MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL JULY
15, 2004

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, July 15, 2004, in the Council Chambers, 1500 Blowing Rock Road. Mayor Velma C. Burnley presided. Council members present were Mayor Pro-Tem Loretta Clawson, Graydon Eggers, Lynne Mason, Bunk Spann and Dempsey Wilcox. Town Attorney Sam Furgiuele was also present. Staff present were Town Manager Greg Young; Town Clerk Freida Van Allen; Fire Chief Reggie Hassler; Public Utilities Director Rick Miller; Finance Director Amy Davis; Public Services Director Blake Brown; Planning Director John Spear; Police Chief Bill Post; Personnel Director Peri Moretz; and Resource Director Jim Byrne.

TENTATIVE AGENDA ADOPTION

There were no changes to the agenda; therefore, on a motion by Council member Clawson, seconded by Council member Mason, Council moved to adopt the agenda as presented.

VOTE: Aye-All
Nay - None

CONSENT AGENDA ITEMS

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

Tax Releases: June, 2004

Taxpayer	Year	Amount	Description
Probinsky, Jean	2004	$40.95	Adj. for bill of sale
Whitman, Charles E.	2004	16.22	Sold vehicle, turned in tag
Pannkuk Construction Inc.	2004	11.51	Lives in Wake Co.
Dalkovski, Daniela L.	2004	12.71	Sold vehicle turned in tag
Brown, Kent E.	2003	9.15	Adj.for bill of sale
Mbajekwe, Carolyn W.	2003	3.46	Turned in tag
Sue, Marilyn J.	2003	45.16	Totalled, ins. has vehicle
Winkler, William R. Jr.	2003	12.45	Traded vehicle
Watson, Andrew S.	2003	16.51	Turned in tag
New River Mental Health	2003	143.70	Exempt
Sellers, Stephen N.	2003	49.84	Lives in Hanover County
Queen, Harold E. II	2003	16.26	Lives in Mecklenberg County
TOTAL		**$377.92**	

Tax Refunds: June, 2004

Taxpayer	Year	Amount	Description
Presnell, Dale	2003	$15.02	Listed under Reba Presnell
Presnell, Dale	2002	15.66	Listed under Reba Presnell
TOTAL		**$30.68**	

Adoption of Agreement: Downtown Boone Development Association

THIS AGREEMENT, made and entered into this the 1st day of July 2004, 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*

WHREREAS, 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, 2004 and shall end on June 30, 2005.

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 load 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 2004-2005, 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, 2005.

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, 2004. 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.

REPORT FROM TRANSPORTATION COMMITTEE

Public Services Director Blake Brown reported that the Transportation Committee met on July 13th and made the following recommendations:

The Traffic Committee proposes that additional signage be used in **all** study areas to indicate entry to a neighborhood area and also stating strictly enforced speed limits. Additionally, speed hump sections will be revised at targeted locations to increase the effectiveness of the humps.

In addition to the items noted above, specific actions are recommended for each study area. Those items below that are highlighted should be considered for public comment by a public hearing.

Study Area A:

1. Additional signage stating "No Cut-Through Traffic," Zero Tolerance for Speeding", "Neighborhood, Please Drive Slowly"
2. Increase enforcement using zero tolerance for speeding.
3. Increase the size of the existing speed humps or relocate for better effect.
4. *Open a dialog with NCDOT about left-turn prohibitions on 105 at Poplar Hill Dr. and Highland Ave.*

Study Area B:

1. Additional signage stating " No Cut-Through Traffic", "Zero Tolerance for Speeding", and" Neighborhood, Please Drive Slowly"
2. Increase enforcement using zero tolerance for speeding.
3. Increase the size of the existing speed humps or relocate for better effect.
4. *Use of a one-way section on Oak Street from Pine Street to Horn in the West Drive.*
5. *Placement of a speed table adjacent to the Jaycees Park on Oak Street.*
6. *Placement of a speed table adjacent to the Horn in West Parking Lot on Horn in the West Drive.*
7. *Use a 3-way stop at the intersection of Oak Street and Horn in the West Drive.*

