BY DELETING TITLE IX, CHAPTER 98.01, SECTION A, AND BY SUBSTITUTING THEREFORE A NEW SECTION 98.01, "OBSTRUCTIONS PROHIBITED," SUBSECTION (A), AND FURTHER, BY ADDING A NEW CHAPTER TO THE TOWN OF BOONE, NORTH CAROLINA CODE OF ORDINANCES, AS TITLE IX, CHAPTER 101, TO BE ENTITLED, "AGGRESSIVE PANHANDLING AND PUBLIC URINATION PROHIBITED:"

98.01 OBSTRUCTIONS PROHIBITED.

(A) Except as otherwise authorized by statute or ordinance (including §§ 98.08 and 98.09 of this chapter), and except to the extent required by the performance of some function authorized or mandated by a statute or ordinance, no person(s) may congregate, stand, sit, or lie

on a sidewalk in a manner that would intentionally obstruct or cause to be obstructed pedestrian traffic, or prevent the free ingress and egress by members of the public to and from private or public buildings, parks, or parking lots adjacent to or accessed by public sidewalks within the Town. Also no person may obstruct public sidewalks, or obstruct or impede travel in the public streets within the town by placing or leaving any object within the traveled portion of the right-of-way.

(1) For purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(a) *CAUSE TO BE OBSTRUCTED* - For purposes of this Section, the phrase “Cause to be Obstructed” shall refer to and mean an action(s) or omission(s) which, though not intended to obstruct the pedestrian use of public sidewalks, nevertheless interferes with a person’s pedestrian use of a public sidewalk to such a degree that passage is prevented or delayed for an unreasonable period of time after it is brought to the attention of the person causing the obstruction that passage is being prevented or delayed for an unreasonable period of time.

(b) *INTENTIONALLY OBSTRUCT* - For purposes of this Section, the phrase “intentionally obstruct” shall refer to and mean any action or omission that has as its purpose the interference with a person’s pedestrian use of a public sidewalk to such a degree that passage is prevented or delayed.

(c) *PUBLIC SIDEWALK* - For purposes of this Section and these definitions, a “public sidewalk” shall be any area open to public use as a pedestrian public way, whether paved or otherwise designated or recognized for use of pedestrian traffic, and which is owned or maintained by the Town.

(d) *UNREASONABLE PERIOD OF TIME* - For purposes of this Section, the phrase “Unreasonable Period of Time” shall mean such time that a reasonable person prevented or delayed in his or her attempt to use a sidewalk for pedestrian use would consider as unreasonable.

(2) Any person who violates this Section shall be guilty of an infraction, pursuant to N.C. Gen. Stat. § 14-4 (b), punishable by a penalty of up to \$50.00.

CHAPTER 101: AGGRESSIVE PANHANDLING AND PUBLIC URINATION PROHIBITED

101.01 DEFINITIONS.

(A) *AGGRESSIVE BEGGING, PANHANDLING OR SOLICITATION* - For purposes of this Chapter, “Aggressive Panhandling, Begging or Solicitation” shall refer to and mean a verbal or non-verbal request for money or other property of value, accompanied by:

(1) an act or acts that a reasonable person would consider hostile or intimidating,
or

(2) by the act of blocking the free passage of the person to whom the panhandling, begging or solicitation is directed, or

(3) by repeating the request for money or other property of value within a five minute period after having being refused by the person to whom the panhandling, begging or solicitation is directed, or

(4) by any other behavior that a reasonable person would interpret as intended to intimidate or coerce a person into acceding to a request for money or other property of value.

(B) *PERENNIAL WATERS* - For purposes of this Chapter, the term “perennial waters shall be those waterways designated as such on the most recent versions of U.S. Geological Survey 1:24,000 scale topographic maps.

(B) *PUBLIC URINATION* - For purposes of this Chapter, the term “public urination” shall refer to and mean urination, other than in a bathroom or temporary facility such as a “port-a-john” which is intended for urination, within fifty feet of any public place, or in plain view of members of the opposite sex, minor children, pedestrian traffic, or vehicular traffic.

(C) *PUBLIC PLACE* - For purposes of this Chapter and these definitions, the term “public place” shall refer to those establishments, parks, buildings, or facilities open for the use of the public or open for service to the public, including but not limited to privately owned and operated retail stores and restaurants, as well as public buildings within the corporate limits of the Town.

