

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL JUNE
27, 2005**

A regular meeting of the Boone Town Council was called to order at 6:35 p.m., Monday, June 27, 2005 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, Bunk Spann, and Dempsey Wilcox. Town Attorney Sam Furgiuele was also present. Staff present were Town Manager Greg Young, Deputy Town Clerk Kim Tester, Special Assistant to the Town Manager Jim Byrne, Fire Chief Reggie Hassler, Police Chief Bill Post, Public Services Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, Development Services Director John Spear, and Human Resources Director Peri Moretz.

ANNOUNCEMENTS

Mayor Burnley observed a moment of silence for our local, state, and national leaders.

TENTATIVE AGENDA ADOPTION

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

Closed Session: Deletion of Glen Henson Violations.

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

VOTE: Aye - All
 Nay - None

CONSENT AGENDA ADOPTION

Upon a motion by Council member Clawson, seconded by Council member Mason, the Council moved to adopt the following consent agenda items:

Minutes: May 12, 2005 – Special Meeting
 May 19, 2005 – Regular Meeting
 May 20, 2005 – Special Meeting
Tax Releases: May 2005

TAXPAYER	YEAR AMOUNT	DESCRIPTION
-----------------	--------------------	--------------------

L B LEASING, INC	2005	\$69.22	VEHICLE IN MITCHELL COUNTY
HIGH COUNTRY TOWING	2005	14.96	SOLD VEHICLES TURNED IN TAGS
MOUNTAIN LUMBER COMPANY	2005	72.20	INCORRECT FIRE DISTRICT
MOUNTAIN LUMBER CO. OF BOONE	2005	66.48	INCORRECT FIRE DISTRICT
LINH D. HUYNH & QUAN C. TANG	2004	10.78	SOLD VEHICLE TURNED IN TAG
STACIA TWAN SANDERS BRELLAND	2004	16.98	TURNED IN TAG
JUSTIN T. MCKINNON	2004	28.35	VEHICLE IN BURKE COUNTY
HAROLD L. DEITERS SR.	2004	3.55	TURNED IN TAG
ARCHIE D. LYONS JR.	2004	7.25	LOST ADJ CODE
MIKE AUSTIN ENTERPRISES	2004	695.32	SOLD VEHICLE TURNED IN PLATE
TOMMY S. & KANDI BURGESS	2004	2.97	TURNED IN TAG
KAMESWARI S. GARIGIPATI	2004	11.48	LIVES IN WILKES COUNTY
JAMES B. BROWN	2004	138.20	INCORRECT FIRE DISTRICT
SCOTT PHAN	2004	8.60	TURNED IN TAG
JAMES C. HASTINGS	2004	5.83	TURNED IN TAG
TOYOTA OF BOONE INC.	2004	69.96	GROSS RENTALS
CAROLYN M. & JOSEPH H. GRIMES SR.	2004	17.50	SOLD VEHICLE TURNED IN TAG
SAUL E. & NAN E. CHASE	2004	7.07	SOLD VEHICLE TURNED IN TAG
TOYOTA MOTOR CREDIT CORP	2004	106.56	INCORRECT FIRE DISTRICT
TED J. WALLER	2004	43.35	SOLD VEHICLE
PHYLLIS S. CRANDALL	2004	24.36	TURNED IN TAG
TOTAL		\$1420.97	

Tax Refunds: May 2005

TAXPAYER	YEAR	AMOUNT	DESCRIPTION
REPUBLIC SERVICES OF NC LLC	2005	\$40.00	RECYCLE TRUCK-EXEMPT
GREENE, DOUGLAS WILLIAM	2004	19.06	TURNED IN TAG
TEMPLETON, MAURICE ALLEN	2003	16.24	SOLD VEHICLE TURNED IN TAG
TOTAL		\$75.30	

Approval of Agreement – DBDA

STATE OF NORTH CAROLINA

AGREEMENT

COUNTY OF WATAUGA

THIS AGREEMENT, made and entered into this the 1st day of July 2005, by and between the Town of Boone, hereinafter “Town”, and the Downtown Boone Development Association, Inc., hereinafter “DBDA”.

WITNESSETH:

WHEREAS, the Town has established a Municipal Service District pursuant to N.C.G.S. 160-

535, *et seq.*: and

WHEREAS, the DBDA is a non-profit corporation organized to promote, encourage and assist the revitalization and economic health and stability of the Municipal Service District; and

WHEREAS, the parties hereto desire to enter into an Agreement for the purpose of promoting the economic development of the Municipal Service District.

NOW, THEREFORE, in consideration of the mutual promise contained herein, as well as other good and valuable consideration flowing between the parties, the parties hereto agree to the following terms and consideration.

1. The term of this contract shall begin on July 1, 2005 and shall end on June 30, 2006.
2. The services the DBDA shall provide include, but are not limited to, the following activities within the Municipal Service District.
 - A. Advancing, promoting and marketing the commercial, business, economic, residential and civic development of the Municipal Service District in whatever way and by such means as shall improve orderly growth and development.
 - B. Organizing and operating revolving loan funds and facade programs contingent on availability of funds in order to finance physical improvements to structures within the Municipal Service District at a reasonable and economic cost.
 - C. Providing a coordinating service to carry on the revitalization of the Municipal Service District, including the coordination of the efforts of the public and private sectors to render the guidance, expertise planning, support and capital necessary for such revitalization.
 - D. Acting as a real estate clearinghouse in order to match the needs of business ventures with the most appropriate structures available and thereby best utilize the commercial buildings of the Municipal Service District and to increase their occupancy rates.
 - E. Providing a public relations programs for the purpose of retaining presently existing businesses and attracting new businesses to the Municipal Service District.
 - F. Increasing the efficiency of Boone's economy by capitalizing on existing public investments in services and physical improvements and private investments in business, service, and structures.
 - G. Improving the quality of life by enhancing the physical, environmental and business conditions in central Boone.
 - H. Generating additional jobs in the Municipal Service District through the expansion of commercial, office and ancillary economic developments.
 - I. Stabilizing the tax base, enhancing property values and promoting retail sales in the Municipal Service District.
 - J. Engaging in or assisting in any "downtown revitalization project" as defined in N.C.G.S. 160A-536.
3. For services rendered by the DBDA pursuant to this Agreement, the Town shall pay to the DBDA the total sum of moneys collected from the Boone Municipal Service District tax for fiscal year 2005-2006, less all expenses the Town incurs collecting said taxes.
4. The DBDA shall submit to the Town for approval a detailed budget and work plan reflecting the services to be performed on or before April 15, 2006.

5. This agreement is contingent upon the approval of the DBDA's budget and work plan by the Boone Town Council.
6. Funds made available to the DBDA pursuant to this agreement shall be expended only in accordance with applicable federal, state, and local laws.
7. DBDA shall operate in accordance with generally accepted accounting principals approved by a certified public accountant and the Town's Finance Officer.
8. DBDA shall provide the Town with such records, verification of expenditures of funds and such other information pertaining to the duties of the DBDA as requested by the Town.
9. All records of the DBDA shall be available for inspection by employees or agents of the Town at all times.
10. DBDA shall provide the Town with an audit of its finances for fiscal year 2004-2005 performed by a certified public accountant on or before October 1, 2005.
11. DBDA is responsible for all Municipal Service District tax revenue that it receives and spends.
12. A member of the Boone Town Council shall be an ex-officio member of the DBDA's Board of Directors.
13. The DBDA shall provide the Town with a progress report on its activities on or before December 31, 2005. This report shall be in a form acceptable to the Town.
14. In the event the DBDA breaches this Agreement and fails to cure any breach promptly upon notice thereof, the Town shall have the right to suspend or terminate the grant of funds in whole or part and declare this agreement terminated. In the event the Town breaches this Agreement and fails to cure any breach promptly upon notice thereof, the DBDA shall have the right to declare this Agreement terminated.
15. If for any reason the Town terminates this Agreement pursuant to Section 14 above, the DBDA agrees to remit forthwith to the Town any Town funds the DBDA then has on hand less any amounts necessary to pay obligations properly incurred by the DBDA pursuant to this agreement.
16. The DBDA shall provide the Town with a final report of its activities for fiscal year 2004-2005 on or before July 31, 2005. This report shall be in a form acceptable to the Town.

IN WITNESS WHEREOF, each party hereto has caused this agreement to be signed in its corporate name by its duly authorized representatives, and its seal to be hereunto affixed by authority of its governing board, the day and year first above written.

Approval of Contract – Watauga County Arts Council

STATE OF NORTH CAROLINA

CONTRACT

COUNTY OF WATAUGA

This contract, made and entered into this the 1st day of July, 2005, by and between the Town of Boone, (hereinafter called "Town"), and the Watauga County Arts Council (hereinafter called "Arts Council").

WITNESSETH:

WHEREAS, the Jones House Advisory Board has recommended to the Boone Town

Council that the Town enter into a contract with the Arts Council for the purpose of providing an Executive Director for the Jones House; and

WHEREAS, the Arts Council is willing to provide such a service.

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

1. The Arts Council shall provide an Executive Director and an Administrative Assistant for the Jones House. The Arts Council shall include as part of its personnel committee, one representative of the Town of Boone and one from the Jones House Advisory Board. The purpose of these appointees is to assist the Arts Council in selection and performance appraisal of the Jones House Executive Director and Administrative Assistant. The duties and responsibilities of such personnel shall be as follows:
 - a. To promote the purpose and goals of the Jones House Community Center which is to provide via the Jones House structure, its grounds, and any additions, a community and cultural center for performances, exhibitions, classes and meetings sponsored by various community organizations.
 - b. To assist the Jones House Advisory Board in implementing policies and objectives of the Board.
 - c. The Jones House Executive Director shall:
 - Provide administrative support to the Jones House Advisory Board to carry out responsibilities set forth in the Jones House Resolution dated May 27, 1993.
 - See that Jones House is made available to the public, 25 hours per week, for meeting space and to keep the gallery open 20 hours per week.
 - Oversee facility maintenance - cleanup, etc.
 - Schedule Special Events and community groups for maximum use of the house.
 - Work with the Advisory Board in developing Annual Budget and Annual plan for the House.
 - The Executive Director will employ and supervise part-time help as needed with input from the Personnel Committee.
 - Handle other reasonable activities as directed by Jones House Advisory Board.
2. The Town shall pay the Arts Council the sum of \$34,981. for said services, said sum to be paid in twelve equal monthly installments, commencing on July 30, 2005.
3. The Arts Council agrees to help keep the Jones House open for nighttime and weekend events as much as possible.
4. This contract shall terminate on June 30, 2006.

IN WITNESS WHEREOF, the parties hereto have executed this contract the day and first above written.

Approval of Lease – Watauga County Arts Council

STATE OF NORTH CAROLINA

LEASE

COUNTY OF WATAUGA

This LEASE is made on the 1st day of July, 2005, by and between the TOWN OF BOONE, (hereinafter referred to as Lessor), and the WATAUGA COUNTY ARTS COUNCIL, (hereinafter referred to as Lessee).

1. **Leased Premises.** The Lessor hereby leases to the Lessee an office in the 2nd floor of the Jones House, said office being the first office to the left of the stairs. The Lessee also has the right to use the reception area and gallery on the first floor, said use to be in common with others. Gallery exhibits shall be determined and maintained by Lessee.
2. **Term.** The term of this lease shall be one (1) year beginning on July 1, 2005, and end on June 30, 2006.
3. **Rent.** The rent for this term shall be fifty dollars (\$50.00), per month and shall be due by the 1st day of each month.
4. **Hours of Operation.** The Jones House shall operate on the average of 25 hours per week, and the gallery available to the public 20 hours per week, with the exception of 2 weeks when it shall be closed. Those weeks are: One week around the Christmas holiday; and one week independently selected by the Jones House Executive Director. These weeks must be approved and mutually agreed upon by the Jones House Advisory Board and the Arts Council.
5. **Lessee's Care.** The Lessee will commit no act of waste, will take good care of the premises, and will comply with all applicable laws and regulations.
6. **Maintenance and Repairs.** Lessee shall be responsible for any damages caused by its employees, agents or invitees. The Lessor shall be responsible for repairs related to ordinary wear and tear.
7. **Supplies.** The Lessor shall allow the Lessee to use any surplus office equipment the Lessor may have at the Jones House. The Lessee shall be responsible for 1/2 of the supplies and maintenance costs of this equipment.
8. **Assignment of Subletting.** The Lessee shall not assign or sublease the premises without the prior consent of the Lessor.
9. **Alterations.** The Lessee shall not make any alterations, additions, or improvements to the premises without the prior consent of the Lessor.
10. **Utilities.** The Lessee is responsible for paying its phone bill. Lessor shall pay all other utilities.
11. **Personal Property.** The Lessor is not responsible for any personal property located within the Jones House or situated on the grounds of the Jones House.
12. **Default.** If the Lessee defaults in the payment of rent or in the performance of any conditions of this lease, the Lessor may give Lessee written notice of default. If the Lessee does not cure the default within ten (10) days after the giving of notice, this lease shall terminate, and the Lessee shall at once quit and surrender the premises to the Lessor. If this lease is terminated by the Lessor, it may thereafter resume possession of the premises by any lawful means and remove the Lessee or other occupants and their property.
13. **Governing Law.** This lease shall be governed by and construed in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, the parties hereto executed this lease in duplicate originals, and agree to all the conditions set forth above, the day and year first above written.

Approval of Grandfather Mountain Marathon Special Events Permit.

VOTE: Aye - All
 Nay - None

ADOPTION OF ZONING TEXT AMENDMENT

Case No. RZ2004-10 – UDO Section 316. *Commercial Development Appearance Standards*. The purpose of this text amendment is to provide regulations to regulate aesthetic features on commercial building sites. Development Services Director John Spear informed the Council of the Community Appearance Commission and Planning Commission's recommendations. The Planning Commission recommended approval of the revised ordinance language, including an additional substantive change in the text which would raise the maximum recommended retaining wall height from eight feet to twelve feet. The Commission also recommended an effective date for this amendment as January 1, 2006. Several Council members voiced a concern with the change in the retaining wall height. Mr. Spear also pointed out a change in the allowable foot-candle values in the chart under Section 398. *Lighting*. Town Manager Greg Young inquired if the Council would like to initiate an amortization period for gas stations to come into compliance with the lighting regulations. He stated an amortization would present both legal and budget issues. Town Attorney Sam Furguele stated that amortizations are legal in North Carolina and that the time period should be a reasonable length. Council member Eggers expressed a concern that this amortization period would create a burden for gas station owners. Dan Caton spoke to the Council about the safety issues with the current lighting fixtures at gas stations. Upon a motion by Council member Mason, seconded by Council member Clawson, Council moved to adopt the following revised text amendment:

Article XXII Commercial Development Appearance Standards

Section 390. *The Purpose and Intent*

[a] The purpose and intent of this article is to regulate aesthetic features on commercial building sites to: improve community appearance by requiring developments to use designated exterior color palettes, provide finish materials that enhance the visual interest and regional character of a building, address the human scale through the use of architectural features and detailing, and provide well designed exterior lighting.

Section 391. *Applicability*

[a] This article is applicable to the publicly visible portions of building elements, as defined herein, in new commercial (non-residential), multi-family (more than three dwelling units), institutional, and industrial uses. Each element of a building shall be evaluated independently for public visibility.

[b] If building elements are not publicly visible at the time of construction due to existing site features (earth berms, heavily wooded areas, existing buildings to remain), then these existing site features must remain indefinitely. If they are altered at any time to allow greater visibility, then the element made visible must comply with the standard.