Study Area C:

1. Additional signage stating " No Cut-Through Traffic"." Zero Tolerance for Speeding" and " Neighborhood, Please Drive Slowly"
2. Increase enforcement using zero tolerance for speeding.
3. Increase the size of the existing speed humps or relocate for better effect.
4. *Use a one-way section on Bear Trail from Junaluska Park to Eastview Drive. NOTE: The one-way treatment of Bear Trail is necessary due to the limited roadway width and sight distance and is not necessarily associated with Traffic Calming in the area.*
5. *Convert Westbrook Drive to a one-way street going south and convert Eastbrook Drive to a one-way street going north.*

Council member Eggers questioned if all the new signage will be placed on one post. Public Services Director Brown said no, that he would place two different signs at entrances to the neighborhoods. Council member Spann asked if speed tables would be used in the Stadium Drive area. Again, Public Services Director Brown said no, since speed tables are used only where there are crosswalks; however, Mr. Brown said the speed humps would be reconfigured to make them more effective. Council member Mason asked if he plans to restripe the streets using single yellow line. Mr. Brown answered yes. Council member Wilcox questioned how the Town would stop two-way traffic on Eastbrook and Westbrook. Public Services Director Brown said barriers would be placed to narrow the street. Afterward,s sidewalks could be installed. Town Attorney Sam Furgiuele pointed out that, after some research, he concluded that the Town could close streets as a traffic control device without going through normal street closing procedures. Council member Wilcox said the Transportation Committee did not want to close streets at this point, but wanted to try other measures first. Council member Mason commented, if these measures prove to be effective we should implement them in all neighborhoods. Council member Mason also commented that we should contact DOT about lowering the speed limits on State roads that are in residential neighborhoods. On a motion by Council member Mason, seconded by Council member Clawson, Council moved to accept the Transportation Committee's recommendations and scheduled a public hearing for Tuesday, August 17th at 7:00 p.m. The motion also included that the Mayor correspond with DOT about lowering speed limits on State roads.

VOTE: Aye-All
Nay-None

ADOPTION OF CODE AMENDMENT LOWERING SPEED LIMITS IN NEIGHBORHOODS

On a motion by Council member Mason, seconded by Council member Spann, Council moved to adopt the following code amendment:

DROP THE FOLLOWING STREETS FROM 25 MPH to 20 MPH

STREET	***FROM BEGINNING STREET***	***TO ENDING STREET***
Appalachian Drive	Forrest Hills Drive	Dead end
Azalea Drive	Highway 105 Extension	Dead end
Beverly Heights	Highway 105 Extension	Dead end
Blairmont Drive	Deerfield Road	Blairmont Road
Bodenheimer Drive	Rivers Street	Dead end
Brookside Drive	Farthing Street	Dead end
Buena Vista Drive	Tracy Circle	Farthing Street
Carolina Avenue	North Street	Summit Avenue
Cecil Street	Highway 194	Dead end
Cherry Drive	Cherry Drive	Council Street
Cherry Drive	Cherry Drive	Eastbrook Drive
Chestnut Drive	Chestnut Drive	East King Street
Chestnut Drive	King Street	Dead end
Clement Street	Blowing Rock Road	Oak Street
Council Street	King Street	Cherry Drive
Daniel Boone Drive	Daniel Boone Drive	East King Street
Daniel Boone Drive	Daniel Boone Drive	Daniel Boone Drive
Delmar Street	Delmar Street	Daniel Boone Drive
Dogwood Road	Dogwood Road	NC Highway 105
Dogwood Road	Dogwood Road	Poplar Hill Drive
Dogwood Road	Highland Avenue	Highway 105
Eastview Drive	Hunting Road	Dead end
Elizabeth Drive	Hunting Hills Drive	Dead end
Faculty Street Extension	Highway 105	Winkler's Creek Road
Farthing Street	King Street	Hillcrest Circle
Furman Road	State Farm Road	Longvue Avenue
Grand Boulevard	King Street	Hillcrest Circle
Hidden Valley Circle	Hidden Valley Circle	Chestnut Street
Highland Avenue	Blowing Rock Road	NC Highway 105
Hillandale Drive	Highland Avenue	Dead end
Hilltop Street	King Street	Grand Boulevard