(D) *PUBLIC SIDEWALK* - For purposes of this Chapter, a “public sidewalk” shall be any area open to public use as a pedestrian public way, whether paved or otherwise designated or recognized for use of pedestrian traffic, and which is owned or maintained by the Town.

101.01 PUBLIC URINATION

It shall be unlawful for any person to engage in public urination within the corporate limits of the Town;

101.02 URINATION WITHIN BUFFERS OF PROTECTED WATERWAYS

It shall be unlawful for any person to urinate, other than in a bathroom or temporary facility such as a “port-a-john” which is intended for urination, within fifty feet of any perennial waters within the corporate limits of the Town.

101.03 AGGRESSIVE BEGGING, PANHANDLING, OR SOLICITING

It shall be unlawful for any person to engage in aggressive begging, panhandling or soliciting within the corporate limits of the Town, or to engage in any begging, panhandling or soliciting within fifty feet of view of an outside automated teller machine (ATM) which is accessed from or immediately adjacent to a public sidewalk, or within fifty feet of view of a bank entrance, during the hours of ATM or bank operation, respectively.

101.04 PENALTY

Criminal Penalties. Any person who violates this Chapter shall be guilty of an infraction, pursuant to N.C. Gen. Stat. § 14-4 (b), punishable by a penalty of up to \$50.00.

Adopted this 18th day of March, 2004.

Mayor

Attest:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGES 228-231)

VOTE: Aye-All

Nay-None

Absent-1 (Wilcox)

ADOPTION OF RESOLUTION - DIRECTING CLERK TO INVESTIGATE ANNEXATION PETITION FOR VENTURE PROPERTIES, III, LLC

Planning Director John Spear said this voluntary, non-contiguous annexation request is made by Venture Properties and is for the Food Lion project located on the Carroll property outside of Town. Mr. Spear said the property contains over 5 acres and that this is the first step in the annexation process. Council member Spann asked if the project meets all the requirements of the UDO. Planning Director Spear replied that the building plans meet UDO requirements but that the project was permitted and constructed under County authority. Council member Mason asked if the project as built meets the UDO requirements. Planning Director Spear explained that the project is not complete but may be finished by the time the Town completes the annexation process. Council member Mason said she was concerned about the Town's ability to serve the area and whether or not the project would fit into the Town's growth plan. Council member Clawson asked if the sign problem has been solved. Mr. David Barger, developer of the project, replied that the signage has been completed and that the entire project meets the UDO requirements in every aspect. On a motion by Council member Eggers, seconded by Council member Spann, Council moved to adopt the following resolution:

WHEREAS, a petition requesting annexation of an area described in said petition was received on March 5, 2004 by the Town Council; and

WHEREAS, G.S. 160A-31 provides that the sufficiency of the petition shall be investigated by the Town Clerk before further annexation proceedings may take place; and

WHEREAS, the Town Council of the Town of Boone deems it advisable to proceed in response to this request for annexation;

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

The Town Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the Town Council the result of her investigation.

Adopted this the 18th day of March, 2004.

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 257)

VOTE: Aye-All

Nay-None

Absent-1 (Wilcox)

**APPROVAL OF NEW FORMS - RECIPIENT AGREEMENT & CONTRIBUTION
FORM FOR OUTSIDE AGENCIES**

Council member Mason explained that after reviewing the current process for outside agency funding, the committee wants to clarify the Town's policies and procedures for funding. The committee consists of Council members Eggers and Mason, along with Town Attorney Furguele, Town Manager Young and Town Clerk Van Allen. Council member Mason said she hoped that by adopting the new forms the process would be fairer to the agencies and that decisions would be based upon complete information. Council member Eggers agreed that the new forms would provide clarity and should not create any hardships for the agencies. On a motion by Council member Spann, seconded by Council member Clawson, Council moved to adopt the following forms:

***INFORMATION REQUIRED TO BE SUBMITTED BY ALL AGENCIES
REQUESTING FUNDS FROM THE TOWN OF BOONE***

☐ Prepare a brief narrative including a statement of the purpose or mission of your agency and services provided.