[c] This article is not intended to supercede more stringent requirements which may exist within the North Carolina Building Code.

Section 392. Definitions

[a] Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this article.

[1] *Element of a building – an exterior wall, roof, or site wall which is* *manmade and*

- [2] Public visibility – An element of a building shall be deemed publicly visible when an
 - a. At least 70 percent of the element occurs above adjacent grade and is visible from any street adjacent to the property; or
 - b. At least 70 percent of the element is, upon staff review, deemed
 - c. At least 70 percent of the element is taller than the vegetative buffer at the time of planting.
- [3] Exterior walls - the vertical or nearly-vertical planes which form the exterior envelope of a building.
- [4] Site walls – retaining walls, screen walls or other vertical or nearly-vertical planes which occur on a property, but are not part of the exterior envelope of a building.
- [5] Roof area – a single, unbroken, contiguous plane, measured perpe
- [6] Flat Roof – The external covering of a building having a 2(v):12(h) slope
- [7] Pitched Roof – The external covering of a building having a slope greater than 2
- [8] Field color – a single paint color which is used most extensively in a building’s vi
- [9] Trim color – a single paint color which is used on a building’s trim, lesser in prop
- [10] Accent color – a single paint color which is used on a building, in the least prop
- [11] Full cutoff fixture – a light fixture designed such that no light is projected at o
- [12] Façade – the face of a building.
- [13] Volume – a portion of a building which is offset by a minimum of ten feet (10’) in

Section 393. Site Walls

[a] The purpose of this section is to limit dimensions of site walls. The intent is to prevent walls which appear to dwarf the human scale and to encourage equalizing cut/fill or majority cut slope methods of grading.

[b] No retaining wall may be more than eight feet (8’) in height. This height does not include decorative caps that are less than eight inches (8”) in height. Screen walls shall not be taller than necessary to conceal the item screened (such as a dumpster, HVAC equipment, etc.)

[c] Buildings located near the top of site retaining walls shall be a minimum of four feet (4’) horizontally from the top of the retaining wall.

[d] Retaining walls, any portion of which are within six feet (6’) of a sidewalk or pedestrian way, shall not exceed four feet (4’) in height. Subsequent walls must be offset a minimum of four feet (4’) in plan. See Figure 1 on page 22-10.

[e] A series of two (2) retaining walls must have a minimum of four feet (4’) horizontally from the back of the top of the lower wall face to the toe of the upper wall face in plan. See Figure 1 on page 22-10. For three (3) or more walls in series, see item [g] below.

[f] The space between retaining walls in series shall be landscaped with appropriate grasses, vines or other ground cover in accordance with provisions of Appendix B and may contain shrubs and trees not to exceed thirty-five feet (35’) in height at maturity. This area shall be maintained in accordance with the provisions of Section 369.

[g] Retaining walls in series which collectively exceed sixteen feet (16’) in height shall have a minimum of one (1), ten foot (10’) wide Type “A” buffer (see Section 362), between two of the walls. Retaining walls which are separated by a building, a road, or a parking area shall be exempt from this requirement. See Figure 2 on page 22-11.

Section 394. Exterior Walls

[a] The intent of this section is to require running lengths of walls to be interrupted by architectural features which lend a more human scale to the overall massing. Such features include:

- [1] Offsets of the building wall or other elements in plan of eight inches
- [2] Wall recesses or projections of a minimum of eight inches (8”) in section;
- [3] A colonnade with columns or other vertical elements of sixteen feet (16’) or less o
- [4] A change in building material, with a maximum of two uses of this option being c
- [5] Awnings or canopies;

- [6] Windows;
- [7] Trellises;
- [8] A combination of the above; and
- [9] Any other type of feature not listed here which is deemed by staff to meet the intent of the code.

[b] Features shall be provided in accordance with the following feature schedules:

TABLE A
FEATURE SCHEDULE – PLAN

Linear Dimensions, in Plan	Number of Features Required
10' to less than 40'	2
40' to less than 80'	3
80' to less than 120'	4
120'+	5

TABLE B
FEATURE SCHEDULE – ELEVATION

Linear Dimensions, in Elevation	Number of Features Required
10' to less than 16'	2
16' to less than 32'	3
32' to less than 48'	4
48'+	5

[c] Features which serve to interrupt the building façade in both plan and elevation shall be credited as such using the above charts. Windows are considered plan and elevation features. See examples in Figure 3 on page 22-12 and Figure 4 on page 22-13.

[d] A building is assumed to have four elevations. The use of multiple volumes in any building is encouraged in order to articulate its façade. If a volume is offset ten (10) or more feet in elevation or ten (10) or more feet in plan, then it shall have its own feature requirements. The designer may apply this offset to another portion of the buildings requirement for architectural features. See example in Figure 4 on page 22-13.

Section 395. Roofs

[a] The purpose of this section is to regulate both pitched and flat roof types. The intent is to interrupt expanses of pitched roofs and minimize or prevent the visibility of flat roofs.

[b] Walls shall not appear to terminate at flat roofs. Flat roofs shall be concealed from view by using pitched roof features, parapets, or a mixture thereof. Where only one elevation has this condition, the parapet or other feature will continue four feet (4') along the adjacent elevation. See Figure 5 on page 22-14.

[c] Buildings over two stories above grade may utilize a flat roof, provided the flat portion is not publicly visible. Compliance may not be possible if the adjacent road grade is substantially above the roof in question.

[d] Minimum roof slope for pitched roofs is 4'(v):12'(h).

[e] Publicly visible plumbing vent stacks shall be colored to match the roofing material.

[f] Where a parapet intersects with a pitched roof element, there shall be no apparent breaks in the parapet wall. See Figure 6 on page 22-15.

[g] Awnings or canopies which are illuminated from within must be covered or finished with fully opaque material.

[h] Publicly visible pitched roofs shall be articulated by features in accordance with the following schedule. Features shall be in proportion to the roof area where they appear. Features include:

- [1] Dormers;

[2] Eyebrows;

[3] Intermittent gables or hips;

[4] A combination of the above; and

[5] Any other type of feature not listed here which is deemed by
- staff to

TABLE C
FEATURE SCHEDULE – ROOF AREAS

Roof Area	Number of Features Required
Less than 1200 s.f.	0
1200 s.f. to less than 1600 s.f.	1
1600 s.f. to less than 2400 s.f.	2
2400 s.f. +	3

[i] No part of this ordinance shall be construed to prevent solar panels or any other type of renewable energy collection or storage method, provided the development follows the massing guidelines established herein.

Section 396. Materials

[a] The purpose of this section is to establish standards for finish materials used on publicly visible exterior walls and site walls. Materials that enhance the appearance and regional character of a building are required. Materials such as wood, brick, and regionally appropriate stone (igneous rock or marble) are encouraged.

[b] Mirrorized glass is prohibited from use. Reflective tinted glass is acceptable up to 30 percent tint. Anything above 30 percent tint is subject to review by the Community Appearance Commission.

[c] Architectural concrete masonry such as split face, ribbed, or ground-face block is acceptable.

[d] Stucco and synthetic stone are acceptable finish materials.

[e] Architectural concrete (containing a pattern or finish) as a finish material is acceptable. Gray, unfinished concrete is discouraged as a finish material. Concrete architectural detail elements intended to be a decorative enhancement for exterior walls and site walls are acceptable

[f] Other finish materials subject to staff review and approval include vinyl siding (which should simulate wood grain) and other manufactured materials.

[g] For publicly visible roof surfaces, allowed materials include standing seam metal, asphalt shingles, shakes, tile, or manufactured shingles which give an appearance of shingles, shakes, or other simulated natural material. Sheet materials other than those listed in this section are subject to staff review for use on publicly visible roofs.

[h] Any materials which comprise less than 10 percent of a publicly visible exterior building wall or site wall and are components of windows or trim systems are allowed (example: aluminum storefront, metal corner trim, etc.).

[i] FRP, PVC, and other composites formed into architectural detail elements such as columns, cornices, etc., are approved for use as long as such material is intended to be a decorative enhancement for the façade.

Section 397. Colors

[a] The purpose of this section is to prevent inordinately bright façades and primary color ranges.

- [b] Acceptable field colors are those equivalent to Sherwin-Williams series “Essential” and “Fundamentally Neutral”.
- [c] Acceptable trim and accent colors are those equivalent to Sherwin-Williams series “Essential”, “Fundamentally Neutral”, and “Color Options”.
- [d] All fluorescent colors are prohibited, except when used as an accent on less than 5 percent of an overall façade. Specifically prohibited colors are those equivalent to Sherwin-Williams series “Energetic Brights”.
- [e] The use of stark white is prohibited as a field color.

Section 398. Lighting

- [a] The purpose of this section is to regulate the intensity of exterior lighting. The intent is to prevent light from commercial developments from excessively illuminating the property in question, other properties, or the night sky.
- [b] Only light fixtures which are categorized as full cut-off (FCO) fixtures shall be permitted. The use of fully shielded (FCO) floodlights are permitted but not encouraged.
- [c] The following are specific standards for lighting intensity based upon the land use involved. Values are presented in allowable foot-candles (fc) maintained (measured horizontally) at grade and are to be averaged throughout the site to avoid hot spots, i.e. areas of extreme light intensity relative to the remainder of the site:

Land Use	Minimum	Maximum
Pedestrian areas / sidewalks	0.2 fc	1.0 fc
Building entries	1.0 fc	10.0 fc
Street lighting	0.2 fc	1.0 fc
Parking areas	2.0 fc	4.0 fc
Playgrounds		5.0 fc
Sports grounds		20.0 fc
Site perimeter		0.5 fc

- [d] Athletic fields must be illuminated with fixtures equipped with the manufacturer’s glare control package. If the manufacturer does not offer a glare control package, the fixture specifications must be changed to a manufacturer that does offer a glare control package.
- [e] Gas station canopies shall be illuminated at a maximum illuminance of 30 fc and individual fixtures shall be flush mounted or have the canopy edge below the lowest light-emitting point on the fixtures. All existing gas station canopies which exceed this standard shall be made compliant within seven (7) years of the date of adoption of this article.
- [f] Up-lighting may be used to illuminate a building, landscaping element or architectural feature, provided the lighting design has a maximum illuminance of 12 fc, measured in a vertical plane. Down lighting is preferred.

Section 399. Flexibility in Administration

- [a] Flexibility in administration is required for this article. When strict application of the standards within this article undermines other provisions of the UDO, then those other provisions take precedence. For example, the retaining wall height limitation may be increased to afford an opportunity to preserve significant or historic tree(s).

Section 400. Submission Requirements

[a] Development site plans shall graphically illustrate, in both a site plan view and elevation view, those elements which are not publicly visible. Otherwise, each element of the project will be assumed by staff to be publicly visible.

[b] Elevation drawings of each side of the building shall be provided. The elevations shall have materials and colors rendered in such a way that each is distinct.

[c] Elevation drawings shall be accompanied by the following information for each portion of the building, corresponding to the design requirements set forth in Article XXII.

- | | | |
|-----|--|---------------|
| [1] | Largest distance in plan between required features, and the | elevation |
| [2] | Largest distance in elevation between required features, and | the elevation |
| [3] | Number of features required and number present in each | elevation. |
| [4] | Name of each type of feature in elevation. | |

[d] Material samples shall be provided for all synthetic materials not specifically approved by Section 396.

[e] A lighting plan shall be submitted for staff review and approval prior to issuance of building permits. The plan shall contain the following information:

[1] An area lighting plan, drawn to scale, indicating all structures, parking lots, building entrances, vehicular and pedestrian traffic areas, vegetation that may interfere with lighting, and adjacent land uses that may be adversely impacted by the lighting. The plan shall contain a layout of all proposed fixtures by location, orientation, aiming direction, mounting height and type.

[2] The submission shall include, in addition to proposed area lighting, all other exterior lighting, e.g., architectural, building entrance, landscape, flagpole, sign, etc.

[3] A 10' x 10' illuminance grid (point-by-point) of maintained footcandles overlaid on the site plan plotted out to 0.0 footcandles, which demonstrates compliance with light intensity standards specified in Section 398.

Section 401. Community Appearance Commission Review

[a] Alternatives to the appearance standards provided herein may be permitted upon review and approval of the Community Appearance Commission. Applications containing alternatives shall be forwarded to the commission for review at their next regularly scheduled meeting.

[b] The Commission may approve such alternatives if it finds the alternatives involved meet the purpose and intent of the provisions contained within this article.

[c] Unless otherwise specified, the Commission's review and approval of any deviation from the standards contained herein is required prior to permit approval.

Council member Wilcox asked for clarification on who gives final approval for project designs which deviate from UDO regulations. Mr. Spear stated any project that proposes deviations from the UDO regulations can come before the Community Appearance Commission for approval.

VOTE: Aye – All
 Nay – None

DISCUSSION OF POSSIBLE AMENDMENTS – SINGLE-FAMILY SUBDIVISION REGULATIONS

Council member Eggers distributed a statement (**Exhibit A**) regarding tree surveys for subdivisions. Council member Eggers explained that tree surveys are required under UDO Sections 358 [c] and 370 [b] [4] for new construction including single-family subdivision. He further noted that a tree survey is not required for a property owner purchasing one single-family lot. Council member Eggers stated a tree survey would be important for the area where the roadway infrastructure is to be constructed. He proposed that Development Services staff evaluate this text and propose an amendment to this ordinance for consistency. Upon a motion

by Council member Mason, seconded by Council member Spann, Council moved to have the Development Services Department evaluate the ordinance regulating tree surveys for single-family subdivisions and propose an amendment to this ordinance for consistency.

VOTE: Aye – All
 Nay – None

In regard to stormwater detention and retention requirements cited in UDO Section 312, Council member Eggers pointed out that single-family lots are exempt from the requirements but that minor subdivisions are not exempt. He offered that the Development Services Department should also evaluate this requirement and propose an amendment to make it consistent with requirements for single-family parcels. Council member Mason stated there is confusion with the definition for commercial and residential uses. Upon a motion by Council member Mason, seconded by Council member Spann, Council moved to direct the Development Services Department to evaluate the ordinance requirements for stormwater retention and detention for subdivisions and to clarify the definition of “commercial” and “residential.”

VOTE: Aye – All
 Nay – None

ADOPTION OF RESOLUTION – SET DATE FOR PUBLIC HEARING ON BLUST ANNEXATION

Upon a motion by Council member Eggers, seconded by Council member Mason, the Council moved to adopt the following resolution to hold a public hearing regarding the Blust annexation on July 21, 2005 at 6:30 p.m.

**RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION
OF ANNEXATION PURSUANT TO G.S. 160A-58.2
(BLUST ANNEXATION)**

WHEREAS, a petition requesting annexation of the non-contiguous area described herein has been received; and

WHEREAS, the Town Council has by resolution directed the Town Clerk to investigate the sufficiency of the petition; and

WHEREAS, certification by the Town Clerk as to the sufficiency to the petition has been made;

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

Section 1. A public hearing on the question of annexation of the non-contiguous area described herein will be held at Council Chambers on Blowing Rock Road at 6:30 p.m. on July 21, 2005.