Horn Avenue	Highway 105 Extension	Horn-in-the-West Drive
Horn-in-the-West Drive	King Street	Blowing Rock Road
Hunting Lane	State Farm Road	Dead end
Hunting Road	Westbrook Drive	Eastview Drive
Iris Lane	Grand Boulevard	Dead end
Junaluska Road	Junaluska Road	North Street
Kimberly Drive	Deerfield Road	Furman Road
Laurel Drive	Highway 105 Extension	State Farm Road
Linney Street	Linney Street	East King Street
Market Hills Drive	New Market Boulevard	Dead end
North Street	Water Street	Depot Street
Oak Street	King Street	Clement Street
Oakdale Drive	Highway 105 Extension	Laurel Drive
Old Bristol Road	Old Bristol Road	West King Street
Old Bristol Road	Old Bristol Road	Green Street
Old Bristol Road	Old Bristol Road	US 421
Poplar Hill Drive	Highland Avenue	Highway 105
Poplar Hill Road	Poplar Hill Road	NC Highway 105
Queen Street	Grand Boulevard	Gladys Street
Stadium Drive	Hemlock Drive	Dogwood Road
Stadium Drive	Stadium Drive	Dogwood Road
Stadium Drive	Stadium Drive	Rivers Street
Tracy Circle	Council Street	Edgewood Drive
University Village	Highway 421	Dead end
VFW Drive	State Farm Road	Dead end
Watauga Drive	Farthing Street	Dead end
Westbrook Drive	Westbrook Drive	Cherry Drive
Westbrook Drive	Westbrook Drive	Eastbrook Drive
Woodland Drive	Horn-in-the-West Drive	Pine Street

VOTE: Aye-All
Nay-None

ADOPTION OF CODE AMENDMENT - NOISE ORDINANCE REVISIONS

Town Attorney Sam Furgiuele pointed out that when revising the noise ordinance, he made sure that all the terms have legal meaning and that the ordinance is objective rather than subjective. Council discussed at length time limits and permits. After some corrections, on a motion by Council member Wilcox, seconded by Council member Mason, Council moved to adopt the following code amendment:

§ 93.01 STATEMENT OF POLICY.

It shall be unlawful for any person, firm, corporation or other entity to make, allow, or cause to be made any excessive, unreasonable or unusually loud noise, any noise which would annoy or disturb a reasonable person and about which a complaint is received.
Penalty, see § 93.99.

§ 93.02 NOISES PROHIBITED.

The following acts, among others, are declared to be loud and disturbing noises in violation of this chapter, but said enumeration shall not be deemed to be exclusive, namely:

(A) *Horns, signaling devices, etc*. The sounding of any horn or signal device on any automobile, motorcycle, bus, or other vehicle, except as a danger signal, so as to create any unreasonably loud or harsh sound, or the sounding of such device for an unreasonable period of time, or the use of any siren upon any vehicle, other than police, fire or other emergency vehicle or equipment.

(B) *Radios, phonographs, etc*. The using, operating, playing, or permitting to be played, used or operated of any television set, radio receiving set, musical instrument, phonograph, musical instrument or sound amplifying device or other machine or device for the producing or reproducing of sound in such manner or with such volume as to annoy or disturb a reasonable person within his or her temporary or usual place of abode or place of employment, and about which a complaint is received. However, before any establishment located in a general business district, which as part of its business activities presents live performances of music, is penalized under this Chapter, it shall be warned by a law enforcement officer that the sound is of such volume that it would annoy or disturb a reasonable person and that the sound is, in fact, annoying or disturbing a person within his or her temporary or usual place of abode or place of employment, and it shall be given an opportunity to come into prompt compliance with the noise ordinance.