☐ Briefly describe how your program meets a public purpose.

1. How much funding are you requesting this year? \$ _____
2. What was your total budget last year? \$ _____
3. How was the Town of Boone's contribution to your agency spent last year?

4. How will you spend this year's contribution, if funded?

5. List all other revenue sources and the amount you are requesting for this budget year.

6. List all revenue sources and the amount received for the past budget year.

- Attach separate sheet if necessary.**
7. Include a copy of your agency's current and proposed operating budget.
8. What portion of your program serves Town of Boone residents?
\$ _____ or _____ %.
9. Does your agency provide free or reduced fees or services to Town of Boone residents or Town employees? _____ Please explain: _____

10. Did you have a financial audit last year? _____ Yes _____ No
Name of audit firm. _____
Were there any findings? _____ Yes _____ No
If yes, explain on separate sheet of paper.
11. What other cities or counties are served by your agency?

The Town of Boone reserves the right to monitor the funds it contributes to any agency and review its financial records. This sheet must be signed and dated by the chief officer of the requesting agency.

Date

Signature

***Town of Boone
Applicant/Recipient Agreement***

This Agreement between the Applicant/Recipient and Town of Boone is for the purposes of the allocation and/or payment of funds in the amount of \$_____ by the Town of Boone in the fiscal year _____, and in consideration of the allocation and/or payment by the Town, if this application is accepted, as indicated by the signature of the Mayor hereto, the Applicant/Recipient agrees and represents as follows:

- 1. Applicant/Recipient confirms that the IRS has determined that it is an organization described in Section 501(c) (3) or an entity of government and that said determination has not been revoked. Applicant/Recipient will only use this grant for purposes consistent with such tax-exempt status.*
- 2. With the application for funding, a brief written narrative will be submitted by Applicant/Recipient to the Town Manager on the manner in which the funds are to be used, and the Applicant/Recipient agrees that all representations which it makes to the Town concerning its use of any funds allocated or paid to it will be in accordance with its application, its written narrative, and all other representations, whether written or oral, made by it in connection with its request for funding and acceptance of that funding, and all such representations, applications and narrative are explicitly incorporated by reference into the terms of this agreement. The Applicant/Recipient agrees that should it not submit information and/or reports requested by the Town in timely fashion, or should it use the funds allocated or paid in a manner inconsistent with this agreement, the Town shall have the right, without prior notice, to discontinue any further payment under the agreement.*
- 3. Records of receipts and disbursements will be maintained by the Applicant/Recipient and such books and records will be made available to the Town or its representative upon request.*
- 4. No funds from this grant will be used to carry on any religious or political activities, lobbying, or otherwise to attempt to influence legislation or the outcome of any public election.*

5. *Applicant/Recipient will promptly notify the Town if the Recipient's tax-exemption status is revoked or modified in any way.*
6. *Applicant/Recipient accepts and will retain full control of the grant's disposition and full responsibility for compliance with its terms and conditions. Applicant/Recipient does hereby release, acquit and forever discharge Boone, its agents, officers and employees, from any claims, demands, costs, loss of services, expenses, compensation, liabilities and obligations, suits at law or equity, including claims or suits for contribution and/or indemnity of whatever nature and all consequential damages resulting from or on account of its use of any funds allocated or for which the Town is the conduit, and it hereby agrees to indemnify and defend the Town of Boone for any claims brought as a result of its use or misuse of said funds.*
7. *The person signing below certifies his or her authority to execute this agreement on behalf of the Applicant/Recipient. If the Applicant/Recipient is a corporation, it's board of directors adopted a resolution on _____, 200____, authorizing the person signing below to enter into this Agreement.*

IN WITNESS, this Recipient's acceptance and understanding is duly executed this _____ day of _____, 2004.

NAME OF RECIPIENT ORGANIZATION

By:

TITLE

This _____ day of _____, 200____.