Section 2. The area proposed for annexation is described as follows:

A parcel of land lying on the west side of North Carolina Secondary Road No. 1105, commonly known as George Wilson Road and being a portion of the lands described in deed to David R. Blust and wife Cynthia Blust recorded in Book of Records 221 at page 138; being bounded on the east by NCSR No. 1105 and Beatrice Sherwood, on the south by Blust Properties, Inc., on the west by Alliance Bible Fellowship Church, and on the north by David Blust as surveyed by Donald H. McNeil, P.L.S., L-2809, survey no. 05114, dated October 23, 2000, updated April 1, 2005 as BEGINNING on a 5/8 inch rebar set in the eastern line of the lands conveyed to Alliance Bible Fellowship Church as shown on plat recorded in Plat Book 017 at page 307, and located North 01 degrees 14 minutes 30 seconds East 25.00 feet from a 5/8 inch rebar set, a common corner of the Alliance Bible Fellowship Church property and the lands conveyed to Blust Properties, Inc. by deed recorded in Book of Records 389 at page 246; thence with the eastern line of the lands of said Church, North 08 degrees 14 minutes 00 seconds West 635.86 feet to a 5/8 inch rebar set; thence North 80 degrees 48 minutes 06 seconds West 73.49 feet to a 5/8 inch

rebar set; thence North 01 degrees 09 minutes 54 seconds East 267.72 feet to a 5/8 inch rebar set in the southern line of the lands conveyed to David Blust by deed recorded in Book of Records 221 at page 138, being the northeast corner of the lands of Alliance Bible Fellowship Church and located South 80 degrees 40 minutes 30 seconds East 289.64 feet from an existing concrete monument; thence with the southern line of the lands of David Blust, South 80 degrees 40 minutes 30 seconds East 226.62 feet to a point in the center line of NCSR No. 1105; thence with the center line of NCSR No. 1105 the following four (4) courses and distances: (1) South 05 degrees 05 minutes 12 seconds West 43.73 feet to a point; (2) South 00 degrees 19 minutes 12 seconds West 202.63 feet to a point; (3) South 10 degrees 11 minutes 48 seconds East 112.77 feet to a point; (4) South 23 degrees 19 minutes 48 seconds East 389.08 feet to a point in the center line of said road and being a corner to the lands conveyed to Beatrice Sherwood by deed recorded in Deed Book 083 at page 072; thence leaving the road and with the line of said lands of Sherwood, North 64 degrees 15 minutes 48 seconds West 33.43 feet to a 5/8 inch rebar set; thence South 12 degrees 43 minutes 48 seconds East 207.53 feet to an existing “Bathey” iron in a small branch, a corner to the aforesaid lands of Blust Properties, Inc.; thence with the northern line of said lands of Blust Properties, Inc., North 88 degrees 46 minutes 30 seconds West 107.74 feet to a 5/8 inch rebar set; thence North 01 degrees 14 minutes 30 seconds East 25.00 feet to a 5/8 inch rebar set; thence North 88 degrees 46 minutes 30 seconds West 142.99 feet to the BEGINNING and containing 4.346 acres as calculated by the coordinate geometry method and having bearings relative to the North Carolina Geodetic Survey (NAD 83) and all distances being horizontal measurements.

Section 3. Notice of public hearing shall be published once in the Watauga Democrat, a newspaper having general circulation in the Town of Boone, at least ten (10) days prior to the date of the public hearing.

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGES 293-294)

VOTE: Aye – All
 Nay – None

DISCUSSION OF AWNING SIGN REQUIREMENTS

Council member Eggers referenced UDO Section 329 [a] [1] d *Signs Permitted in the B-1 District* which states the following:

Awning signs shall not exceed eight (8) feet. Signs which are suspended under the awning and/or cantilevered roof shall be at least eight (8) feet above the sidewalk at their lowest point. Signs which are attached to the face or side of an awning may not exceed twelve (12) inches in height and no support structures shall be visible.

He distributed a photograph as **Exhibit B** which displays the former Farmer’s Hardware awning and the new awning for the Shoppes at Farmers Hardware. Council member Eggers pointed out the vast difference in the size of the lettering on each awning. He stated this ordinance requirement is very limiting to businesses displaying their signage on an awning. Upon a motion by Council member Eggers, seconded by Council member Spann, Council moved to direct the Development Services Department to evaluate this ordinance and propose a text amendment so that awning signs will be proportionate to other signs in the downtown area.

VOTE: Aye – All
 Nay – None

DISCUSSION OF POSSIBLE UDO TEXT AMENDMENT – ALTERNATES TO THE BOARD OF ADJUSTMENT

Town Attorney Sam Furgiuele referred to the revised text for UDO Section 43 *Appointment and Terms of Board of Adjustment*. The revisions include three conflict alternates residing within the town limits and one conflict alternate from the ETJ. Mr. Furgiuele explained that this revision would help in attaining a quorum when there is a case involving the employer of several of the board members. He noted that any text revisions would need to be sent to the Quarterly Public Hearing in August. Upon a motion by Council member Eggers, seconded by Council member Wilcox, Council moved that Town Attorney Sam Furgiuele and Development Services Director John Spear should collaborate on a proposed text amendment reflecting the need for additional alternates to the Board of Adjustment to be presented at the Quarterly Public Hearing in August.

VOTE: Aye – All
 Nay – None

ADOPTION OF ORDINANCE – FY2005-2006 BUDGET ORDINANCE

Town Manager Greg Young presented the budget information. The Council commended Mr. Young and the town staff for the hard work in preparing the budget. Upon a motion by Council member Mason, seconded by Council member Clawson, the FY2005-2006 Budget Ordinance was adopted.

ORDINANCE # 05-07

**TOWN OF BOONE, NORTH CAROLINA
2005-2006 BUDGET ORDINANCE**

BE IT ORDAINED by the Town Council of the Town of Boone, North Carolina that:

SECTION 1: It is established that the following revenues will be available in each fund listed for the operation of the Town of Boone government and its activities for the fiscal year beginning July 1, 2005 and ending June 30, 2006.

GENERAL FUND	
Current Year Tax Levy & Penalties	3,535,528
Prior Year Taxes	35,000
Tax Penalties & Interest	11,000
Tax Refunds - Current Year	(3,000)
Tax Refunds - Prior Year	(2,000)
Gross Receipts Tax	20,000
Local Sales Tax 1%	1,550,000
Local Sales Tax ½%	500,000
Local Sales Tax ½%	500,000
Local Sales Tax ½%	600,000
Privilege Licenses	45,000
Room Occupancy Tax	165,000
Administrative Costs - Room Occup. Tax	19,750
Cablevision Franchise Revenue	70,000
Utilities Franchise Tax	440,000
Telecommunications Sales Tax	205,000
Beer & Wine Tax	60,000
ABC Revenues	300,000
ABC Board - Law Enforcement	10,000

State Funds - Powell Bill	408,421
Payment in Lieu of Taxes	99,875
Building & Sign Permits	122,000
Parking Violation Fines	100,000
Police Fees	16,000
School Resource Officer	50,890
Fire Protection Charges - Watauga Co.	47,125
Fire Protection Charges - ASU	146,564
Fire Department - Misc. Fees/Permits	15,000
Interest Earned on Investments	65,000
Interest Earned on Powell Bill	1,400
Library Lot Parking	5,500
Tracy Circle Parking	3,600
Jones House Parking	4,500
Town Hall Parking Lot	60,000
Queen Street #2 Parking	25,000
Boot Fees	1,000
Parking Meters	15,000
Sale of Surplus Property	4,500
Contributions/Donations	1,000
Rental Income	25,000
Rental - Jones House	1,000
Bad Check Charges	50
Miscellaneous Revenue	80,000
Transfer from Sanitation Capital Reserve	85,000
Transfer from Separation Allowance Trust	35,923
Transfer from TOB Rural Fire Tax	109,800
Appropriated Fund Balance	982,377
TOTAL REVENUE - GENERAL FUND	\$10,572,803
EMERGENCY TELEPHONE SYSTEM	
E911 Telephone Surcharges	80,000
Wireless Surcharges	70,000
Interest Earned on Investments	1,500
TOTAL REVENUE - EMERGENCY TELEPHONE SYSTEM	\$151,500
NARCOTICS ENFORCEMENT	
Fund Balance Appropriated	15,500
TOTAL REVENUE - NARCOTICS ENFORCEMENT	\$15,500

WATER & SEWER FUND	
Interest Earned on Investments	45,000
Water Sales	1,832,377
Sewer Charges	2,413,750
Water Tap Connection Fees	30,000
Sewer Tap Connection Fees	10,000
Re-connection Fees - Water	10,000
Septic Tank Discharge Fees	55,000
Impact/Availability Fees - Water	75,000
Impact/Availability Fees - Sewer	75,000
NSF/Returned Check Charges	500
Meter Check/Meter Re-Read Charges	7,000
Late Payment Penalties	60,000
Miscellaneous Revenue	5,000
Water Capital Reserve Contribution	40,000
Sewer Capital Reserve Contribution	220,000
Appropriated Fund Balance	194,230
TOTAL REVENUE - WATER & SEWER FUND	\$5,072,857
HEALTH INSURANCE FUND	
Insurance Revenue - COBRA	0
Insurance Revenue - Retiree	16,000
Insurance Revenue - General Fund	650,000
Insurance Revenue - Water/Sewer Fund	244,955
Interest Earned on Investments	2,000
TOTAL REVENUE-HEALTH INSURANCE	\$912,955
MUNICIPAL SERVICE DISTRICT	
Current Year Taxes	68,253
Prior Year Taxes	350
Tax Penalties & Interest	200
Tax Refunds	0
Interest Earned on Investments	300
TOTAL REVENUE - MUNICIPAL SERVICE DISTRICT	\$69,103
TOB RURAL FIRE SERVICE DISTRICT	
Current Year Taxes	194,000
Prior Year Taxes	2,500
Tax Penalties & Interest	450
Tax Refunds & Releases	(150)
Interest Earned on Investments	500

Miscellaneous Revenue	500
Appropriated Fund Balance	0
TOTAL REVENUE - TOB RURAL FIRE SERVICE DISTRICT	\$197,800
GRAND TOTAL OF ALL APPROPRIATIONS	\$16,992,518

SECTION 2: The following amounts are hereby appropriated in each fund listed for the operation of the Town of Boone government and its activities for the fiscal year beginning July 1, 2005 and ending June 30, 2006.

GENERAL FUND	
Governing Body	68,382
Administration	640,277
Finance	308,558
Tax Collections	74,511
Legal	65,200
Elections	15,000
Old City Hall Building	8,190
Blowing Rock Road Building	65,041
Brown Building	61,285
Jones House	105,078
Town Hall Building	71,000
Special Programs & Projects	961,626
Subsidies & Allocations	224,560
Professional Memberships	14,474
GIS / Information Technology	99,004
Non-Departmental	152,817
Police Department	2,397,523
Communications	396,988
Fire Department	970,469
Development Services	737,393
Public Works & Engineering	278,632
Street Department	1,103,525
Powell Bill	408,421
Fleet Maintenance	264,416
Facilities Maintenance	828,433
Sanitation	125,000
Recycling	127,000
TOTAL GENERAL FUND APPROPRIATIONS	\$10,572,803
EMERGENCY TELEPHONE SYSTEM	
Emergency E-911	151,500

TOTAL EMERGENCY TELEPHONE SYSTEM APPROPRIATIONS	\$151,500
NARCOTICS ENFORCEMENT DIV.	
Enforcement	15,500
TOTAL NARCOTICS ENFORCEMENT DIVISION APPROPRIATIONS	\$15,500
WATER & SEWER FUND	
Public Utilities - Administration	434,395
Water Operations	710,290
Sewer Operations	743,391
Water Treatment Plant	702,204
Wastewater Treatment Plant	1,112,654
Utility Billing & Collections	178,908
Non-Departmental	1,191,015
TOTAL WATER AND SEWER FUND APPROPRIATIONS	\$5,072,857
HEALTH INSURANCE FUND	
Health Insurance	912,955
TOTAL HEALTH INSURANCE FUND	\$912,955
MUNICIPAL SERVICE DISTRICT	
Municipal Service District	69,103
TOTAL MUNICIPAL SERVICE DISTRICT APPROPRIATIONS	\$69,103
TOB RURAL FIRE SERVICE DISTRICT	
TOB Rural Fire Service District	197,800
TOTAL TOB RURAL FIRE SERVICE DISTRICT APPROPRIATIONS	\$197,800
GRAND TOTAL OF ALL APPROPRIATIONS	\$16,992,518

SECTION 3: There is hereby levied a tax rate of forty cents (\$0.40) per one hundred dollars (\$100.00) valuation of property as listed for taxes as of January 1, 2005 for the purpose of raising the revenues listed “Current Year Taxes” in the General Fund in Section 1 of this Ordinance. This rate is based on an estimated total valuation of property for the purpose of taxation of \$915,940,000 assessment ratio of 100% of the appraised value. The collection rate of 96.5% is reflected in the budget.

SECTION 3 (a): There is hereby levied a tax rate of twenty-one cents (\$0.21) per one hundred dollars (\$100.00) valuation of property as listed for taxes as of January 1, 2005 for the purpose of raising the revenues listed “Current Year Taxes” in the Downtown Municipal Service District in Section 1 of this Ordinance. This rate is based on an established taxation of \$33,680,000 assessment ratio of 100% of the appraised value. The collection rate of 96.5% is reflected in the budget.

SECTION 4: The Budget Officer is hereby authorized to transfer appropriations within a Fund as contained herein under the following conditions:

- A. He may transfer amounts between objects of expenditure within a Department to a maximum of the budgeted amount per Department. Transfers shall be filed with the Finance Department for public and Town Council inspection. Town Council shall approve transfers in excess of the limitation.
- B. He may transfer available funds between departments of the same fund with an official report of such transfer on file with the Finance Department for inspection by the general public and the Town Council.
- C. He may not transfer any amounts between Funds.
- D. Town Council shall establish, by governing body procedure, the purchasing mechanism for large capital items (e.g. vehicle purchases). Such procedures shall not be in conflict with NCGS 143-129.

SECTION 5: The rates for water and sewer shall be established as set forth in Exhibit A, which is an attachment to this Ordinance. These rates will remain in effect until subsequently repealed or modified by the Town Council.

SECTION 6: Copies of this Budget Ordinance shall be furnished to the Finance Director and to the Budget Officer of the Town of Boone to be kept on file by them for their direction in the disbursement of funds.

ADOPTED this the 27th day of June, 2005 by the Town Council of the Town of Boone, North Carolina.

Mayor

ATTEST:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGES 268-275)

VOTE: Aye – All
 Nay – None

ADOPTION OF RESOLUTION AND AGREEMENT – NC INTERLOCAL RISK MANAGEMENT AGENCY

Town Manager Greg Young presented the information for the resolution and agreement. Upon a motion by Council member Clawson, seconded by Council member Mason, the Council moved to adopt the following resolution and agreement:

RESOLUTION

WHEREAS, certain municipalities and other units of local government of the State of North Carolina, as defined in G.S. 160A-460(2), have agreed to create the NORTH CAROLINA INTERLOCAL RISK MANAGEMENT AGENCY and have agreed to pool the risks of their workers' compensation liabilities and payment of claims for employers' liability coverage pursuant to, and to be governed by, the provisions of North Carolina General Statutes 160A-460 *et seq.* (Part 1 of Article 20 of Chapter 160A);

NOW, THEREFORE, BE IT RESOLVED that the above named unit of local government elects to become a member of the NORTH CAROLINA INTERLOCAL RISK MANAGEMENT AGENCY

upon the terms and conditions stated in the “Interlocal Agreement for a Group Self-Insurance Pool For Workers’ Compensation Risk Sharing,” with such future policy renewals constituting a continuing ratification of this decision to be a member of the Agency and to abide by the terms and conditions of the Interlocal Agreement.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the duly authorized officials of the above named unit of local government are directed to execute in the name of said unit the “Interlocal Agreement for a Group Self-Insurance Pool for Workers’ Compensation Risk Sharing,” a copy of which is attached to and made a part of this Resolution.