(C) *Yelling, shouting, etc*. Yelling, shouting, whistling, or singing on the public streets, between the hours of 11:00 p.m. and 6:00 a.m. or at any time or place in such manner as to annoy or disturb a reasonable person within his or her temporary or usual place of abode or place of employment, and about which a complaint is received.

(D) *Animals, birds, etc*. Noise from any animal or bird which, by causing frequent, constant or continued noise, would annoy or disturb a reasonable person within his or her temporary or usual place of abode or place of employment, and about which a complaint is received.

(E) Ve*hicles*. The use of any automobile, motorcycle, or vehicle so out of repair, so loaded or in such manner as to create grating, grinding, rattling or other noise which would annoy or disturb a reasonable person within his or her temporary or usual place of abode or place of employment, and about which a complaint is received.

(F) *Loading, unloading, opening boxes*. The creation of noise in connection with loading or unloading any vehicle or the opening and destruction of bales, crates, and containers which would annoy or disturb a reasonable person within his or her temporary or usual place of abode or place of employment, and about which a complaint is received. No person, firm, corporation or other entity shall load or unload any commercial vehicle between the hours of 11:00 p.m. and 6:00 a.m. if such activity creates noise that is audible from a residence.
Penalty, see § 93.99

§ 93.03 OWNER'S RESPONSIBILITY.

The owner of every premise shall be responsible and liable for the actions of his/her tenants and their guests when such actions violate this chapter. This shall in no way relieve such tenants or their guests from liability for any violations of this chapter.
Penalty, see § 93.99

§ 93.04 PERMIT TO EXCEED.

A person, firm, corporation or other entity shall be exempt from the provisions of §§

93.01 and 93.02 hereof upon obtaining a "Permit to Exceed" from the town. With a permit to exceed, the maximum allowable sound levels are set forth in division (F) below. On an annual basis, the Town shall notify any establishment located in a general business district within the Town of Boone, which as part of its business activities presents live performances of music, of the requirements of this Chapter and of the availability of "permits to exceed."

(A) *Action by the Town Manager*. The Town Manager or his/her designee shall act upon all applications for permits to exceed. In considering and acting upon such application, the Town Manager shall consider, but shall not be limited to, the following:

(1) The nature of the requested activity;

(2) The previous experience with the applicant;

(3) The time of the event;

(4) The location of the event;

(5) Other activities in the vicinity of the proposed location;

(6) The effect of the activity on any adjacent residential property.

(B) *Application and permit fee*. An application for a permit to exceed, on a form provided by the Town and fully completed by the applicant, must be submitted to the Town at least 48 hours prior to the event for which such permit is needed. A non-refundable processing fee in the amount of $15 must be paid at the time the application is submitted.

(C) *Security deposit*. A deposit in an amount up to $500.00, as set by the Town Manager, must be paid at the time an application for a permit to exceed is submitted. The purpose of this deposit is to secure the compliance of the party requesting the permit to exceed with the conditions included in the permit. Upon the satisfaction of all of the conditions of the permit to exceed, said deposit shall be promptly refunded to the applicant. Should the applicant fail to comply with the conditions of the permit, the security deposit shall be forfeited.

(D) *Conditions of permits*. A permit to exceed shall specify the date, time period and location to which it applies. The permit shall also prescribe the conditions necessary to minimize the adverse effects the event may have upon the community or surrounding neighborhoods. The Town Manager may require, but shall not be limited to, the following conditions:

(1) That permit holders place sound speaker is such manner as to minimize any disturbance;

(2) That permit holders will change the arrangement of the amplifying equipment or sound instruments upon the request of the Police Department so as to minimize the disturbance to others resulting from the position or orientation of said amplifying equipment;

(3) That adequate provisions be made to ensure the proper cleanup of any litter resulting from the event;

(4) That if over 50 people attend the event for which the permit to exceed was obtained, adequate private security shall be provided for the purpose of crowd and traffic-control. The adequacy of such private security may be determined by the Police Department if so requested by the Town Manager or his/her designee.