TOWN OF BOONE

Mayor

Attest: _____
Town Clerk

VOTE: Aye-All
Nay-None

Absent-1 (Wilcox)

UPDATE ON PROJECT - VILLAGE AT MEADOWVIEW

Planning Director John Spear presented a status report on the construction at the Village at Meadowview project. Mr. Spear said this project was approved by the Board of Adjustment in September, 2002 by a Conditional Use process. The project consists of 204 apartment units contained in twelve 3-story buildings, 40 feet in height. Also planned for the property is a clubhouse, indoor pool, laundry and exercise rooms for a total of over 200,000 square feet. Planning Director Spear reported that some of the apartments will be used as low-to moderate-income housing and that AppalCART will serve the area. The project area is slightly over 18 acres with a planned 660 parking spaces and a total of 15 disturbed acres. He also indicated that this is a highly visible project and that it was thoroughly evaluated by the Board of Adjustment. Mr. Spear said the contractor has provided adequate erosion control measures and is currently in compliance with the UDO. Council member Clawson said she placed this matter on the agenda because of all the citizen concerns she has heard. Council member Clawson asked if another project of this magnitude could be approved in the future. Planning Director Spear replied in the affirmative. Town Attorney Sam Furguele pointed out that this project was approved before the new landscape ordinances were adopted. Council member Mason suggested that, in the future, more information about a project of this magnitude be released to the media. Mayor Burnley pointed out that it is good that the project will provide some affordable housing.

PERMISSION TO APPLY FOR GRANT

Police Major Curtis Main requested permission to apply for a grant from the NC Governor's Highway Traffic Safety Program for a new speed monitoring trailer and 4 radar units. The cost of the grant is \$15,250 with a 25% local match costing the Town \$3,812.50. Major Main said the speed monitoring trailer the Town now has is very old and always broken down. Council member Eggers asked if the speed monitoring trailers are effective. Major Main replied affirmatively, indicating they are helpful in providing traffic counts, too. Council member Clawson asked if the old trailer is still serviceable. Major Main said it will cost between \$4-5,000 to re-wire the computer board in order for it to be operational. Council member Mason asked where the funds for the match would come from, to which Town Manager Young replied, from the fund balance. On a motion by Council member Clawson, seconded by Council member Mason, Council moved to grant permission to apply for this grant.

VOTE:Aye-All

Nay-None

Absent-1 (Wilcox)

ADOPTION OF ORDINANCE TO INITIATE LEGAL ACTION - PSI PROPERTIES, INC.

Town Attorney Sam Furguele explained that this ordinance would allow him to initiate legal action against PSI Properties and New River Capital for the outstanding sewer bill at the Brookhollow Trailer Park. He said residents of the park would not be hurt by this action. On a

motion by Council member Mason, seconded by Council member Clawson, Council moved to adopt the following ordinance:

ORDINANCE # 04-02

WHEREAS, the Town of Boone (hereafter, “the Town”) has duly adopted a Water and Sewer Use Ordinance; and

WHEREAS, N.C. Gen. Stat. § 160A-314 authorizes the Town to establish a schedule of fees for the use of its sewer system, and the Town Council, in accordance with said authority, has established a fee schedule for sewer services; and

WHEREAS, pursuant to a request for sewer service by PSI Properties, Inc., a North Carolina corporation, the Town has provided sewer services to property owned by New River Capital, Inc., beginning October 1995 and continuing until the present; and

WHEREAS, the Town has provided bills for the monthly sewer usage by the residents of the property owned by New River Capital, Inc., on a monthly basis; and

WHEREAS, PSI Properties, Inc. has failed to pay the bills provided, and currently has an arrearage for sewer use of \$63,888.54; and

WHEREAS, the Town of Boone has filed four claims of liens in the office of the Watauga County Clerk of Superior Court and has notified both New River Capital, Inc., and PSI Properties, Inc., of this arrearage and its claim of lien, but neither has chosen to pay the outstanding balance; and

WHEREAS, since the services in question are provided to tenants of New River Capital, Inc. living at Bradford Mobile Home Park, and many of said tenants are low or moderate income persons who have no easy recourse in the event of a discontinuance of service to them, the Town of Boone prefers not to discontinue their service; and

WHEREAS, pursuant to N.C. Gen. Stat. §§ 160A-314(c) and (d) the unpaid charges for the use of the sewer system are the legal obligation of both PSI Properties, Inc. and New River Capital, Inc.;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA, PURSUANT TO N.C. GEN. STAT. § 314 (b), AS FOLLOWS:

1. The Town Attorney is ordered to initiate a legal action in the General Court of Justice in Watauga County, North Carolina against PSI Properties, Inc. and New River Capital, Inc., seeking to recover all outstanding charges for the provision of sewer services to the property owned by New River Capital, Inc., along with costs, interest, as available.