Adopted this the 27th day of June, 2005.

Mayor

Attest:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 295)

**NCIRMA 2005 1
INTERLOCAL AGREEMENT FOR A
GROUP SELF-INSURANCE POOL
FOR WORKERS’ COMPENSATION RISK SHARING**

This Agreement, made and entered into in duplicate originals this ____ day of _____, 20__, by and between all the parties who are now, or may hereafter become, members of the North Carolina Interlocal Risk Management Agency (hereinafter “Agency”):

WITNESSETH:

WHEREAS, certain municipalities and other units of local government of the State of North Carolina have agreed to create the Agency and have agreed to pool the risk of their workers’ compensation liabilities and payment of claims for employers’ liability coverage pursuant to, and to be governed by, the provisions of North Carolina General Statutes 160A-460 et seq. (Part 1 of Article 20 of Chapter 160A); and

WHEREAS, the members of the Agency have agreed upon designation of a Board of Trustees to direct the affairs of the Agency, to adopt rules, regulations, policies, and bylaws for implementing and administering the Agency, and to pass upon the admissibility of future members of the Agency; and

WHEREAS, the members have designated the North Carolina League of Municipalities as Administrator of the Agency, subject to the provisions of this Agreement and the policies adopted by the Trustees, and;

WHEREAS, by this Agreement the Agency will undertake to discharge, solely from the assets of this Agency, by payment, any lawful workers’ compensation and employers’ liability claims against any member of the Agency, which awards shall have been sustained by final judgment where suit shall have been filed, or by the rules of the Agency if settlement is made before suit is filed; and

WHEREAS, the members of the Agency agree to pay premiums and/or contributions based upon appropriate classifications, rates, and experience modifications, and other criteria established by the Trustees, out of a portion of which the Agency will establish and maintain a fund for the payment of workers’ compensation and employers’ liability claims and awards and further, that the members covenant and agree that there will be no disbursements out of this fund by way of dividends or distribution of accumulated reserves to the respective members, except at the

discretion of the Trustees; and

WHEREAS, the members of the Agency, through the action of their respective governing bodies have elected to comply with the conditions of this Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants, promises, and obligations herein contained, which are given to and accepted by each member hereof to the other, the parties hereto agree as follows:

Section 1. Purpose of Agreement; Composition of Board of Trustees.

The purpose of the Agency established by the signatories hereto is to allow members to pool the risk of their workers' compensation liabilities and payment of claims for employers' liability coverage. To this end, the Agency shall be governed by a Board of Trustees made up of thirteen (13) officials or employees of units of local government. Eleven (11) members shall be appointed for three (3) year overlapping terms by the Board of Directors of the North Carolina League of Municipalities. In addition, the Board of Directors of the North Carolina League of Municipalities shall appoint two (2) of its members to the Board of Trustees, to serve at the pleasure of the Board of Directors, but not more than six months beyond the end of their tenure on the Board of Directors. The foregoing provisions shall not be construed to prevent the Board of Directors from appointing others of its members to one or more of the eleven (11) regular 3-year terms. In addition, the Executive Director of the North Carolina League of Municipalities shall serve as an ex-officio, non-voting member of the Board of Trustees: the ex-officio member position shall not have a committee assignment, nor shall the position serve as an officer of the Board of Trustees.

Section 2. Trustees' Powers, Duties, Liability and Indemnity.

The Trustees shall have the following powers and duties, in addition to those set forth elsewhere in this Agreement:

1. To establish guidelines for membership in the Agency;
2. To establish the terms and conditions of coverage, including underwriting criteria and exclusions from coverage;
3. To ensure that all valid claims are promptly paid;
4. To establish, operate, and enforce rules, regulations, policies, and bylaws as between the individual members of the Agency and the Agency;
5. To enter into agreements with such persons, firms, or corporations as it deems appropriate to adjust claims; promote membership in the Agency; provide actuarial and underwriting services; defend against claims and lawsuits; provide accounting services; obtain excess insurance or reinsurance coverage, if available, designed to protect the Agency against excess losses; invest the assets of the Agency; provide loss control and other risk management services for the Agency and member units; maintain records and accounts; and provide any other service necessary or desirable for the sound operation of the Agency;
6. To lease or rent real and personal property it deems to be necessary;
7. To borrow or raise monies for the purpose of the Agency to the extent that the Trustees shall deem desirable upon such terms and conditions as the Trustees in their absolute discretion may deem desirable or proper, and for any sum so borrowed to issue their promissory note as Trustees and to secure the repayment thereof by pledging all or any part of the pool; and no person or entity lending money to the Trustees shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any such borrowing;
8. To rate individually any member unit with rates different from the group rates when the loss experience of the unit warrants such individual rating, in the discretion of the Trustees;
9. To take measures to maintain claim reserves equal to known incurred losses and loss adjustment expenses and to maintain an estimate of incurred but not reported losses; and
10. To take all necessary precautions to safeguard the assets of the Agency.

The Trustees shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties hereunder. The members agree that the Trustees shall not be

liable for any mistake of judgment or other action made, taken, or omitted by any employee, agent, contractor, subcontractor, or independent contractor selected with ordinary care and reasonable diligence; nor for loss incurred through investment of Agency money or failure to invest. No Trustee shall be liable for any action taken or omitted by any other Trustee. The Trustees shall not be required to give a bond or other security to guarantee the faithful performance of their duties hereunder.

The members of the Agency agree that, for the payment of any claim against the Agency or the performance of any obligation of the pool hereunder, resort shall be had solely to the assets of the Agency, and neither the Trustee nor the Administrator shall be liable therefor. Further, the Agency shall indemnify and hold harmless the Trustees against any and all claims, suits, actions, debts, damages, costs, charges, and expenses (including but not limited to court costs and attorneys' fees) and against all liability, losses, and damages of any nature whatever, that the Trustees shall or may at any time sustain, or be put to, by reason of the exercise of their power and in the performance of their duties hereunder, or by reason of any mistake of judgment or other action made, taken, or omitted by any employee, agent, contractor, subcontractor, or independent contractor, or for loss incurred through investment of Agency money or failure to invest.

Section 3. Payment of Claims.

The members of the Agency agree that, for the payment of any workers' compensation or employers' liability claim against the Agency or the performance of any obligation arising hereunder, resort shall be had solely to the assets of the Agency, and neither the Trustees nor the Administrator shall be liable therefor. Accordingly, lawful claims will be paid from the assets of the Agency pursuant to the types and levels of coverage established by the Board of Trustees. The Board of Trustees shall establish a schedule of types and monetary levels of coverages for which the Agency shall be responsible on behalf of its members, including provisions for levels of coverage for which the members shall be individually responsible. Such types and levels of coverage may vary according to population classifications of members, mutual agreement of the Agency and a member, or such other criteria as may be established by the Board of Trustees. The types and level of coverage for each member shall be shown on a Coverage Document provided to each member. The Agency shall pay all claims (less the applicable deductible) for which each member incurs liability during each member's period of membership except where a member has individually retained the risk, where the risk is not covered, and except for amount of claims above the coverage provided by the Agency. The schedule so established may, from time to time, be amended by the Board of Trustees (but not during any coverage period) to sustain the financial integrity of the Agency or to reflect the desires of the members as determined by the Board of Trustees.

Section 4. Mutual Covenant of Risk Sharing.

The members intend this Agreement as a mutual covenant of risk sharing and not as a partnership. No member by reason of being a member of the Agency and contributing to the pool shall be liable to the Agency, to any other member, or to any claimant, except for the payment of the premiums and/or contributions provided for in its application for membership and joinder in this Agency, and for any necessary additional assessments levied by the Trustees to offset a claims fund deficiency.

Section 5. Administrator.

The North Carolina League of Municipalities, an unincorporated association with offices at 215 North Dawson Street, Raleigh, North Carolina, 27602, is designated as the Administrator of the Agency. Subject to the direction of the Trustees, the Administrator shall provide day-to-day management of the Agency and shall have the authority to contract with third parties for provision of services. The Administrator may establish offices where necessary within the State of North Carolina and employ staff to carry out the Agency's purpose. The Administrator shall deposit to the account of the Agency at any financial institution or financial institutions designated by the Trustees all premiums and/or contributions as collected and such monies shall be disbursed and/or invested only as provided by the rules, regulations, policies, and bylaws of the Trustees. The Administrator may enter into financial services agreements with financial institutions and issue checks in the name of the Agency. The Administrator shall receive such

compensation as shall be determined from time to time by the Trustees.

Section 6. Admission to Membership; Suspension & Expulsion.

All members of the Agency hereby agree that the Trustees may admit as members of this Agency only the units of local government set forth in North Carolina General Statutes 160A- 460 et seq. (Part 1 of Article 20 of Chapter 160A). The Trustees shall be sole judge of whether or not an applicant shall be admitted to membership. Except as otherwise provided in Section VII (i) of this Agreement, a member may be suspended or expelled by the Trustees from the Agency only after forty-five (45) days' notice has been mailed to it. No payment shall be required by the Agency as a result of any workers' compensation or employers' liability claim of the suspended or expelled member occurring after forty- five (45) days' notice has been mailed to the member.

Section 7. Rules, Regulations, Policies and Bylaws Members Responsibilities.

The rules, regulations, policies, and bylaws for the administering of the Agency and the admission and expulsion or suspension of members shall be promulgated by the Trustees. In addition, each member of the Agency agrees as follows:

- (a) To make prompt payment of all premiums and/or contributions as required by the Trustees;
- (b) To (and they do hereby) appoint the Trustees and Administrator as its agent and attorney-in- fact, to act on its behalf and to execute all contracts, reports, waivers, agreements, excess insurance or reinsurance contracts, and service contracts; and to make or arrange for payment of claims, medical expenses, and all other things required or necessary;
- (c) In the event of an accident or a claim reported by a member, to make immediate provision for remedial care for its employee, and to give immediate notification of the claim to the Administrator on the prescribed forms;
- (d) To permit the Agency to defend in the name of and on the behalf of the members any suits or other proceedings which may at any time be instituted against them on account of injuries or death within the purview of the North Carolina Workers' Compensation Act or employers' liability coverage, including suits or other proceedings alleging such injuries and demanding damages or compensation therefore (although such suits, other proceedings, allegations, or demands are considered to be wholly groundless, false, or fraudulent) and to pay all judgments or costs taxed against members in any legal proceeding which is so defended at the direction of the Agency, all interest accruing after entry of judgment and all expenses which are incurred pursuant to the direction of the Agency for investigation, negotiation, or defense. It is agreed that the Agency shall make all final decisions regarding the legal defense of claims, and shall have absolute and conclusive authority with regard to defense, settlement, and payment of claims. It is agreed that the independent settlement or payment of any claim by or on behalf of a member without approval of the Agency shall be at the sole cost of the settling member without any reimbursement or other resources from the Agency and may be grounds for expulsion of the member from the Agency;
- (e) To cooperate in all respects with the Agency, the Trustees, the Administrator, and any contractors of the Agency in carrying out the purposes of this Agreement ;
- (f) In the event of the payment of any loss by the Agency under this Agreement, the Agency shall be subrogated to the extent of such payment to all the rights of the member against any person or other entity legally responsible for damages for such loss, and in such event, the member agrees to render all reasonable assistance to affect recovery;
- (g) To follow the reasonable safety, loss prevention, loss control, and risk management recommendations of the Trustees, the Administrator, or contractors of the Agency in order to minimize claims against the Agency;
- (h) The Trustees, the Administrator, and any contractors of the Agency shall be permitted at all reasonable times to inspect the work places, plants, works, machinery, and appliances of each member covered by this Agreement, and shall be permitted at all reasonable times and within two years after the final termination of a member's membership to examine the member's books, vouchers, contracts, documents, and records of any and every kind which show or tend to show or verify the premiums and/or contributions that are payable under the terms hereof;
- (i) Risk sharing by the Agency under the terms of this Agreement shall begin upon payment of the premium and/or contribution by the member to the Agency. Risk sharing by this Agency under the terms of this Agreement shall expire and be cancelled automatically for

nonpayment of premiums and/or contributions, and a member may be expelled from the Agency upon thirty (30) days' notice by mail by the Trustees, the Administrator, or their designee to the member specifying the date that cancellation shall be effective. No payment shall be required of the Agency as a result of any workers' compensation or employers' liability claim of the expelled member occurring after 30 days' notice has been mailed to the expelled member;

- (j) To pay any assessment duly levied by the Trustees under the terms of this Agreement. If a member cancels or withdraws from the Agency, the member shall pay its pro rata share of any assessment relating to the member's period of enrollment; and
- (k) In order that an adequate reserve may be maintained, the members further agree that the Trustees shall have the right to assess the members pro-rata in such amounts as will be sufficient to maintain at all times a minimum reserve, equal to at least the annual premium and/or contributions for the coverage provided by the Agency. Should a member fail to pay any assessment as provided for in this Section within thirty (30) days of the assessment date, all interest and claim of such defaulting member in and to the Agency shall automatically cease.

Section 8. Allocation of Monies.

The Trustees are authorized to set aside from the premiums and/or contributions collected from members a reasonable sum for the operating and administrative expenses of the Agency. All remaining monies coming into their hands during any fiscal year of the Agency shall be set aside and shall be used only for the following purposes:

- (a) Disbursement to establish a reserve for payments of required medical, surgical, hospital, rehabilitation, nursing expenses, payments of workers' compensation to employees of members covered by this Agreement, and employers' liability claims including settlements, awards, judgments, legal fees, and costs in all contested cases to the extent provided herein;
- (b) Payment of such compensation to the Administrator as shall be determined from time to time by the Trustees;
- (c) Payment of all costs of all bonds and auditing expenses required of the Agency, the Administrator, or its agents or employees; and
- (d) Distribution to members in such manner as the Trustees shall deem to be equitable of any excess monies remaining after payment of claims and claims expenses and after provision has been made for open claims and outstanding reserves; provided, however, that no such distributions shall be made earlier than twelve (12) months after the end of an Agency Year. Undistributed excess funds from previous Agency Years may be distributed at any time if they are not required as reserves and if approved for distribution by the Trustees. Monies in excess of those required to fulfill the purposes, costs, and other obligations of the Agency as set out hereinabove will be accumulated in the Agency or distributed to the member units at the discretion of and in the manner provided by the Trustees.

Section 9. Fiscal year; Continuing Contract; Withdrawal of Members subject to Provision of 45 days' written notice to administrator; Fee Imposed for failure to provide 45 days' written notice of withdrawal.

The Agency shall operate on a fiscal year from 12:01 a.m. July 1st to midnight on June 30 of the succeeding year (the "Agency Year"). Application for membership, when approved in writing by the Trustees or their designee, shall constitute a continuing contract for each succeeding Agency Year unless canceled by the Trustees, or unless the member shall have resigned or withdrawn from the Agency by having written notice delivered to the Administrator on or before May 15 (i.e., the Administrator must receive written notice forty (45) days prior to the last day, June 30, of the Agency Year). Failure to provide forty (45) days' written notice shall subject the member to an exiting fee constituting two percent (2%) of the premium for that Agency Year.

Section 10. Members bound by Agreement; Termination Permitted Only at End of Fiscal Year; Final Accounting.

Any member who formally applies for membership in the Agency and is accepted by the Trustees shall thereupon become a party to this Agreement and be bound by all of the terms and conditions hereof, and such application shall constitute a counterpart of this Agreement. Cancellation of this Agreement on the part of any member, or withdrawal from membership,

shall be permitted only at the end of a fiscal or Agency Year. A terminating member is entitled to a final accounting when all incurred claims are concluded, settled, or paid.