(E) *Limit on permits*. All permits to exceed shall be subject to the following limitations:

(1) Permits will only be granted for temporary purposes not to exceed eight continuous hours at any one time period;

(2) Unless the applicant is an establishment located in a general business district within the Town of Boone, which as part of its business activities presents live performances of music, no more than two permits shall be allowed per address (person or group of persons)

during any six-month period. January 1 through June 30 shall constitute one six-month period. July 1 through December 31 shall constitute the second six-month period;

(3) No permit shall be granted for the time period between 1:00 a.m. - 10:00 a.m.

(F) *Maximum sound level*. Except as allowed in Table 2 below, no person, corporation or other entity shall create, generate or produce, directly or indirectly, sound in such a manner as to create a sound level which at its peak exceeds the limits set forth in Table 1 when measured at or beyond the property line of the property from which the sound originates. For purposes of measurement, the back of the curb, the outside edges of driveways, fences, hedges, or other physical features commonly associated with property boundaries are presumed to be at a point which is at or beyond the property line.

TABLE 1 - SOUND LEVELS

Time	***Sound Level Limit dB(A)***
10:00 a.m. - 11:00 p.m.	75 dB(A)
11:00 p.m. - 10:00 a.m.	60 dB(A)

Sound levels in excess of the limits established in Table 1 may be permitted as follows:

TABLE 2 - SOUND LEVELS

Time	***Sound Level Limit dB(A)***
Friday evening (5:00 p.m. - 11:00 p.m.)	85 dB(A)
Saturday* (10:00 a.m. - 12:00 midnight)	85 dB(A)

* The designation “Saturday” includes all holidays observed by the town.

(G) *Cooperation*. Permit holder(s) shall agree to cooperate with the Police Department in enforcing the noise ordinance by having the signer(s) of the permit available at the site of the event during the entire time period for which a permit has been issued and capable of assisting the police in enforcing the noise ordinance.

(H) *Enforcement*.

(1) The permit to exceed shall be revoked and/or the security deposit forfeited if:

(a) The signer(s) of the permit fails to be present during the entire time period for which the permit has been issued; or

(b) The signer(s) of the permit fails or refuses to assist the police in enforcing this chapter; or

(c) Sound is created, generated or produced, directly or indirectly by the permitted activity, that exceeds the limits set forth in division (F) above or the permit, whichever is less; or

(d) The signer(s) of the permit fails to comply with any of the conditions of the permit to exceed.

(2) Once the permit to exceed has been revoked, the provisions of §§ 93.01 and 93.02 shall immediately apply.

(I) *Limitation on provisions*. The provisions of this § 93.04 apply ONLY when a person, firm, corporation or other entity has obtained a permit to exceed, and ONLY on the date and during the time period set forth in said permit. The provisions of §§ 93.01 and 93.02 apply at all other times.

Penalty, see § 93.99

§ 93.99 PENALTY.

(A) Violation of this chapter shall subject the offender to a civil penalty in the amount of $100 to be recovered by the town. Violators shall be issued written notice of the violation which must be paid within thirty days after the receipt of said notice. If the violator does not pay the penalty within thirty days, the town may recover such penalty, and all subsequently accruing penalties, in a civil action. In the event that it is necessary for the town to institute a civil action to collect such penalty, the violator shall be responsible for all court costs and attorney's fees incurred by the town.

(B) Notwithstanding division (A) above, this chapter may be enforced by appropriate equitable remedies issuing from a court of competent jurisdiction.