Adopted this the 18th day of March, 2004.

Mayor

Attest:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGES 232-233)

VOTE: Aye-All
Nay-None
Absent-1 (Wilcox)

CABLE TV ADVISORY COMMITTEE APPOINTMENTS

On a motion by Council member Eggers, seconded by Council member Spann, Council moved to appoint Robert Cherry and Ernie Lane to another 3-year term on the Cable TV Advisory Committee. Before voting, Council member Mason said this committee is very important to the community and that she would like to see them take more of a responsible role as outlined in the Cable TV Franchise.

VOTE: Aye-All
Nay-None
Absent-1 (Wilcox)

ABC BOARD NOMINATIONS

Bobby McConnell's term on the ABC Board expires 4/30/04. Mr. McConnell is willing to serve again if appointed. Council member Clawson nominated Candy Winebarger and said Ms. Winebarger would provide an application form for the next meeting. Council member Clawson indicated that she would like to see a member of the ABC Board report to Council periodically, just as David Edmisten used to do. Council member Mason suggested advertising for board nominees and putting this information on the Town's web page. Final appointment will be at the April meeting.

ADOPTION OF AGREEMENT - NCDOT

Town Manager Greg Young explained that when DOT widened Hardin Street two years ago, replacement of existing street lights was not completed. He continued by stating that, thanks to Sam Erby, the DOT has approved \$50,000 towards installation of lights along Hardin Street. Council member Eggers asked if the Town could install the lights for this amount of money to

which Town Manager Young indicated affirmatively. On a motion by Council member Clawson, seconded by Council member Eggers, Council moved to adopt the following contract:
NORTH CAROLINA
WATAUGA COUNTY

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

MUNICIPAL AGREEMENT

AND

WBS ELEMENT: 37514

TOWN OF BOONE

THIS AGREEMENT, made and entered into this the ____ day of _____, 20 __, between the DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina, hereinafter referred to as the Department, and the TOWN OF BOONE, a municipal corporation, hereinafter referred to as the Municipality;

WITNESSETH:

WHEREAS, the Municipality has plans to make certain street and highway constructions and improvements within the Municipality under WBS Element 37514, Watauga County, said plans consisting of providing street lighting along US 321 (Hardin Street) from US 421 (King Street) to SR 1163 (Faculty Street) in Boone; said project having a right-of-way width as shown on the project plans on file with the Department's office in North Wilkesboro, North Carolina; and,

WHEREAS, the Department and the Municipality have agreed that the corporate limits of the Municipality, as of the date of the awarding of the contract for the construction of the above-mentioned project, are to be used in determining the duties, responsibilities, rights and legal obligations of the parties hereto for the purposes of this Agreement; and,

WHEREAS, the Department has approved the construction of said project and has agreed to participate in the cost of the project as hereinafter set out.

NOW, THEREFORE, the parties hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant and agree, each with the other, as follows:

1. The Municipality shall prepare the environmental and/or planning document and obtain any environmental permits, and the plans, contractor specifications and estimates (PS&E package) needed to construct the project. All work shall be done in accordance with Departmental standards, specifications, policies and procedures.
2. The Municipality, without any cost or liability whatsoever to the Department, shall relocate and adjust all utilities in conflict with the project. Said work shall be performed in a manner satisfactory to the Department prior to the Municipality beginning construction of the project.