Section 11. Intention of Indefinite Operation; Reservation of Right to Terminate Agency; Revision of Monies or Other assets Upon Termination.

This Agency has been established with the bona fide intention that it shall be continued in operation indefinitely and that the premiums and/or contributions to the Agency shall continue for an indefinite period. However, the Trustees reserve the right at any time to terminate the Agency by a written instrument to that effect executed by the Trustees. In the event of such termination, member premiums and/or contributions (other than duly authorized assessments) shall cease as of the date of termination and the assets then remaining in the Agency shall continue to be used and applied, to the extent available, for the (a) payment of claims arising prior to such termination and administrative and other expenses and obligations arising prior to such termination; and (b) payment of reasonable and necessary expenses incurred in such termination.

Any monies or other assets thereafter remaining in the Agency shall revert to the members of the Agency as of the date of termination pro-rata to the annual premiums and/or contributions of said members paid in the year of termination. In no event shall any such assets be returned or distributed to any individual. Upon such termination, the Trustees shall continue to serve for such period of time and to the extent necessary to effectuate termination of the Agency.

Section 12. Amendment of Agreement.

This Agreement may be amended by an agreement executed by those members constituting a majority in paid-in dollar volume of contributions to the Agency during the current Agency Year. In lieu of this amendment procedure, the members hereby appoint the Board of Directors of the North Carolina League of Municipalities as their agents to make any amendments to this Agreement which would not fundamentally alter the contemplated arrangement. For purposes of illustration, and not limitation, an amendment to increase or decrease the number of members of the Board of Trustees or their terms shall not be construed as a fundamental alteration of the arrangement, provided that the current term of a member may not be terminated by any such amendment. Written notice of any amendment proposed for adoption by the Board of Directors of the North Carolina League of Municipalities shall be mailed to each member not less than 30 days in advance. Written notice of amendments finally adopted by the Board of Directors of the North Carolina League of Municipalities shall be mailed to each member not more than 30 days after adoption.

Section 13. Headings.

Headings of various sections and subsections of this Agreement have been inserted for the convenience of reference only and shall not be construed as modifying, amending, or affecting in any way the express terms and provisions of this Agreement.

Section 14. Interpretation.

This Agreement shall be governed and interpreted under the laws of the State of North Carolina. This Agreement is intended to serve as an interlocal agreement, for purposes of executing the undertaking described in the preceding sections and paragraphs, under North Carolina General Statutes 160A-460 et seq. (Part 1 of Article 20 of Chapter 160A). The terms of this Agreement do not constitute a coverage document or form applicable to any specific claim.

Should any clause, sentence, provision, paragraph, or other part of this Agreement be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement. Each of the parties declares that it would have entered into this Agreement irrespective of the fact that any one or more of this Agreement's clauses, sentences, provisions, paragraphs, or other parts have been so declared invalid. Accordingly, it is the intention of the parties that the remaining portions of this Agreement shall remain in full force and effect without regard to the clause(s), sentence(s), provision(s), paragraph(s), or other part(s) invalidated.

Failure of the Trustees, the Administrator, or their designees to insist in any one or more instances upon the performance of any of the covenants, agreements, and/or conditions of this Agreement, or to exercise any right or privilege herein conferred, shall not be construed as a waiver of any such covenant or condition.

This Agreement contains the entire agreement between the parties, whom shall not be bound by any verbal statement or agreement made heretofore.

IN WITNESS WHEREOF, the participating entity listed below acknowledges its membership in the Agency and acceptance of obligations hereunder, by the due execution hereof, following appropriate governing body approval, by its duly authorized official. Further, the members of the North Carolina Interlocal Risk Management Agency have caused these presents to be signed by their duly authorized Chair of the Board of Trustees and have had this Agreement attested by its duly authorized Administrator.

VOTE: Aye – All
 Nay – None

ADOPTION OF RESOLUTION AND AGREEMENT – INTERLOCAL RISK FINANCING FUND OF NORTH CAROLINA

Town Manager Greg Young presented the information on the resolution and agreement. Upon a motion by Council member Eggers, seconded by Clawson, Council moved to adopt the following resolution and agreement:

RESOLUTION

WHEREAS, certain municipalities and other units of local government of the State of North Carolina, as defined in G.S. 160A-460(2), have agreed to create the INTERLOCAL RISK FINANCING FUND OF NORTH CAROLINA and have agreed to pool the risks of their exposure to property losses and potential liabilities in the manner herein provided pursuant to, and to be governed by, the provisions of North Carolina General Statutes 160A-460 *et seq.* (Part 1 of Article 20 of Chapter 160A);

NOW, THEREFORE, BE IT RESOLVED that the above named unit of local government elects to become a member of the INTERLOCAL RISK FINANCING FUND OF NORTH CAROLINA upon the terms and conditions stated in the “Interlocal Agreement for a Group Self-Insurance Pool For Property and Liability Risk Sharing,” with such future policy renewals constituting a continuing ratification of this decision to be a member of the Fund and to abide by the terms and conditions of the Interlocal Agreement.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the duly authorized officials of the above named unit of local government are directed to execute in the name of said unit the “Interlocal Agreement for a Group Self-Insurance Pool For Property and Liability Risk Sharing,” a copy of which is attached to and made a part of this Resolution.

Adopted this the 27th day of June, 2005.

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 296)

**IRFFNC 2005 1
INTERLOCAL AGREEMENT FOR A
GROUP SELF-INSURANCE POOL**

FOR PROPERTY AND LIABILITY RISK SHARING

This Agreement, made and entered into in duplicate originals this ____ day of _____ 20____, by and between all the parties who are now or may hereafter become members of the Interlocal Risk Financing Fund of North Carolina (hereafter referred to as the “Fund”):

WITNESSETH:

WHEREAS, certain municipalities and other units of local government of the State of North Carolina have agreed to create the Fund and have agreed to pool the risk of their exposure to property losses and potential liabilities in the manner herein provided pursuant to, and to be governed by, the provisions of North Carolina General Statutes 160A-460 et seq. (Part 1 of Article 20 of Chapter 160A); and

WHEREAS, the members of the Fund have agreed upon designation of a Board of Trustees to direct the affairs of the Fund, to adopt rules, regulations, policies, and by-laws for implementing and administering the Fund, and to pass upon the admissibility of future members of the Fund; and

WHEREAS, the members have designated the North Carolina League of Municipalities as Administrator of the Fund, subject to the provisions of this Agreement and the policies adopted by the Board of Trustees of the Fund; and

WHEREAS, by this Agreement the Fund will undertake to discharge, solely from the Assets of this Fund, certain claims against any member of the Fund, when said claims come within the rules of the Fund, and when said claims are determined to be due as a result of a court judgment or settlement agreement; and

WHEREAS, the members of the Fund agree to pay premiums and/or contributions based upon appropriate classifications, rates, and loss experience, and other criteria established by the Board of Trustees, out of a portion of which the Fund will establish and maintain a fund for the payment of the claims, awards, and attorney’s fees and further, that the members covenant and agree that there will be no disbursements out of the fund by way of dividends or distribution of accumulated reserves to the respective members, except at the discretion of the Trustees; and

WHEREAS, the members of the Fund, through action of their respective governing bodies, have elected to comply with the conditions of this Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants, promises, and obligations herein contained, which are given to and accepted by each member hereof to the other, the parties hereto agree as follows:

Section 1. Purpose of Agreement; Composition of Board of Trustees.

The purpose of the Fund established by the signatories hereto is to allow members to operate a pool for property and liability risk sharing, including but not being limited to the following risks and coverages: automobile liability; automobile physical damage; comprehensive general liability; property and inland marine; boiler and machinery; fidelity bonds; crime; police professional liability, and public officials and employment practices liability (with such exclusions, exemptions, and limitations as are specified in the regulations or schedules of coverage adopted by the Board of Trustees). To this end, the Fund shall be governed by a Board of Trustees made up of thirteen (13) officials or employees of units of local government. Eleven (11) members shall be appointed for three (3) year overlapping terms by the Board of Directors of the North Carolina League of Municipalities. In addition, the Board of Directors of the North Carolina League of Municipalities shall appoint two (2) of its members to the Board of Trustees, to serve at the pleasure of the Board of Directors, but not more than six months beyond the end of their tenure on the Board of Directors. The foregoing provisions shall not be construed to prevent the Board of Directors from appointing others of its members to one or more of the eleven (11) regular 3-year terms. In addition, the Executive Director of the North Carolina League of Municipalities shall serve as an ex-officio, non-voting member of the Board of Trustees: the ex-officio member position shall not have a committee assignment, nor shall the position serve as an officer of the Board of Trustees.

Section 2. Trustees' Powers, Duties, Liability and Indemnity.

The Trustees shall have the following powers and duties, in addition to those set forth elsewhere in this Agreement:

1. To establish guidelines for membership in the Fund;
2. To establish the terms and conditions of coverage, including underwriting criteria and exclusions from coverage;
3. To ensure that all valid claims are promptly paid;
4. To establish, operate, and enforce rules, regulations, policies, and bylaws as between the individual members of the Fund and the Fund;
5. To enter into agreements with such persons, firms, or corporations as it deems appropriate to adjust claims; promote membership in the Fund; provide actuarial and underwriting services; defend against claims and lawsuits; provide accounting services; obtain excess insurance or reinsurance coverage, if available, designed to protect the Fund against excess losses; invest the assets of the Fund; provide loss control and other risk management services for the Fund and member units; maintain records and accounts; and provide any other service necessary or desirable for the sound operation of the Fund;
6. To lease or rent real and personal property it deems to be necessary;
7. To borrow or raise monies for the purpose of the Fund to the extent that the Trustees shall deem desirable upon such terms and conditions as the Trustees in their absolute discretion may deem desirable or proper, and for any sum so borrowed to issue their promissory note as Trustees and to secure the repayment thereof by pledging all or any part of the pool; and no person or entity lending money to the Trustees shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any such borrowing;
8. To rate individually any member unit with rates different from the group rates when the loss experience of the unit warrants such individual rating, in the discretion of the Trustees;
9. To take measures to maintain claim reserves equal to known incurred losses and loss adjustment expenses and to maintain an estimate of incurred but not reported losses; and
10. To take all necessary precautions to safeguard the assets of the Fund.

The Trustees shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties hereunder. The members agree that the Trustees shall not be liable for any mistake of judgment or other action made, taken, or omitted by any employee, agent, contractor, subcontractor, or independent contractor selected with ordinary care and reasonable diligence; nor for loss incurred through investment of Fund money or failure to invest. No Trustee shall be liable for any action taken or omitted by any other Trustee. The Trustees shall not be required to give a bond or other security to guarantee the faithful performance of their duties hereunder.

The members of the Fund agree that, for the payment of any claim against the Fund or the performance of any obligation of the pool hereunder, resort shall be had solely to the assets of the Fund, and neither the Trustee nor the Administrator shall be liable therefor. Further, the Fund shall indemnify and hold harmless the Trustees against any and all claims, suits, actions, debts, damages, costs, charges, and expenses (including but not limited to court costs and attorneys' fees) and against all liability, losses, and damages of any nature whatsoever, that the Trustees shall or may at any time sustain, or be put to, by reason of the exercise of their power and in the performance of their duties hereunder, or by reason of any mistake of judgment or other action made, taken, or omitted by any employee, agent, contractor, subcontractor, or independent contractor, or for loss incurred through investment of Fund money or failure to invest.

Section 3. Payment of Claims.

The members of the Fund agree that, for the payment of any claim against the Fund or the performance of any obligation arising hereunder, resort shall be had solely to the assets of the Fund, and neither the Trustees nor the Administrator shall be liable therefor. Accordingly, lawful claims will be paid from the assets of the Fund pursuant to the types and levels of coverage established by the Board of Trustees. The Board of Trustees shall establish a schedule of types and monetary levels of coverages for which the Fund shall be responsible on behalf of its members, including provisions for levels of coverage for which the members shall be individually responsible. Such types and levels of coverage may vary according to population

classifications of members, mutual agreement of the Fund and a member, or such other criteria as may be established by the Board of Trustees. The types and level of coverage for each member shall be shown on a Coverage Document provided to each member. The Fund shall pay all claims (less the applicable deductible) for which each member incurs liability during each member's period of membership except where a member has individually retained the risk, where the risk is not covered, and except for amount of claims above the coverage provided by the Fund. The schedule so established may, from time to time, be amended by the Board of Trustees (but not during any coverage period) to sustain the financial integrity of the Fund or to reflect the desires of the members as determined by the Board of Trustees.

Section 4. Mutual Covenant of Risk Sharing.

The members intend this Agreement as a mutual covenant of risk sharing and not as a partnership. No member by reason of being a member of the Fund and contributing to the Fund shall be liable to the Fund, to any other member, or any claimant against the Fund, except for the payment of the premiums and/or contributions and deductibles provided for in its application for membership and joinder in the Fund, for annual premiums and/or contributions for continued membership as determined by the Trustees, and for any necessary additional assessments levied by the Trustees to offset a claims fund deficiency.

Section 5. Administrator.

The North Carolina League of Municipalities, an unincorporated association with offices at 215 North Dawson Street, Raleigh, North Carolina, 27602, is designated as the Administrator of the Fund. Subject to the direction of the Trustees, the Administrator shall provide day-to-day management of the Fund and shall have the authority to contract with third parties for provision of services. The Administrator may establish offices where necessary within the State of North Carolina and employ staff to carry out the Fund's purpose. The Administrator shall deposit to the account of the Fund at any financial institution or financial institutions designated by the Trustees all premiums and/or contributions as collected and such monies shall be disbursed and/or invested only as provided by the rules, regulations, policies, and bylaws of the Trustees. The Administrator may enter into financial services agreements with financial institutions and issue checks in the name of the Fund. The Administrator shall receive such compensation as shall be determined from time to time by the Trustees.

Section 6. Admission to Membership; Suspension & Expulsion.

All members of the Fund hereby agree that the Trustees may admit as members of this Fund only the units of local government set forth in North Carolina General Statutes 160A-460 et seq. (Part 1 of Article 20 of Chapter 160A). The Trustees shall be sole judge of whether or not an applicant shall be admitted to membership. Except as otherwise provided in Section VII (i) of this Agreement, a member may be suspended or expelled by the Trustees from the Fund only after forty-five (45) days' notice has been mailed to it. No payment shall be required by the Fund as a result of any claim occurring after forty-five (45) days' notice has been mailed to the member.

Section 7. Rules, Regulations, Policies and Bylaws; Members' Responsibilities.

The rules, regulations, policies, and bylaws for the administering of the Fund and the admission and expulsion or suspension of members shall be promulgated by the Trustees. In addition, each member of the Fund agrees as follows.