VOTE: Aye-All
Nay-None

ADOPTION OF CONTRACT - W.K. DICKSON & COMPANY FOR HOWARD STREET DESIGN

Town Manager Greg Young said the contract is for $182,700 and will entail 480 days of design work. Town Manager Young said the Town Attorney has reviewed the contract and has a few minor changes. On a motion by Council member Wilcox, seconded by Council member Mason, Council moved to adopt the following contract:

CONTRACT FOR SERVICES

This CONTRACT for Howard Street- Streetscape Improvements 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:

1. Employment of CONSULTANT. The OWNER hereby engages the CONSULTANT and the CONSULTANT hereby agrees to perform the professional services hereinafter set forth.

2. 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.

3. 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.

4. Time of Performance. The CONSULTANT will commence work on or as soon as practicable after the date of execution of this Contract and receipt of written Notice to Proceed. All work as set forth in the Scope of Services shall be completed within 480 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.

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.

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.

CONSULTANT acknowledges that time is of the essence and is a material requirement of this agreement.

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. Subsurface Investigation. Not Applicable

4. CONSULTANT'S Personnel at Construction Site. The presence or duties of CONSULTANT'S personnel at a construction site, whether as onsite representatives or otherwise, do not make CONSULTANT or CONSULTANT'S personnel in any way responsible for those duties that belong to OWNER and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction Contract Documents and any health or safety precautions required by such construction work. CONSULTANT and CONSULTANT'S personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except the CONSULTANT'S own personnel.

5. The presence of CONSULTANT'S personnel at a construction site is for the purpose of providing to OWNER a greater degree of confidence that the completed work will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the construction contractor(s). CONSULTANT neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform their work in accordance with the Contract Documents.

6. 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 said 30th day of the month following the date of the invoice shall be overdue. Should a court action be taken to address collections, reasonable attorney 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 the 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.

1. 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.

2. 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.

3. Providing assistance and cooperation for the CONSULTANT in obtaining any other needed material, which the OWNER does not have in its possession.

4. 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.

5. 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.

6. Bear all costs for permitting and advertising for the project.

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 within 7 calendar days after receipt of written notice delivered by certified mail. 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 14. The CONSULTANT shall be entitled to receive compensation for work accomplished in compliance with this agreement 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.

7. 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 $1,000,000.00. The CONSULTANT agrees to maintain this coverage throughout the contract. The CONSULTANT agrees to indemnify the OWNER for any negligent acts, errors or omissions resulting from this agreement.

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.

ATTACHMENT A

SCOPE OF SERVICES

Streetscape Improvements for Howard Street
WK Dickson and Co., Inc. (WKD) proposes to provide professional engineering, landscape architecture, electrical engineering, transportation planning and land surveying associated with the improvements necessary to upgrade the streetscape along Howard Street from Appalachian Street to Water Street. This work will includes preparing an up to date survey of the area, coordinating the relocation and reconstruction of public and private utilities and preparing design plans for the physical streetscape improvements along with drainage infrastructure. This contract is based on project concept information reviewed by town council in April 2004. Below we will discuss the project task that will be performed under this contract.

Task #1 – Transportation Planning:

We will through the use of available traffic counts from the town and the NCDOT with additional traffic counts performed by our staff evaluate the existing traffic and pedestrian traffic in the Howard Street, area. This analysis will not only take into account the traffic on Howard Street but will also address how those traffic patterns relate to King Street and to university traffic. This analysis will investigate existing traffic directions, control measures and impacts expected from proposed streetscape improvements. Out of this evaluation we will report out findings to the town staff along with our recommendations. Based on the feelings from the town concerning these items the report will be finalized and the recommendations of the report will be implemented in the project design process.

Task #2 – Preliminary Streetscape Plans :

We will take the preliminary plans from 2000 that the town has and upgrade the schematics based on our field findings to prepare presentations for town staff to receive input from everyone concerned. We anticipate that this meeting will identify items of concern that will be incorporated into the schematic plans. We will then take the modified schematics to a citizen group identified by the town for input and discussions. We anticipate that there will be two meetings with this group and the town to help focus the schematic plans and detail project issues that must be identified. The outcome of these meetings will be a schematic design that will be used as we start the design plan process and further detail the overall project improvements. Also involved in this process will be at least four meetings with the private utility companies that have service in this corridor to try and identify the infrastructure they have in the project area and identify the process of how these will be placed underground. Part of this process will be further detailing the cost of these items and who will be responsible for the construction.

