

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL JULY
21, 2005**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, July 21, 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; Town Clerk Freida Van Allen; Landscape Architect Brian Johnson; Planning Supervisor George Cole; Public Utilities Director Rick Miller; Assistant to the Manager Jim Byrne; Finance Director Amy Davis; Public Services Director Blake Brown; Planning Director John Spear; Police Chief Bill Post and Fire Chief Reggie Hassler.

ANNOUNCEMENTS

Mayor Burnley observed a few moments of silence for leaders, peace-keepers and humanitarians around the world.

Mayor Burnley read over the following proclamation:

***WHEREAS**, the Watauga American Legion Post #130 is the oldest Veterans' group in Watauga County;
and*

***WHEREAS**, on August 17, 2005, the Watauga American Legion Post #130 will celebrate its 84th
Anniversary; and*

***WHEREAS**, as it states in the Charter for the Watauga American Legion Post #130: "With a pledge of
allegiance to God and Country, honorably discharged Veterans of World War I applied for, and were granted a
Charter to form Watauga Post #130 on August 17, 1921"; and*

***WHEREAS**, the Watauga American Legion Post #130 has played a vital role in the annual Town of Boone
4th of July parade, as well as many other parades, serving many times as Color Guards walking the entire parade
route; and*

***WHEREAS**, the Watauga American Legion Post #130 is diligent in honoring Veterans by participating in
funeral services for Veterans, placing flags on graves of Veterans on Memorial Day, hosting a Memorial Day
service at the American Legion building, and assisting with the ASU Memorial Day Service; and*

***WHEREAS**, the Watauga American Legion Post #130 plays an active role in the community by collecting
money for a coloring book for each child in the third grade at each of the eight county schools, and by presenting
two plaques to two ROTC students at ASU each year;*

***NOW, THEREFORE, BE IT RESOLVED**, that I, Velma Burnley, Mayor of Boone, do hereby proclaim
August 17, 2005, as Watauga American Legion Post #130 Day as a gesture of appreciation for all Veterans.
Furthermore, I urge all citizens to express their gratitude and thanks for each Veteran's time and effort in serving
our country during wartime and peacetime.*

TENTATIVE AGENDA ADOPTION

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

- Item 6.K. Selection of Howard Street Traffic Pattern.
- Item 6.L. Discussion of Water Committee Recommendations.
- Item 6.M. Discussion of Transportation Committee Recommendations.
- Item 6.N. Adoption of Watauga Medical Center Encroachment Agreements.
- Addition of Closed Session - Williamson Litigation

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

VOTE: Aye-All

Nay-None

CONSENT AGENDA ADOPTION

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

Minutes: June 13, 2005, Special Meeting
 June 16, 2005, Special Meeting
 June 21, 2005, Special Meeting
 June 27, 2005, Regular Meeting

Tax Releases: June, 2005

Taxpayer	Year	Amount	Description
CIANCHETTI, MARK A. & MARY JO	2005	\$2.99	DOES NOT LIVE IN CO. / IN MILITARY
WEAVER, MICHAEL	2005	24.29	TURNED IN TAG
TOYOTA OF BOONE INC.	2005	94.88	RENTAL / TAXED UNDER GROSS RENTALS TAX
DUNCAN, KENNETH E.	2005	11.33	TURNED IN TAG
GREENE, RONNIE A.	2004	80.92	INCORRECT FIRE DISTRICT
PETREY, WINSTON S.	2004	89.60	INCORRECT FIRE DISTRICT
GANSSE, HEATHER L.	2004	27.46	CAR TOTALED PLATE TURNED IN
BENITEZ, DIMAS M.	2004	36.28	LIVES IN PITTSBORO, NC
HARMON, JASON W.	2004	15.79	SOLD VEHICLE TURNED IN TAG
HENDRIX, DAVID H.	2004	2.75	SOLD CAR
ROYALL, HARDIN J. JR.	2004	35.49	TURNED IN TAG
HOUSTON, COYTE E. &	2004	122.76	LIVES IN CATAWBA CO.