- (a) To make prompt payment of all premiums and/or contributions as required by the Trustees;
- (b) To (and they do hereby) appoint the Trustees and the Administrator, as its agent and attorney-in-fact, to act on its behalf and to execute all contracts, reports, waivers, agreements, excess insurance or reinsurance contracts, and service contracts; to make or arrange for payment of claims and all other things required or necessary, insofar as they affect its liability for claims and awards and as covered by the terms of the Agreement and the rules, regulations, policies, and by-laws as now provided or as hereafter promulgated by the Trustees;
- (c) In the event a claim is reported to or is known by a member, to give immediate notification of the claim to the Administrator in the manner prescribed by the Trustees;
- (d) To permit the Fund to defend in the name of and on behalf of the members any suits or

other proceedings which may at any time be instituted against them concerning claims for which the Fund may be obligated to make payment (although such suits, other proceedings, allegations, or demands are considered to be wholly groundless, false, or fraudulent) and to pay all judgments or costs taxed against members in any legal proceeding which is so defended at the direction of the Fund, all interest accruing after entry of judgment and all expenses which are incurred pursuant to the direction of the Fund for investigation, negotiation, or defense. It is agreed that the Fund shall make all final decisions regarding the legal defense of claims, and shall have absolute and conclusive authority with regard to defense, settlement, and payment of claims. It is agreed that the independent settlement or payment of any claim by or on behalf of a member without approval of the Fund shall be at the sole cost of the settling member without any reimbursement or other resources from the Fund; and, may be grounds for expulsion of the member from the Fund;

- (e) To cooperate in all respects with the Fund, the Trustees, the Administrator, and any contractors of the Fund in carrying out the purposes of this Agreement;
- (f) In the event of the payment of any loss by the Fund under this Agreement, the Fund shall be subrogated to the extent of such payment to all the rights of the member against any person or other entity legally responsible for damages for such loss, and in such event, the member agrees to render all reasonable assistance to affect recovery;
- (g) To follow any reasonable safety, loss prevention, loss control, and risk management recommendations of the Trustees, the Administrator, or contractors of the Fund in order to minimize claims against and losses of the Fund;
- (h) The Trustees, the Administrator, and any contractors of the Fund shall be permitted at all reasonable times to inspect the real and personal property, work places, plants, works, machinery, and appliances of each member covered by this Agreement, and shall be permitted at all reasonable times within two years after the final termination of a member's membership to examine the member's books, vouchers, contracts, documents, and records of any and every kind which show or tend to show or verify the premiums and/or contributions that are payable under the terms hereof;
- (i) Risk sharing by the Fund under the terms of this Agreement shall begin upon payment of the premium and/or contribution by that member to the Fund. Risk sharing by this Fund under the terms of this Agreement shall expire and be cancelled automatically for nonpayment of premiums and/or contributions, and a member may be expelled from the Fund upon thirty (30) days' notice by mail by the Trustees, the Administrator, or their designee to the member specifying the date that cancellation shall be effective. No payment shall be required of the Fund as a result of any covered loss of the expelled member occurring after 30 days' notice has been mailed to the expelled member;
- (j) To pay any assessment duly levied by the Trustees under the terms of this Agreement. If a member cancels or withdraws from the Fund, the member shall pay its pro rata share of any assessment relating to the member's period of enrollment ; and
- (k) In order that an adequate reserve may be maintained, the members further agree that the Trustees shall have the right to assess the members pro-rata in such amounts as will be sufficient to maintain at all times a minimum reserve, equal to at least the annual premium and/or contributions for the coverage provided by the Fund. Should a member fail to pay any assessment as provided for in this Section within thirty (30) days of the assessment date, all interest and claim of such defaulting member in and to the Fund shall automatically cease.

Section 8. Allocation of Monies.

The Trustees are authorized to set aside from the premiums and/or contributions collected from members a reasonable sum for the operating and administrative expenses of the Fund. All remaining monies coming into their hands during any fiscal year of the Fund shall be set aside and shall be used only for the following purposes:

- (a) Disbursement to establish a reserve for payments of covered claims and expenses and required settlements, awards, judgments, legal fees, and costs in all contested cases to the extent provided herein;
- (b) Payment of such compensation to the Administrator as shall be determined from time to time by the Trustees;
- (c) Payment of all costs of all bonds and auditing expenses required of the Fund, the Administrator, or its agents or employees; and

- (d) Distribution to members in such manner as the Trustees shall deem to be equitable of any excess monies remaining after payment of claims and expenses and after provision has been made for open claims and outstanding reserves; provided, however, that no such distributions shall be made earlier than twelve (12) months after the end of a Fund Year. Undistributed excess funds from previous Fund Years may be distributed at any time if they are not required as reserves and if approved for distribution by the Trustees. Monies in excess of those required to fulfill the purposes, costs, and other obligations of the Fund as set out hereinabove will be accumulated in the Fund or distributed to the member units at the discretion of and in the manner provided by the Trustees.

Section 9. Fiscal Year; Continuing Contract; Withdrawal of Member Subject to Provision of 45 days' Written Notice to Administrator; Fee Imposed for Failure to Provide 45 days' Written Notice of Withdrawal.

The Fund shall operate on a fiscal year from 12:01 a.m. July 1st, to midnight of June 30 of the succeeding year (the "Fund Year"). Application for membership, when approved in writing by the Trustees or their designee, shall constitute a continuing contract for each succeeding Fund Year unless cancelled by the Trustees, or unless the member shall have resigned or withdrawn from the Fund by having written notice delivered to the Administrator on or before May 15 (i.e., the Administrator must receive written notice forty five (45) days' prior to the last day, June 30, of the Fund Year). Failure to provide forty five (45) days' written notice shall subject the member to the assessment of an exiting fee constituting two percent (2%) of the premium for that Fund Year.

Section 10. Members Bound By Agreement; Termination Permitted Only at End of Fiscal Year; Final Accounting.

Any member who formally applies for membership in the Fund and is accepted by the Trustees shall thereupon become a party to this Agreement and be bound by all of the terms and conditions hereof, and such application shall constitute a counterpart of this Agreement. Cancellation of this Agreement on the part of any member, or withdrawal from membership, shall be permitted only at the end of a fiscal or Fund Year. A terminating member is entitled to a final accounting when all incurred claims are concluded, settled, or paid.

Section 11. Intention of Indefinite Operation; Reservation of Right to Terminate Fund; Reversion of Monies or Other Assets Upon Termination.

This Fund has been established with the bona fide intention that it shall be continued in operation indefinitely and that the premiums and/or contributions to the Fund shall continue for an indefinite period. However, the Trustees reserve the right at any time to terminate the Fund by a written instrument to that effect executed by the Trustees. In the event of such termination, member premiums and/or contributions (other than duly authorized assessments) shall cease as of the date of termination and the assets then remaining in the Fund shall continue to be used and applied, to the extent available, for the (a) payment of claims arising prior to such termination and administrative and other expenses and obligations arising prior to such termination; and (b) payment of reasonable and necessary expenses incurred in such termination. Any monies or other assets thereafter remaining in the Fund shall revert to the members of the Fund as of the date of termination pro-rata to the annual premium and/or contributions of said members paid in the year of termination. In no event shall any such assets be returned or distributed to any individual. Upon such termination, the Trustees shall continue to serve for such period of time and to the extent necessary to effectuate termination of the Fund.

Section 12. Amendment of Agreement.

This Agreement may be amended by an agreement executed by those members constituting a majority in paid-in dollar volume of contributions to the Fund during the current Fund Year. In lieu of this amendment procedure, the members hereby appoint the Board of Directors of the North Carolina League of Municipalities as their agents to make any amendments to this Agreement which would not fundamentally alter the contemplated arrangement. For purposes of illustration, and not limitation, an amendment to increase or decrease the number of members of the Board of Trustees or their terms shall not be construed as a fundamental alteration of the arrangement, provided that the current term of a member may not be terminated by any such

amendment. Written notice of any amendment proposed for adoption by the Board of Directors of the North Carolina League of Municipalities shall be mailed to each member not less than 30 days in advance. Written notice of amendments finally adopted by the Board of Directors of the North Carolina League of Municipalities shall be mailed to each member not more than 30 days after adoption.

Section 13. Headings.

Headings of various sections and subsections of this Agreement have been inserted for the convenience of reference only and shall not be construed as modifying, amending, or affecting in any way the express terms and provisions of this Agreement.

Section 14. Interpretation.

This Agreement shall be governed and interpreted under the laws of the State of North Carolina. This Agreement is intended to serve as an interlocal agreement, for purposes of executing the undertaking described in the preceding sections and paragraphs, under North Carolina General Statutes 160A-460 et seq. (Part 1 of Article 20 of Chapter 160A). The terms of this Agreement do not constitute a coverage document or form applicable to any specific claim.

Should any clause, sentence, provision, paragraph, or other part of this Agreement be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement. Each of the parties declares that it would have entered into this Agreement irrespective of the fact that any one or more of this Agreement's clauses, sentences, provisions, paragraphs, or other parts have been so declared invalid.

Accordingly, it is the intention of the parties that the remaining portions of this Agreement shall remain in full force and effect without regard to the clause(s), sentence(s), provision(s), paragraph(s), or other part(s) invalidated. Failure of the Trustees, the Administrator, or their designees to insist in any one or more instances upon the performance of any of the covenants, agreements, and/or conditions of this Agreement, or to exercise any right or privilege herein conferred, shall not be construed as a waiver of any such covenant or condition.

This Agreement contains the entire agreement between the parties, whom shall not be bound by any verbal statement or agreement made heretofore.

IN WITNESS WHEREOF, the participating entity listed below acknowledges its membership in the Fund and acceptance of obligations hereunder, by the due execution hereof, following appropriate governing body approval, by its duly authorized official. Further, the members of the Interlocal Risk Financing Fund of North Carolina have caused these presents to be signed by their duly authorized Chair of the Board of Trustees and have had this Agreement attested by its duly authorized Administrator.

VOTE: Aye – All
 Nay – None

DBDA APPOINTMENTS

Mayor Burnley noted that Venus Taylor, Dave Jamison, and Charles Harmon were recommended by the DBDA to fill three vacant positions. If appointed, their terms will expire June 30, 2008. Upon a motion by Council member Wilcox, seconded by Council member Clawson, Council moved to appoint Venus Taylor, Dave Jamison, and Charles Harmon to serve on the Downtown Boone Development Association.

VOTE: Aye – All
 Nay – None

COMMUNITY APPEARANCE COMMISSION APPOINTMENTS

Development Services Director John Spear informed the Council of the resignation of Lila

Petersen from the Community Appearance Commission. He pointed out that an application had been received from Joan McLaughlin for this committee. Upon a motion by Council member Eggers, seconded by Council member Clawson, Joan McLaughlin was appointed to fill Ms. Petersen's unexpired term on the Community Appearance Commission. Her term will expire June 30, 2006.

VOTE: Aye – All
 Nay – None

ADOPTION OF CONTRACT – W.K. DICKSON & CO., INC.

Public Utilities Director Rick Miller stated the contract is for the Raw Water Supply Alternatives Study – Phase II. With the addition of such wording as “and permitting” in paragraph 5 a. on the second page of the contract, Mr. Miller stated he was satisfied with the contract. Upon a motion by Council member Eggers, seconded by Council member Clawson, the following contract was approved subject to review by the Town Attorney.

CONTRACT FOR SERVICES

This CONTRACT for the Boone Raw Water Supply Alternatives Study – Phase II by and between the Town of Boone, hereinafter called the OWNER, and W.K. Dickson & Co., Inc., hereinafter called the CONSULTANT;

The parties hereto do mutually agree as follows:

- *Employment of CONSULTANT. The OWNER hereby engages the CONSULTANT and the CONSULTANT hereby agrees to perform the professional services hereinafter set forth.*
- *Scope of Services. The CONSULTANT shall perform, in a professional manner, the services set forth in Attachment A, Scope of Services, which attachment is incorporated herein.*
- *Additional Services. The CONSULTANT shall provide additional services, not specifically called for in Attachment A, Scope of Services, upon request or authorization of the OWNER.*
- *Time of Performance. The CONSULTANT will commence work on the date of receipt of written Notice to Proceed. All work as set forth shall be completed within two hundred forty (240) calendar days of that date, assuming the timely submission of all required data and the scheduling of all meetings and reviews by the OWNER or other delays beyond CONSULTANT'S control. CONSULTANT acknowledges that time is of the essence and will proceed with the scope of services as identified. Work identified above will be completed within the established timeframe as listed above.*

If the OWNER requests modifications to the Scope of Services of the project, the time of performance of the CONSULTANT shall be adjusted appropriately. Likewise should the CONSULTANT'S services extend past the completion date above, at no fault of the CONSULTANT, the CONSULTANT'S compensation shall be adjusted accordingly in an amount mutually acceptable to the parties. Should additional compensation be needed, Town Council will have to approve the additional amount prior to the CONSULTANT proceeding with the associated work.

CONSULTANT'S services under this Contract, and each phase of services, if the Scope of Services is so divided, shall be considered complete at the earlier of (1) the date when the submissions for that phase have been accepted by the OWNER or (2) thirty days after the date when such submissions are delivered to the OWNER.

1. *Meetings. This Contract includes attendance by the CONSULTANT at meetings to make presentations or to otherwise review the progress of the work as identified in Attachment A.*
2. *Reports. The CONSULTANT shall prepare and submit to the OWNER reports called for in Attachment A, Scope of Services, attached hereto.*
3. *Compensation. The CONSULTANT agrees to perform the services provided for in the Scope*

of Services, and the OWNER agrees to compensate the CONSULTANT for such services as set forth in Attachment B, Basis of Compensation, which attachment is incorporated herein. Compensation for additional services shall also be as set forth in Attachment B, Basis of Compensation.

Payment by the OWNER to the CONSULTANT shall be due and payable on the 25th day of the month following the date of the invoice. Payments not received by the CONSULTANT by the 30th day of the month following the date of the invoice shall be overdue. Should a court action be taken to address collections, reasonable attorneys fees and costs shall be paid to the prevailing party. Should the OWNER request a clarification for a legitimate item of any invoice within 30 calendar days of receipt, then the CONSULTANT will revise the invoice to satisfy those concerns or give a written reply to those concerns. If the invoice is still not paid within 30 additional calendar days, then the CONSULTANT will begin collection procedures. CONSULTANT shall not be bound by any provision wherein CONSULTANT waives any rights to a mechanic's lien, or any provision implying payment to CONSULTANT is contingent upon payment to OWNER by a third party. A failure by OWNER to pay CONSULTANT on a timely basis shall entitle CONSULTANT at its election, to stop work on the Project until such time as payment has been made, and upon seven days' notice and OWNER'S failure to pay all amounts then due, to terminate this contract.

4. Personnel. The CONSULTANT represents that he has, or will secure at his own expense, all personnel required to perform the services under this Contract and that such personnel will be fully qualified to perform such services.
5. Responsibilities of the OWNER. It is agreed that the OWNER will have the following responsibilities under this Contract:
 - a) The timely provision of all available information, data, reports, records, and maps to which the OWNER has access and which are needed by the CONSULTANT for the performance of the services provided for herein.
 - b) Providing assistance and cooperation for the CONSULTANT in obtaining any other needed material which the OWNER does not have in its possession.
 - c) Making available the services of the OWNER as may be necessary to obtain information as needed to perform the work program set forth in the Scope of Services.
 - d) The designation of a single representative who will be authorized to make necessary decisions required on behalf of the OWNER and will serve to provide the necessary direction and coordination for the project.
 - e) Bear all costs for permitting the project.
 - f) Arrange access, to the extent possible, to all affected private property for CONSULTANT to perform all necessary surveying, engineering and inspections.

All such OWNER responsibilities shall be conducted in a timely manner and without undue delay so as not to delay the CONSULTANT in the performance of his services.