Task #3 – Design and Topographic Surveys:

We will need for the town to provide an ACAD copy of the planimetric and property surveys performed for the town in previous years. We will use this information as a starting point survey data collection. We will perform research at the courthouse to identify the current property owners of record and update the property mapping as necessary. It is anticipated that there are approximately 50 properties affected by this project. We will also perform a thorough survey of the roadway area and physical improvements that will be needed for design plan preparation. Topographic elevations will be collected for the area and used in the design of pavements and utility systems. We will attempt to locate available information regarding underground utilities such as water and sewer services with the assistance of the private utilities and town public works staff. It may be necessary to have the public works staff perform spot digs in some areas to verify water and sewer service conditions and elevations that will be necessary during design to predict the sequencing of construction and minimize the impacts to existing customers. The property information plotted will be the basis for the easement platting necessary in later phases of the project. We will need for the town to provide any mapping that they may have concerning easements and rights of way that have been acquired over the years.

Task #4 – Final Schematic Design Plans:

During this phase of the project we would perform a meeting with the town, a meeting with the town/ private utilities and a meeting with the town/ public to present our final schematic design and answer any questions concerning our findings. During these process we would make any final modifications to the documents, provide copies to the town for review and update the cost estimates for the project. Upon completion of this phase and approval by the town, we would undertake the start of 35% Construction Drawings.

Task #5 – 35% Construction Drawings:

During this phase of the project we would begin preparation of 35% construction drawings that will address underground utilities design both private and public, electrical design of pedestrian lighting, streetscape and hardscape designs, roadway design, storm drainage design and traffic design. Upon completion of these documents we will meet will the town to review the design progress and evaluate updated cost estimates for the project.

Task #6 – 95% Construction Drawings:

During this phase of the project we would begin preparation of 95% construction drawings that will address underground utilities design both private and public, electrical design of pedestrian lighting, streetscape and hardscape designs, roadway design, storm drainage design and traffic design. Upon completion of these documents we will meet will the town to review the design progress and evaluate updated cost estimates for the project. This phase will also include meetings with the private utility companies to go over the design plans and bidding documents, preparation of easement maps for the work areas required, submittals of permit applications for improvements and preparation of bidding documents. At this point we will meet with the town to review all of these items and get direction on additional phases of work. Permit fees for water, sewer and erosion control permits will be paid by the town. Final 100% plans will be delivered addressing any final comments from the town and permit agencies.

Conclusion:

All work associated with this contract will be performed in a timely manner assuming that information form private utilities, town staff and public sector can be received. The objective will be to complete work in a time frame as shown in the original power point presentation provided to the town council in April 2004. It is understood that the funding for this project will be a separate process taking place along side of the design and that the final phases of the project, such as property acquisition, bidding and construction will be dictated as funding is confirmed. It is not anticipated that any traffic signalization will be required. Therefore this proposal does not include any signal design services.

ATTACHMENT "B"

BASIS OF COMPENSATION Howard Street-Streetscape Improvements Town of Boone

1.	A.	Traffic Evaluations:	$ 25,000.00 (Lump Sum)
	B.	Preliminary Schematic Plans:	$ 33,000.00 (Lump Sum)
	C.	Topographic and Location Survey:	$ 12,500.00 (Lump Sum)
	D.	Construction Dwgs for Improvements to 35%	$ 36,550.00 (Lump Sum)
	E.	Construction Dwgs for Improvements to 95%	$ 75,650.00 (Lump Sum)
Total			$182,700.00 (Lump Sum)

2. The fees will be billed monthly in accordance with the terms of the Contract and based on: 1) for lump sum fees, the percentage of the work completed at the end of each month; 2) for estimated fees, based on the time and expenses incurred in the previous month. All time and expense fees will be billed based on the rate schedule in effect, with the current rate schedule listed in paragraph 4 of this attachment.