MARY B.			
		\$544.54	

Tax Refunds: June, 2005

Taxpayer	Year	Amount	Description
HENSON, PAMELA MICHAM	2004	\$4.92	TURNED IN TAG
CANIPE, DOUGLAS H & JO ANN G	2004	23.70	TURNED IN TAG
COLLINS, JEANNINE UNDERDOWN UNDERDOWN & ASSOCIATES INC	2004	35.29	TURNED IN TAG
EVERLY, TRAVIS ASHLEY	2004	14.80	TURNED IN TAG
TURMELLE, DEBRA GIAN	2004	1.71	TURNED IN TAG
TOTAL		\$80.42	

Adoption of Agreement: Watauga County Board of Education.

This Agreement, entered into this 21st day of July, 2005, between Watauga County Board of Education, a public body corporate organized and existing under the Constitution and laws of the State of North Carolina, hereinafter referred to as the "School Board," and Town of Boone, a municipal corporation organized and existing under the laws of the State of North Carolina, through its Police Department, hereinafter referred to as the "Police Agency,"

Witness that:

The School Board and Police Agency mutually agree as follows:

1. That the School Board shall:

- a. Provide funds, not to exceed \$50,667 for services rendered by Police Agency during the term of this agreement, to the Police Agency for providing, through a law enforcement officer employed by Police Agency, those services set forth in this agreement and the attachments hereto.
- b. Develop desired schedule of work for the School Resource Officer, understanding that the School Resource Officer will comply with the Town of Boone Personnel Policies as a Town of Boone employee.

2. That the Police Agency shall:

- a. Cause to be provided for and on behalf of the School Board one school resource officer

to carry out the duties and responsibilities listed in this agreement. The School Board or their representatives will approve the officer to be assigned.

- b. Cause to be completed and submitted to the School Board, as requested by the School Board, all students and program records.
- c. The Police Agency will invoice the School Board on a monthly basis.
- d. Allow full access to the personnel file of the School Resource Officer to the School Board, provided the Resource Officer consents and signs a written release in accordance with NCGS 160A-168 (c)(6).

3. **Reporting Authority:**

- a. For issues of school policy, the School Resource Officer will follow recommendations and coordinate activities with Watauga High Administration.
 - b. For all other law enforcement duties and general supervision as per Town of Boone and Boone Police Department Personnel Policy, the School Resource Officer will report to the Boone Police Department.
4. This agreement shall remain in effect from July 1, 2005 until June 30, 2006, unless terminated sooner pursuant to Section 9 of this agreement.

5. **Performance Responsibilities:**

The general duties of the School Resource Officer shall be to protect students, staff, visitors, and property of the school. He/she will investigate criminal activity, assist other law enforcement agencies as requested, assist social services and mental health agencies, patrol areas as directed or needed, and provide police protection to special and athletic events.

He/she will attend required training, assist in medical emergencies, assist counseling staff in crisis intervention and prevention, work in the conflict resolution program, conduct formal and informal counseling, and classroom instruction to students on areas of expertise. The School Resource Officer will take law enforcement action as necessary and notify Watauga High Administration and the Boone Police Department within guidelines of the Boone Police Agency. Appropriate campus officials shall be notified of any law enforcement action by the School Resource Officer in a timely fashion for proper school action related to the offender's behavior.

6. **Prevention:**

- a. Establish positive relationships between the officer and the student population.
- b. Assist other agencies such as social services, mental health and other organizations which provide services and care to school system employees, students, and families.

- c. Receive training in Conflict Resolution and Peer Mediation.
- d. Assist students and teachers through Conflict Resolution classroom activities, assemblies, and informal discussion.
- e. Work with training team to conduct staff development in Conflict Resolution strategies.
- f. Assist in training students in Peer Mediation.