1. Opinion of Probable Construction Costs. CONSULTANT'S opinion of probable construction costs, if rendered as a service under this Agreement, is based on assumed labor costs and approximate quantities of material and equipment, and therefore is of a conditional character. CONSULTANT cannot and does not guarantee the cost of work to be performed by others since market or bidding conditions can change at any time and changes in the scope or quality of the project may affect estimates.
2. Ownership of Materials. It is agreed that upon receipt of final payment, all final documents, studies, surveys, drawings, maps, models, photographs and reports prepared by the Consultant under this Contract, shall be considered the property of the OWNER. However, the CONSULTANT shall retain such copies thereof as he desires. Any adaptation by OWNER without CONSULTANT'S written verification of adaptation will be at OWNER'S sole risk and without liability or legal exposure to CONSULTANT, and OWNER agrees to indemnify

and hold CONSULTANT harmless from and against any claims or liability, including attorneys' fees resulting from any claim against CONSULTANT by any third party arising out of OWNER'S use of the documents referred to herein, for any purpose other than the completion of the Project.

3. Delays Beyond the Control of the CONSULTANT. It is agreed that events which are beyond the control of the CONSULTANT may occur which may delay the performance of the Scope of Services. In the event that the performance of the Scope of Services by the CONSULTANT is delayed beyond his control, the CONSULTANT shall notify the OWNER in writing of such delay and the reasons therefore, and the OWNER shall extend the time of performance appropriately.
4. Changes. The OWNER or the CONSULTANT may, from time to time, request modifications or changes in the Scope of Services. Such changes, including any increase or decrease in the amount of the CONSULTANT's compensation, which are mutually agreed upon by and between the OWNER and the CONSULTANT, shall be incorporated in written amendments.
5. Termination of Contract. This Contract may be terminated by either the OWNER or the CONSULTANT with 7 calendar days written notice. In the event of such termination, all finished or unfinished plans, specifications and reports prepared by the CONSULTANT shall, at the option of the OWNER, become OWNER's property, subject to the provisions of paragraph 13. The CONSULTANT shall be entitled to receive compensation for work accomplished and for reimbursable expenses incurred prior to termination.
6. Assignability. This Contract shall not be assigned or transferred by either the CONSULTANT or the OWNER without the prior written consent of the other. Notwithstanding the foregoing, however, the CONSULTANT shall not be prohibited from contracting with qualified sub-consultants or from assigning to a bank, trust company, or other financial institution any claims for compensation due, or to become due, without such prior written consent.
18. Liability and Standard of Care. CONSULTANT'S liability to OWNER for any indemnity commitments, or for any damages arising in any way out of performance of this contract, is limited to \$1,000,000. The CONSULTANT shall maintain liability insurance coverage in this amount which insures the CONSULTANT for any liability to OWNER not otherwise released through this contract.

OWNER acknowledges that the CONSULTANT is a Corporation and agrees that any claim made by the OWNER arising out of any act or omission of any director, officer or employee of the CONSULTANT in the execution or performance of this agreement shall be made against the CONSULTANT and not against such director, officer, or employee and OWNER waives any claim against all of CONSULTANT'S directors, shareholders, officers and employees.

IN WITNESS WHEREOF, the CONSULTANT and the OWNER have executed this Contract as of the date written below and under the laws of the State of North Carolina.

ATTACHMENT A
SCOPE OF WORK

PROJECT DESCRIPTION

Boone withdraws its raw water from the South Fork New River just upstream of Winkler Creek and from Winkler Creek itself. Its 404 permit from the U. S. Army Corps of Engineers (USCOE) allows it to withdraw up to 3.0 MGD from both intakes combined. Based on the most recent data obtained from the USGS, this is 75% of the USGS 7 day, 10 year low flow (7Q10) of the South Fork New River below it's confluence with Winkler Creek. Increasing the withdrawal at this location will not be straightforward in that typical withdrawals permitted today in North Carolina are limited to 20% of the 7Q10.

Boone obtains its raw water from a WS-II run-of-river intake on Winkler Creek and from a WS-IV run-of-river intake on the South Fork of the New River. Together these two intakes are permitted to withdraw up to 3.0 million gallons per day (mgd). This water is treated to potable quality in a 3.0 mgd capacity water treatment plant. Boone transmits and distributes potable water to its customers via more than 150 miles of 4 to 16 inch diameter water mains, 4.03 million gallons (MG) of elevated storage (ground storage on mountainside), seven different pressure zones, and booster pump stations to transfer water from the main zone to the higher zones.

The Town currently supplies an average of 1.6 MGD (2.6 MGD maximum day) to a population of about 14,000. This population includes many university students that live off-campus and use town water.

Since the Town's maximum day (2.6 MGD) has reached greater than 80% of their plant capacity (3.0 MGD), the Town has begun planning for and analysis of their future raw water options. Currently, it is projected that by the year 2025, the Town of Boone will require an addition 4.0 MGD. Therefore, this study, at a minimum will look at options for the Town to meet their 20 year need.

PROPOSED SCOPE OF SERVICES

The CONSULTANT proposes to provide the following scope of services for the fees listed under "Basis of Compensation".

- A. Continued investigation of the most viable alternative of the Phase I Study of the withdrawal of water from the South Fork New River.
- B. In addition, the second phase of the study shall include the following:
 - 1. Further identification / investigation including opinions of probable construction costs as necessary of raw water alternatives for the Town of Boone. Alternatives that should be addressed, at a minimum, include the following:
 - a. Continue to assess the existing alternatives as presented. Currently, after conducting the initial study and evaluating the initial alternatives, WKD recommends further evaluation of additional options as presented below versus the Town withdrawing water from the South Fork New River to meet their short term and long term water withdrawal needs.
 - b. Investigate the long term (50 year) water needs and withdrawal options for the Town and possibly the County. Include in this investigation long term (50 year) population projections for the Town and possibly the County.
 - c. Evaluate options for a new and/or additional reservoir for the Town which could meet the Town's short term and long term needs and evaluate the possibility of the Town utilizing their reservoir better to meet high demands.
 - d. Continue to investigate the feasibility of obtaining water from the South Fork New River in Ashe County, North Carolina along with the political implications associated with this potential withdrawal.
 - e. Conclude the investigation of the feasibility of obtaining water from the Yadkin River in Wilkes County, North Carolina along with the political implications associated with this potential withdrawal.
 - f. Conclude the investigation of if the USACE will rescind or revoke the Town's 404 permit for a 3.0 MGD withdrawal from the South Fork New River and Winkler Creek if the Town proposes an additional withdrawal further downstream on the South Fork New River.
 - g. Investigate if NCDENR and/or the USACE will allow the Town of Boone to withdrawal greater than 20% of the 7Q10 flow from select withdrawal points other than at times of high flow, low demand.
 - h. Investigate the feasibility of obtaining water from one of the lakes on Federal land adjacent to the Blue Ridge Parkway within Watauga County.
 - i. Investigate the feasibility of purchasing raw water from ASU to

- supplement the Town's raw water and/or purchasing finished water from ASU to supplement the Town's finished water.*
- j. *Investigate the feasibility of meeting the Town's water needs with wells.*
 - k. *Investigate the feasibility of obtaining the Town of Blowing Rock's permit to skim water from the South Fork New River.*
 - l. *Investigate the feasibility of high rating the Town's filters.*
 - m. *Investigate the feasibility of obtaining raw water from Watauga Lake (Tennessee).*
- *Upon analysis of the additional alternatives and the Watauga River, make a formal recommendation to Town Council.*
 - *Evaluate funding alternatives for the selected alternative.*
 - *Evaluate potential sites for a new surface water treatment plant, as necessary, and as funding is available.*
 - *Prepare an Environmental Assessment of the selected alternative.*
 - a. *The Environmental Assessment will be prepared in accordance with the National Environmental Policy Act (NEPA) in lieu of the State Environmental Policy Act (SEPA) since the format will allow the Town to qualify for federal as well as state funding.*
 - b. *Preparation and distribution of a scoping letter to applicable Federal and State agencies including the US Fish and Wildlife Service, the USACE, and the North Carolina Nature Resources Commission.*
 - c. *The EA would be prepared using data from the initial and final Raw Water Intake Study to support the purpose, need, and alternatives of the proposed plan.*
 - d. *Prepare effective environmental and project impacts documentation and summarize the mitigation needs.*
 - e. *Draft and finalize the EA document and submit the document for acceptance by federal and state funding and permitting agencies, as required.*

C. Additional Services

The OWNER may request additional services from time to time. When provided, additional services will be performed in accordance with the current rate schedule. These services will be provided on an as-needed basis only when requested by the OWNER.

ATTACHMENT B

BASIS OF COMPENSATION

(Lump Sum Fee)

Basic Services: The OWNER shall pay the CONSULTANT for services set forth in Attachment A, Scope of Services, a Lump Sum Fee of eighty thousand dollars (\$80,000.00).

- Raw Water Alternatives Reconnaissance	\$27,500.00
- Raw Water Alternatives Evaluation	\$27,500.00
- Funding ID	\$5,000.00
- Environmental Assessment	\$20,000.00
Total	
\$80,000.00	

A percentage of the Lump Sum Fee will be billed on the last day of each month. The percentage billed will be the percentage of work estimated to be complete as of the day of billing.

Additional Services. The OWNER shall pay the CONSULTANT for additional services, which are not specifically called for in Attachment A, Scope of Services, in accordance with the CONSULTANT'S standard rates.

VOTE: Aye – All

Nay – None

Mayor Burnley declared a break at 8:00 p.m. Council reconvened at 8:15 p.m.

ADOPTION OF ORDINANCE AMENDMENTS – WATER COMMITTEE RECOMMENDATIONS

Town Attorney Sam Furgiuele listed the changes recommended by the Water Committee as a result of its June 16, 2005 meeting. Upon a motion by Council member Clawson, seconded by Council member Spann, the Council moved to adopt the following amended text:

ORDINANCE 05-01

WHEREAS, the Town of Boone has adopted a water system hydraulic analysis and master plan completed by W.K. Dickson; and

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

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

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

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

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

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

NOW, BE IT THEREFORE RESOLVED that pursuant to its police powers created under N.C. Gen. Stat. § 160A-174, in order to provide for the health and welfare of the citizens of Boone, and pursuant to N.C. Gen. Stat. § 160A-312, which confers upon the Town the authority to protect and regulate its water distribution system through the adoption of reasonable rules, the Boone Town Council hereby adopts the following policy concerning the provision of water service to new customers. For its stated duration, unless extended, to the extent the following creates any conflict with the Town of Boone Water and Sewer Ordinance, the following provisions supercede and control the provision of water by the Town of Boone:

1. To the extent feasible and during the term of this Resolution, the Town shall allocate its remaining water usage gallons, estimated at the time of adoption as 150,000 gallons, evenly in yearly increments for a six year period beginning January 1, 2004, with the first two years of allocation available in calendar year 2005, and any unused allocation from a prior calendar year made available in the following calendar year. The Council may adjust the yearly allocation based on actual usage as it can be determined and/or new information concerning remaining capacity. **Any approval of water service in a particular calendar year shall ordinarily be attributed to the available allocation for that same calendar year; however, the Town Council may designate that a**

particular approval of water service shall be attributed to the available allocation from any year within the term of this resolution, but the periods of time established in paragraph 5 herein for the expiration of rights shall be measured from the date of the Town Council's approval. (Amended 6/27/05)

2. Within the aforesaid limits, the Town of Boone shall ordinarily provide water service to future customers within the corporate limits on a first-come, first served, basis. **The water usage predicted as to each application shall be determined by multiplying the usage predicted by the North Carolina Discharge Rate (NCDRS) Schedule by 60%. (Amended 6/27/05)** ~~However, a~~ Any requests for water service which involve predicted usage, as **thus calculated,** ~~established in the North Carolina Discharge Rate Schedule (NCDRS),~~ of over 3,000 gallons per day shall only be approved upon action, by majority vote, of the Boone Town Council acting in its *quasi* judicial capacity **(Amended 6/27/05)**. Likewise, in each calendar year in which the Town has allocated two-thirds (2/3) of the water allotted for that year, **all** subsequent requests for water connection **for which there is a predicted usage of more than five hundred (500) gallons per day** must be approved by the Boone Town Council, without regard to the predicted usage resulting from the granting of the request **(Amended 6/27/05)**. In determining the desirability of approving a connection for water service, the Council shall consider the following:
 - a. Any factor which may make the predicted actual use different from the NCDRS predicted use;
 - b. The amount of water usage in gallons per day previously approved during the calendar year;
 - c. The amount of water usage in gallons per day predicted to be used by the applicant, ordinarily with small requests preferred over large requests;
 - d. Whether in its opinion the application is for a land use which is consistent with the Town's adopted policies concerning growth and development; and
 - e. Such other factors as may be identified by the Town Council in its deliberations which either suggest that a particular project promotes or undermines the public health or safety, or the general welfare of the Town.
3. During the term of this Resolution, ordinarily only requests for service connections to property which is in the corporate limits will be granted. An applicant whose property is partly or wholly outside the Town limits may petition the Town for annexation, and if the property is annexed, in accordance with the requirements of North Carolina General Statutes and the Town of Boone's ordinances, water services may be extended to such property, in accordance with the provisions of this Resolution.
4. During the term of this Resolution, no service extensions into the secondary pressure zone shall be approved, but a connection to an existing water main in a secondary pressure zone may be considered where the connection is within the corporate limits as they exist as of the date of the resolution, and where such connection creates no negative impact on the Town's distribution system, allows adequate pressure to be maintained as may be necessary to comply with the requirements of the Boone Fire Department applicable fire codes, results in no additional costs to the Town, and otherwise complies with the requirements of the Town of Boone Water and Sewer Code for connection to the Town's water system. For purposes of this paragraph, a "connection" is defined as the linking of pipes serving a single dwelling unit to an existing water main. For purposes of this paragraph, an "extension" refers to the continuation of a water main beyond its currently existing limits.
5. Any applicant granted the right to connect to the Town's water distribution system, **without regard to the calendar year to which the applicant's predicted water usage is attributed,** must obtain all needed development permits within one year of the approval **by the Town Council or Public Utilities Department** of the water application, or said approval will expire and the allocated water usage shall return into the overall water census for redistribution **(Amended 6/27/05)**. Upon **subsequent** action by the Boone Town Council, the approval of a water application may be extended for a second year **from the date of the initial approval, whether by the Town Council or staff of the Public Utilities Department,** upon payment by the applicant of a non-refundable availability fee in the amount of the normal availability fee established by the Town of

Boone Water and Sewer Code for use(s) of the type proposed (**Amended 6/27/05**). Previously approved requests which have not been connected shall likewise expire within one year of enactment of this ordinance. However, they, too, may be extended for a second year upon payment by the approved applicant of a non-refundable availability fee in the amount of the normal availability fee established by the Town of Boone Water and Sewer Code for use(s) of the type proposed.

- 6. Any requests for water services from the Town must comply with all requirements of the Town of Boone Water and Sewer Code which are not superceded by this Resolution.
- 7. The Town of Boone Water and Sewer Department shall provide a monthly report to the Boone Town Council concerning the number and predicted volume of each water connection request approved during the term of this Resolution.
- 8. This resolution shall expire December 31, 2009, unless specifically extended by action of the Boone Town Council, and it may be modified by the Boone Town Council upon majority vote of the Council.
- 9. This policy shall become effective upon the adoption of this Resolution.

Amended and effective this the 27th day of June, 2005.

VOTE: Aye-All
 Nay-None

Public Utilities Director Rick Miller stated that with the adoption of the amended ordinance, three of the requested appearances can now be approved by the Public Utilities Department. Upon a motion by Council member Eggers, seconded by Council member Clawson, the Council moved to amend the agenda to reflect the deletion of agenda items 6. D, E, and F.