3. The Municipality, at no expense or liability whatsoever to the Department, shall be responsible for acquiring any needed right of way and/or permanent easements required for said project. Acquisition of right of way shall be accomplished in accordance with the Right of Way Acquisition Policy and Land Acquisition Policy contained in the Federal-Aid Policy Guide, Part 712, Subpart B, and in accordance with policies and procedures set forth in the North Carolina Right of Way Manual (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970). The Municipality shall remove from said right of way all obstructions and encroachments of any kind or character (including hazardous and contaminated materials). The Municipality shall indemnify and save harmless the Department from any and all claims for damages that might arise on account of said right of way acquisition, and construction easements for the construction of said project.
4. The Municipality shall construct, or cause to be constructed, the project in accordance with the plans and specifications of said project as filed with, and approved by, the Department. The Municipality shall enter into and shall administer the construction contract for said project and the procedures set out herein below shall be followed:
 - A. The construction engineering and supervision will be furnished by the Municipality without cost to the Department.
 - B. The Department's Division Engineer for the 11th Division, at his discretion may assign a resident engineer to the project who shall have the right to inspect any portion of the work being performed by the Municipality or the Municipality's contractor to ensure compliance with the provisions of this Agreement. The resident engineer will be the Department's representative on the project. The resident engineer will furnish the Municipality with any forms that may be needed in order to follow standard Department practices and procedures in the administration of the contract.
 - C. Letting of contracts for construction and purchases shall be in accordance with North Carolina General Statute 143-129.
 - D. The Department's 11th Division Engineer shall have the right to inspect, sample or test, and approve or reject any portion of the project during construction.
 - E. The Municipality shall sample and test all materials in reasonable close conformity with the Department's Guide for Process Control and Acceptance Sampling and Testing.
 - F. During construction of the project, if any changes in the plans are necessary, such changes must be approved by the 11th Division Engineer prior to the work being performed.
 - G. All materials incorporated in the project and workmanship performed by the contractor shall be in reasonable close conformity with the Standards and Specifications of the Department.
 - H. Upon completion of the project, the Municipality will furnish the 11th Division Engineer with two (2) complete sets of "Plan of Record" plans.

- I. Prior to the final acceptance and payment by the Department, the Division Engineer shall make a final inspection of the completed work. The Division Engineer will be responsible for final acceptance of the completed work on behalf of the Department.
 - J. During construction of the project, the Municipality shall, at no cost to the Department, provide and maintain adequate barricades, signs, signal lights, flagmen, and other warning devices for the protection of traffic in conformation with standards and specifications of the Department and the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways published by the Federal Highway Administration.
 - K. The Municipality shall complete said work within one (1) year of execution of this agreement. If the Municipality has not completed its responsibilities, or in the opinion of the Department, satisfactory progress has not been made, the unexpended balance of funds may be recalled by the Department and assigned to other projects by the Board of Transportation.
 - L. The Municipality shall also comply with the following federal and state policies: (1) Conflict of Interest; (2) Equal Employment Opportunity; (3) Title VI - Civil Rights Act of 1964; and (4) Disadvantaged Business Enterprises.
5. Subject to compliance by the Municipality with the provisions set forth in this Agreement, the Department shall participate in the cost of the project not to exceed \$50,000. Construction costs, which exceed this amount, shall be borne by the Municipality. Reimbursement to the Municipality shall be made upon approval of each invoice by the 11th Division Engineer and the Department's Fiscal Section.
- A. The Municipality may bill the Department for actual costs as herein stated by Engineer. Reimbursement to the Municipality shall be made upon approval of said invoice by the 11th Division Engineer and the Department's Fiscal Section.
 - B. The Municipality shall be responsible for adhering to applicable administrative requirements of 49 CFR Part 18 (www.fhwa.dot.gov/legregs/directives/fapg/cfr4918a.htm). If the work is performed by Municipal force account, said invoices shall show a summary of labor, labor additives, equipment, materials and other qualifying cost in conformance with the standards for allowability of costs set forth in Office of Management and Budget (OMB) Circular A-87 (www.whitehouse.gov/OMB/circulars/a087/a087-all.html). Reimbursement shall be based on cost incurred with the exception of equipment owned by the Municipality. Reimbursement for rates of equipment owned by the Municipality cannot exceed the Department's rates in effect for the time period in which the work is performed. If the work is performed by a contractor, said invoices shall show the contract cost.
 - C. In accordance with OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations"

(www.whitehouse.gov/OMB/circulars/a133/a133.html), the Municipality shall arrange for an independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.

- D. The Municipality shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office at all reasonable times during the contract period, and for three (3) years from the date of final payment under this Agreement, for inspection and audit by the Department's Fiscal Section.
 - E. The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs.
 - F. Failure on the part of the Municipality to comply with any of these provisions will be grounds for the Department to terminate participation in the costs of the project.
 - G. All invoices must be submitted within one (1) year of completion and acceptance of the project by the Department.
6. It is further agreed that, upon completion of the project, the Municipality shall be liable and responsible for maintenance activities and utility bills for said lighting and poles.
7. The Department shall have the right to abandon the project at any time before the Municipality has been called upon to perform any part of its agreement.