3. Additional Services: The OWNER shall pay the CONSULTANT for additional services, authorized in writing, which are not specifically called for in Attachment A, Scope of Services, in accordance with the current hourly rates.

4. Current Rate Schedule – See Attached Schedule

W.K. DICKSON & CO., INC.
2004 RATE SCHEDULE

Effective January 1, 2004

LABOR	**2004**
Principal	$175.00/hr.
Project Manager	$125.00/hr.
Senior Staff Engineer	$115.00/hr.
Staff Engineer	$ 95.00/hr.
Landscape Architect	$ 95.00/hr.
Staff Planner	$ 88.00/hr.
Senior Designer	$ 89.00/hr.
Designer	$ 79.00/hr.
Senior Technician	$ 79.00/hr.
Technician	$ 74.00/hr.
Administrative Assistant	$ 48.00/hr.
Field Survey Party	$97.00 - 110.00/hr.
GPS Crew	$195.00/hr.
Registered Surveyor	$ 97.00/hr.
Party Chief (Office Computations, Deed Research, etc.)	$ 61.00/hr.
Construction Observation	$575.00/day

EXPENSES

Reproduction:	
¨ Xerox	Cost +15%
¨ Bluelines	Cost +15%

¨ Mylars	Cost +15%
¨ Sepias	Cost +15%
Mileage	$ 0.36/mi.
Telephone, Postage	Cost +15%
Travel (Meals/Lodging)	Cost +15%
Subconsultants	Cost +15%

VOTE: Aye-All
Nay-None

ADOPTION OF BUDGET AMENDMENTS

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

DESCRIPTION	ACCOUNT #	TO:	FROM:
Capital Outlay-Office Equipment	010-402-000-5710000	$13,720.	
Maint. & Repair-Bldg. & Grounds	010-407-000-525101	13100	
Uniform Equipment	010-500-350-511220	1687	
Community Appearance	010-600-405-525102	20000	
Appropriated Fund Balance	010-000-000-499900		$48,507.
Capital Outlay Lines	030-700-802-575000	$97,000.	
Contracted Services	030-700-802-577000	44624	
Capital Outlay Lines	030-700-803-575000	116800	
Appropriated Fund Balance	030-000-000-499900		$258,424.

VOTE: Aye-All
Nay-None

REQUESTED APPEARANCE - ANN RAPPAPORT

Mr. Ann Rappaport appeared before Council to request water and sewer service to property located on old Highway 421 across from Mack Brown Chevrolet. Ms. Long said she is leasing a building on the property to open a floor covering business. Public Utilities Director Rick Miller said there is a water and sewer line adjacent to the property and that the building was approved for water in August, 2000, contingent upon annexation. Council member Mason asked if there is a time limit on the water hookup. Mr. Miller said no. Council member Mason said she wants to make it clear that the water request was previously approved since Council has been delaying action on requests until the water study is complete. After some discussion, on a motion by Council member Wilcox, seconded by Council member Mason, Council moved to grant approval for the water and sewer request, contingent upon the property owner's petitioning annexation.

VOTE: Aye-All
Nay-None

CLOSED SESSION

On a motion by Council member Wilcox, seconded by Council member Mason, Council moved

to enter Closed Session at 7:40 p.m., pursuant to NCGS 143-318.11a)3) in order to discuss the Ulery litigation and the ASU violations.

VOTE: Aye-All
Nay-None

On a motion by Council member Clawson, seconded by Council member Mason, Council moved to exit Closed Session at 8:45 p.m.

VOTE: Aye-All
Nay-None

ADJOURNMENT

On a motion by Council member Eggers, seconded by Council member Clawson, Council moved to adjourn at 8:46 p.m.

VOTE: Aye-All
Nay-None

_____ _____

Mayor Town Clerk