VOTE: Aye – All
 Nay – None

MONTHLY WATER USE STATUS REPORT

Public Utilities Director Rick Miller presented the following status report:

As requested by Town Council, staff and I have compiled the following information concerning water use for the month of May. The Water Treatment Plant recorded a maximum daily demand of 2.094 million gallons on Sunday, May 1, 2005, and the average daily demand was 1.704 million gallons for the entire month. The Public Utilities Department experienced a 6” water leak that occurred in late hours of April 29, contributing to the maximum daily demand amount that was reported.

As adopted in Ordinance 05-01, the Town of Boone Council has appropriated for 25,000 gallons per day usage for year 2004 and 25,000 gallons per day usage for year 2005 to be combined for a total of 50,000 gallons per day for allocation to customers. The total water allotment remaining for the year 2005 has now broken the sixty percent threshold. All future water service requests will be forwarded to Town Council as required in Ordinance 05-01. At the last Town Council Meeting two projects were approved that removed water from our remaining allotment.

As you can see in the attached chart, once the Council approvals are removed as projected usages from our yearly allotment, the Public Utilities Department has 6,310 gallons per day remaining for allotment in 2005. Also, be reminded that Council chose to allocate 4,165 gallons from 2006 leaving a balance of 20,835 gallons remaining for that year. All calculations are based on 60% of the North Carolina Discharge Rate Schedule.

			Approved Water Connections			
			2005			

Staff Appvd	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						50000
Cookout Grill	Jan-05	1500				50000
			Tom Adams	Feb-05	270	49730
Doug Hanks	Feb-05	600				49130
John Roberts	Feb-05	360				48770
David Styron	Feb-05	270				48500
			WMC Wellness Center	Mar-05	17250	31250
			Dan Minton	Mar-05	7200	24050
			David Blust	Mar-05	165	23885
David Blust	Mar-05	360				23525
Eddie Greene	Mar-05	270				23255
David Nicklaw	Mar-05	270				22985
			Hunter Nichols	Apr-05	360	22625
			VIA LLC/Ed Street Co.	Apr-05	5000	17625
			Watauga County Detention	Apr-05	3728	13897
Baxters Sport Bar	Apr-05	330				13567
Watauga Courthouse	Apr-05	1214				12353
			John Cook	May-05	5000	7353
			Hester Office Bldg	May-05	450	6903
			Americas Home Place	May-05	60	6843
			Molecular Toxicology	Jun-05	60	6783
			Dana Willet	Jun-05	450	6333
			Watauga Arts Council	Jun-05	23	6310

			Approved Water Connections			
			2006			
Staff Appvd	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						25000
			John Cook	May-05	4165	20835

SCHEDULING OF SPECIAL MEETING – WATER STUDY COMMITTEE

Public Utilities Director Rick Miller stated that the Council needs to set a date for a special meeting with the Water Study Committee to hear recommendations from the Water Sub-Committee. Upon a motion by Council member Mason, seconded by Council member Clawson, Council moved to meet at 5:00 p.m. on Tuesday, July 19, 2005 in the Council Chambers prior to a special meeting of the Town Council on the same day at 6:30 p.m.

VOTE: Aye – All
 Nay – None

ADOPTION OF BUDGET AMENDMENTS

Upon a motion by Council member Eggers, seconded by Council member Spann, Council adopted the following budget amendments:

DESCRIPTION	ACCOUNT #	TO:	FROM:
Watauga County - Tax Collection	010-403-000-577110	\$5,000.	
Watauga County - Tax Collection	050-450-000-577110	500.	
Current Year Taxes	010-000-000-411080		\$5,000.
Current Year Taxes	050-450-000-411080		500.
Boone Housing Authority	010-411-000-549101	23,520.	
Miscellaneous Revenue	010-000-000-489900		23,250.
Rebates & Adjustments (W/S)	030-000-000-467103	186,185.	
Fund Balance Appropriated	030-000-000-499900		186,185.
Capital Outlay-Lines (Water)	030-700-802-575000	142,523.	
Capital Outlay-Lines (Sewer)	030-700-803-575000	110,900.	
Water Capital Reserve Contrib.	030-000-000-498031		142,523.
Sewer Capital Reserve Contrib.	030-000-000-498032		110,900.
Transfer to Water Capital Reserve	030-700-890-598031	9,465.	
Transfer to Sewer Capital Reserve	030-700-890-598032	19,188.	
Impact/Availability Fees-Water	030-000-000-467301		9,465.
Impact/Availability Fees-Sewer	030-000-000-467302		19,188.
Group Medical Insurance-Admin.	035-430-000-535610	32,000.	
Group Medical Insurance-Claims	035-430-000-535611	178,500.	
Bank Service Charges - Ins. Fund	035-430-000-539902	500.	
Insurance Revenue-Retiree %	035-430-000-450002		7,000.
Insurance Revenue-General Fund	035-430-000-450003		70,000.
Insurance Revenue-Water/Sewer	035-430-000-450004		29,500.
Interest Earned on Investments	035-430-000-461201		3,000.
Miscellaneous Revenue-Insurance	035-430-000-489900		1,500.
Appropriated Fund Balance-Insur.	035-430-000-499900		100,000.
Property Tax Allocation-MSD	050-450-000-553101	5,500.	
Current Year Taxes	050-450-000-411080		5,500.

VOTE: Aye – All
 Nay – None

REQUESTED APPEARANCE – MR. J. PATRICK WARREN, P.E.

Town Attorney Sam Furguele opened the public hearing at 8:35 p.m. Patrick Warren, being duly sworn, stated the request is for water service to the second phase of the Glen Wilde development located on State Farm Road. He stated that this project was originally approved in 2001 but that the second building was not built at that time. He indicated the building will be used as doctors' offices. Council member Eggers asked if this property was included in the number of properties with taps prior to the current water situation. Rick Miller, Public Utilities Director, being duly sworn, stated it was not included. With no other public testimony, Mr. Furguele closed the public hearing at 8:42 p.m. Upon a motion by Council member Eggers, seconded by Council member Clawson, Council moved to approve the water request for an estimated 900 gallons per day to the structure in the second phase of the Glen Wilde development.

VOTE: Aye – All
 Nay – None

REQUESTED APPEARANCE – MR. JAMES WEST

Town Attorney Sam Furguele opened the public hearing at 8:44 p.m. to hear sworn testimony regarding a request for water and sewer service to property located at 2815 Highway 105. Jim West, being duly sworn, distributed a site plan (**Exhibit C**) to the Council and explained the request. He explained that the property will be used as retail and that he plans to connect to a manhole located across the street beside the Fun 'N Wheels Park. Mr. Furguele noted that a portion of the property is located outside the town limits and is within the secondary pressure zone. He informed the applicant that Council may limit approval to the existing building located within the town limits. Mr. West stated he understands that approval may be limited to the existing building only. Public Utilities Director Rick Miller, under oath, stated that the estimated number of gallons for this project does seem to be high but was calculated based on retail square footage. Mr. West stated that the building does not have a sprinkler system and that it is not required. He noted that the current water ordinance requires properties within 200 feet of town water and sewer lines to connect. The Council discussed allowing a sewer hook-up and by utilizing the existing well; 14,000 gallons of water could be saved. Council member Eggers suggested that the applicant could connect to the water lines and pay the availability fees at a future time when the current water situation has been resolved. He inquired as to whether or not the Town could install a tap to be unlocked if the applicant experiences a problem with the well. Mr. Miller reminded the Council that the water ordinance does not allow a tap to be set until availability fees have been paid. He further stated that, if a tap is set, there must be a physical separation to prevent back-flow into the town lines. Mr. Furguele cautioned the Council against deviating from the regulations in the water ordinance. With no further testimony, Mr. Furguele closed the public hearing at 9:05 p.m. Council member Eggers moved to table this request until later since there is a similar request also on the agenda. Council member Spann seconded the motion.

VOTE: Aye – All
 Nay – None

REQUESTED APPEARANCE – MS. CATHY KOSTERMAN

Town Attorney Sam Furguele opened the public hearing at 9:09 p.m. to hear sworn testimony from Michael Trew, project engineer and representative for Ms. Kosterman, for a request for water and sewer service to a tract of land located on Park Street. He noted that the lower portion of the property adjacent to Part Street and Dogwood Lane is in the town limits; the upper portion of the property is in the ETJ. Mr. Trew further explained that Ms. Kosterman plans to develop the property in three phases:

- Phase I would include 4 single-family residences, one condominium building with 6 units and a barn with living space above. The estimated gallons per day usage for Phase I is 4,080 per day.

- Phase II would include three 6-unit buildings and 7 single-family residences. The estimated gallons per day usage for Phase II is 9,990 per day.
- Phase III would include 16 single-family residences on a well and septic tank.

Mr. Trew stated that the applicant would like to apply for water and sewer service for Phase I only at this time. Public Utilities Director Rick Miller, under oath, stated that a portion of Phase I is in the secondary pressure zone. He indicated that the property could be served from the Gladys/Charles Street tank. Council member Spann voiced a concern that this project could take at least two-thirds of the remaining water allocation for 2005. He was also concerned because part of the property is within the secondary pressure zone. Mr. Trew stated that having water and sewer service to the barn and four houses located in the lower portion of the property in the primary pressure zone is most important to Ms. Kosterman. Mr. Miller stated that this property is included in the 575 properties in the town limits with one tap. He stated the Council could subtract 270 gallons per day from the estimated total gallons of water. Mr. Trew stated that a 6-inch line would be used for fire protection and would be dedicated to the town. With no other testimony, Mr. Furguele closed the public hearing at 9:26 p.m. Upon a motion by Council member Mason, seconded by Council member Eggers, Council moved to approve the request for water and sewer extension to the portion of the property located within the town limits which will include a barn and four single-family residences to served from the Gladys/Charles Street tank. Credit for the 270 gallons per day will be given.

VOTE: Aye – All
 Nay – None

REQUESTED APPEARANCE – BLUE RIDGE ELECTRIC MEMBERSHIP CORPORATION

Town Attorney Sam Furguele opened the public hearing at 9:29 p.m. to hear sworn testimony from Glen Grubb from Blue Ridge Electric regarding a request for water and sewer service to property located at 2491 Highway 421 South. He distributed a statement (**Exhibit D**) from Blue Ridge Electric. Mr. Grubb explained that the request is for an unmanned warehouse that is heated space requiring two restrooms per NC State Building Code. He stated the estimated gallons of water per day to be 30 . Mr. Grubb reminded the Council that this property is currently served by the town due to a contaminated well. With no further pubic testimony, Mr. Furguele closed the public hearing at 9:35 p.m. Upon a motion by Council member Eggers, seconded by Council member Clawson, Council moved to grant the request for water and sewer service.

VOTE: Aye – All
 Nay – None

REQUESTED APPEARANCE – SAMARITAN’S PURSE

Town Attorney Sam Furguele opened the public hearing at 9:36 p.m. to hear sworn testimony from Alan Mosely and Hugh Elder regarding a request for sewer service to property located at the empty corner of Milton Brown Heirs Road and Bamboo Road. Mr. Elder explained the request to connect to town sewer lines and water for fire protection only. He stated that the property would utilize a well until they hook up to water in the future. He asked that the lines and taps for the water be installed at this time as to limit land disturbance in the future. Council member Mason asked how the town could be assured that the water would be used for only the sprinkler system. Public Utilities Director Rick Miller, under oath, stated that the line could have a backflow prevent device and a detector check installed, an action which would help the town to determine if any illegal connections are made. He reiterated that the meter would need to be locked and that a physical air-gap separation from the well would need to be installed. Council member Wilcox suggested that Section 3-10(G) of Article III of the Water and Sewer Use Code be suspended during the duration of the current water crisis. Article III Section 3-10(G) states:

Effective July 1, 1987, the Town of Boone will not accept any new accounts for private water system discharge into its sanitary sewer system with the exception of ASU’s water system.

Mr. Furguele suggested that the entire code be reviewed, including the Ordinance 05-01sections,

to address any conflicting policies. Council member Mason moved to have Town staff and the Town attorney investigate the language in the Water and Sewer Use Code. Council member Wilcox seconded the motion.

VOTE: Aye – All
 Nay – None

Upon a motion by Council member Mason, seconded by Council member Spann, Council moved to table the sewer request from Samaritan’s Purse until the next regular meeting July 21, 2005.

VOTE: Aye – All
 Nay – None

REQUESTED APPEARANCE – MR. JAMES WEST

Upon a motion by Council member Mason, seconded by Council member Clawson, Council moved to grant the request for water and sewer connections for property located at 2815 Highway 105 since the structure is located within the town limits.

VOTE: Aye – All
 Nay – None

REQUESTED APPEARANCE – MS. TUESDAE RICE OF THE DBDA

Ms. Tuesdae Rice, of the Downtown Boone Development Association, appeared before the Council with two requests: parking validation and signs. She stated a concern from many downtown merchants that customers aren’t aware of the parking ticket validation program. She displayed an example of a window decal that merchants could place in their store windows. She also requested that a sign noting the validated parking areas be placed under the current signs advertising public parking. She stated that there would be a total number of 40 signs. Ms. Rice offered that the DBDA would provide the vinyl if the town would provide the blanks for the signs and the labor and maintenance for the signs. She noted that she had contacted a Development Services Department employee who stated that, as long as the signs are erected and maintained by the town, they will not require a permit or be a violation of the sign ordinance. Upon a motion by Council member Mason, seconded by Council member Clawson, the Council moved to support the request and assist the DBDA with the cost of the signs, not to exceed \$500.00 and with town personnel erecting and maintaining the signs.

VOTE: Aye – All
 Nay – None

The second request offered by Ms. Rice concerned directional signs aimed at directing pedestrian traffic to various stores and restaurants downtown. She presented a sample of the sign and asked that it be placed in eight different locations throughout downtown. She stated that the signs would provide information on retail services and restaurants, not advertising any one business. She also informed the Council of the DBDA’s plan to produce a walking map with the 77 businesses downtown. Ms. Rice requested that the town erect and maintain the signs. The DBDA would purchase the signs. Upon a motion by Council member Wilcox, seconded by Council member Clawson, Council moved to approve the request and provide town staff to erect and maintain the signs.

VOTE: Aye – All
 Nay – None

CLOSED SESSION

Upon a motion by Council member Wilcox, seconded by Council member Clawson, Council moved to enter Closed Session at 10:20 p.m. pursuant to NCGS 143-318.11a)3 in order to discuss the following matters:

- Ulery Litigation
- ASU Violations

VOTE: Aye - All
 Nay - None

Upon a motion by council member Eggers, seconded by Council member Clawson, Council moved to exit Closed Session at 11:10 p.m.

VOTE: Aye - All
 Nay - None

ACTION FOLLOWING CLOSED SESSION

Upon a motion by Council member Mason, seconded by Council member Wilcox, Council moved to reject the following settlement offer:

Ulery – Settlement Offer

1. Pay all attorney fees, cost of mediation, and two parking tickets - \$7500.00.
2. Would forgo compensation for damages.
3. Will have same right as anyone to apply for permits, certificates, etc., without being restricted to town manager or town attorney.
4. Town will cooperate with Mr. Ulery in any future applications.
5. Town will waive all claims to past fines and penalties.
6. If Town is concerned for safety, Mr. Ulery will make an appointment and the Town can provide police protection.
7. Mr. Ulery will not sue for malicious prosecution, lost income, damages, or other claims, including lost revenue from delay in developing property.

VOTE: Aye – All
 Nay – None

ADJOURNMENT

On a motion by Council member Clawson, seconded by Council member Wilcox, Council moved to adjourn at 11:11 p.m.

VOTE: Aye - All
 Nay - None

Deputy Clerk

Mayor