IT IS UNDERSTOOD AND AGREED that the approval of the project by the Department is subject to the conditions of this Agreement and that no expenditure of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

VOTE:Aye-All

Nay-None

Absent-1 (Wilcox)

ADOPTION OF BUDGET AMENDMENTS

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

DESCRIPTION	ACCOUNT #	TO:	FROM:
Maintenance-Vehicles	010-600-401-525301	\$1,784.	
Miscellaneous Revenue	010-000-000-489900		\$1,784.
Transfer to Water Capital Reserve	030-700-890-598031	130,000.	

Transfer to Sewer Capital Reserve	030-700-890-598032	215,000.	
Impact/Availability Fees-Water	030-000-000-467301		130,000.
Impact/Availability Fees-Sewer	030-000-000-467302		215,000.

VOTE: Aye-All
Nay-None
Absent-1 (Wilcox)

APPROVAL OF WATER STUDY PROPOSAL

Public Utilities Rick Miller said this information was presented at the retreat and that Council needs to take formal action to award the proposal for the water study. Proposals were received from W.K. Dickson and Hobbs, Upchurch. Public Utilities Director Miller recommended Council award the contract for the water study to W.K. Dickson in the amount of \$54,200. He said that 120 days will be needed to complete the study and that a budget amendment will be presented at the next Council meeting for approval. On a motion by Council member Mason, seconded by Council member Eggers, Council moved to award the proposal to W.K. Dickson.

VOTE: Aye-All
Nay-None
Absent-1 (Wilcox)

SCHEDULING COMMUNITY INFORMATION MEETING ON HOWARD STREET PROJECT

On a motion by Council member Mason, seconded by Council member Clawson, Council moved to schedule a community information meeting on the Howard Street project for Monday, April 26th, at 6:30 p.m., at the Agriculture Conference Center.

VOTE: Aye-All
Nay-None
Absent-1 (Wilcox)

REQUESTED APPEARANCE - LARRY WARREN

Mr. Larry Warren, Deputy Clerk of Court, appeared before Council to discuss the parking dilemma that jurors face each week and to request that they be allowed to park on Queen Street at the metered spaces. Mr. Warren said that parking at the courthouse is very limited now because of a construction project. He indicated that over the last year three parking lots have been eliminated. Mr. Warren said jurors have permission to park at the Cooperative Extension lot, on King Street and at the lots behind the courthouse. He stated that parking jurors on Queen Street is a temporary solution until the County constructs a parking deck on adjacent property. Mayor Burnley asked how many parking spaces we currently provide to the County. Ms. Tami Johnson, Director of McLaurin Parking, indicated that the Town currently provides four spaces

on Queen Street for the magistrate, fire marshal and state troopers. Town Manager Greg Young said the Town is currently re-negotiating with the County for 35 parking spaces behind the library and that perhaps parking could be negotiated for jurors. Council agreed.

REQUESTED APPEARANCE - CHERRY JOHNSON

Mr. Dave Robertson, board member of the Watauga County Arts Council, appeared before Council to request funding for the new artspace/arts center. Mr. Robertson said the Arts Council has the opportunity to lease the old Mountain Times space from John and Faye Cooper for an artspace/arts center. He indicated that the artspace would provide studio space, performance space, a gallery and a retail consignment shop for local artisans. The Arts Council is trying to raise \$250,000 by July 1st in order to secure the space from the Coopers. Mr. Robertson said the Watauga County Board of Commissioners issued a challenge grant of up to \$50,000. He stated that he believed this artspace would be another enhancement to downtown Boone and asked Council for a one-time contribution of \$50,000. Mayor Burnley said she was surprised at the amount of money requested since she thought the Arts Council planned to request only \$25,000 from the Town. Council member Clawson agreed and pointed out the double-taxation that Town residents frequently pay. Arts Council Director Cherry Johnson stated that the \$50,000 the County granted was from Economic Development funds, not taxes. After little discussion, on a motion by Council member Clawson, seconded by Council member Mason, Council moved to grant a one-time contribution of \$25,000 towards the artspace, contingent upon the Arts Council's ability to raise the remaining funds.

VOTE:Aye-All

Nay-None

Absent-1 (Wilcox)

CLOSED SESSION

On a motion by Council member Eggers, seconded by Council member Spann, Council moved to enter Closed Session at 8:05 p.m., pursuant to NCGS 143-318.11a)3) in order to discuss the Ulery UDO violation.

VOTE:Aye-All

Nay-None

Absent-1 (Wilcox)

On a motion by Council member Clawson, seconded by Council member Mason, Council moved to exit Closed Session at 8:30 p.m.

VOTE:Aye-All

Nay-None

Absent-1 (Wilcox)

POSSIBLE ACTION FOLLOWING CLOSED SESSION

On a motion by Council member Mason, seconded by Council member Clawson, Council moved to adopt the following ordinance authorizing the Town Attorney to initiate legal action against Charles Ulery for UDO violations, if necessary corrections are not made.

ORDINANCE # 04-03

WHEREAS, the Town of Boone has duly adopted a Unified Development Ordinance, (hereinafter, the “UDO”); and

WHEREAS, on February 24, 2004, personnel of the Town of Boone’s Development Services office inspected a site located at 1560 Highway 105 (Watauga County PIN # 2900-93-4109-000), which revealed that Charles Ulery, the owner of said site, was conducting land disturbing activity without having first obtained permits from the Town of Boone, in accordance with the UDO; and

WHEREAS, personnel of the Town of Boone’s Development Services office informed Charles Ulery that until proper applications and plans were submitted and proper permits were obtained, he could not proceed with the afore-said activity, and accordingly attempted to post a stop-work order; and

WHEREAS, Charles Ulery removed the stop work order and threw the posted order into the back of the Town’s truck, all the while cursing at the Town personnel and demanding that they immediately vacate his property; and

WHEREAS, by letter dated March 5, 2004, personnel of the Town of Boone’s Development Services office issued a notice of violation to Charles Ulery, advising him of violations of §§ 61, 274, 290, 294, 302 and 304 of the UDO; and

WHEREAS, said notice of violation gave Charles Ulery until March 12, 2004 to comply with the UDO in order to avoid the \$100.00 per day penalties available for his non-compliance and to avoid criminal charges pursuant to UDO section 294; and

WHEREAS, Charles Ulery has not only not complied with the UDO, he has proceeded with his illegal activities; and

WHEREAS, Charles Ulery’s violations of the Soil Erosion and Sediment Control provisions of Article XVI of the UDO constitutes a Class 2 misdemeanor which may include a fine not to exceed \$5,000.00.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA, PURSUANT TO N.C. GEN. STAT. § 160A-175, AS FOLLOWS:

2. Charles Ulery is the owner of that certain real property situated and known as 1560 Highway 105 (Watauga County PIN # 2900-93-4109-000), Boone, North Carolina. Said real property is located within the town limits and jurisdiction of the Town of Boone.

3. Charles Ulery has violated the Unified Development Ordinance of the Town of Boone by failing to obtain proper permits and by continuing to work on said property after having been notified of his violations. Said violations are continuing in nature and thus constitute repeated violations of the Ordinance.
4. Charles Ulery has violated the Soil Erosion and Sediment Control provisions of Article XVI of the UDO.
5. The Town Attorney is ordered to initiate a legal action in the General Court of Justice in Watauga County, North Carolina against Charles Ulery, seeking a mandatory injunction requiring Charles Ulery to immediately and permanently abate his violation of the UDO, and to collect the unpaid penalties for its violations of the Ordinance, including attorney's fees and costs.
6. This Ordinance shall be recorded in the registry of the Watauga County Register of Deeds under the name Charles Ulery.

Adopted this 18th day of March, 2004.

Mayor

Attest:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGES 232-233)

VOTE: Aye-All

Nay-None

Absent-1 (Wilcox)

ADJOURNMENT

On a motion by Council member Clawson, seconded by Council member Mason, Council moved to adjourn at 8:35 p.m.

VOTE: Aye-All

Nay-None

Absent-1 (Wilcox)

Town Clerk

Mayor