7. **Intervention:**

- a. Identify causes of violence in the schools.
- b. Educate students on legal aspects of violence and criminal behavior.
- c. Investigate criminal activity against property, personnel, students, and visitors.
- d. Provide and/or coordinate law enforcement at school activities.
- e. Assist local law enforcement authorities in school related matters as requested.
- f. Serve as liaison between law enforcement and school officials, students, and parents.
- g. Keep a log of activities relating to class, student, parent contacts.
- h. Any other duties as assigned by the Boone Police Department.

8. **Critical knowledge, training or certification:**

- a. Basic Law Enforcement training:
- b. Certified as a North Carolina Law Enforcement Officer sworn by the Boone Police Department.
- c. General experience in law enforcement with specialized knowledge of and/or experience in dealing with substance abuse, juvenile law, and operating standards of accepted School Resource Officer procedures.

9. **Termination:**

Either party may terminate this agreement without cause on 30 days notice in writing to the other party; further, either party may terminate this agreement immediately for cause, upon giving written notice to the other party, provided such notice is accompanied by a written opinion from the general counsel of the party terminating the agreement stating that it is not legally permissible for that party to continue to substantially comply with this agreement.

IN WITNESS WHEREOF, the parties set their hands and seals in Boone, Watauga County, North Carolina.

Adoption of Resolution: Disposition of Surplus Property by Private Sale.

Whereas the Council of the Town of Boone desires to dispose of certain surplus property of the Town:

NOW, THEREFORE, BE IT RESOLVED by the Council that:

1. The following described property is hereby declared to be surplus to the needs of the Town:

 10 Minitor II pagers
2. The Fire Chief is authorized to dispose of the described property by private sale at a negotiated price.
3. The minimum price to be accepted for the property is \$350.00
4. The Town Clerk shall publish notice summarizing this Resolution in accordance with G. S. 160A-267.
5. The sale may be consummated not earlier than 10 days from the date of publication.

Adopted this the 21st day of July 2005.

Mayor

Attest:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 297)

VOTE: Aye-All

Nay-None

BLUST ANNEXATION PUBLIC HEARING

Mayor Burnley opened the public hearing at 6:35 p.m. There being no comments the public

hearing closed at 6:35 p.m.

PARK COMMITTEE REPORT

Council member Mason reported that the occupancy tax legislation bill, including the force account rider for \$750,000, passed the General Assembly on July 19, 2005. The joint subcommittee met again on July 13th and concluded that the Town would flag the property that will be leased and provide a survey of the 12.55 acres. The Town also agreed to allow the County to use the \$45,000 landfill settlement payment towards development of this park. In return, the County is willing to use its force accounts to help develop the Town's portion of the passive recreation park. Mayor Burnley questioned if the County is planning to develop more than soccer and softball fields in the area. Council member Mason felt that the two separate, distinct parks will complement each other when finished. Council member Mason finalized her report by saying that the County will be requesting rezoning of the property in August and that the Town Manager is developing the final lease document.

INITIATION OF AMENDMENTS TO SIGN ORDINANCE

Planning Director John Spear reminded Council members of their request from the last meeting to prepare text amendments for awning signs in the B-1 district. Planning Director Spear presented the following information:

The following are options to consider as an amendment to the Unified Development Ordinance text regarding awning sizes in the B-1 zoning district:

The awning for Shoppes at Farmer's Hardware will be used as an example to compare different measuring options that might be utilized in a text amendment. The size of the Farmer's awning is one-hundred fifty (150) square feet. The square footage of the sign on the awning is twenty-five (25) square feet and the height of the sign is thirty-two (32) inches. The current text in the Unified Development Ordinance limits the size of the sign to eight (8) square feet and twelve (12) inches in height.

Section 329. Signs Permitted in the B-1 District

- d. Awning signs shall not exceed fifteen percent (15%) of the area of the awning.
The size of the Farmer's awning would be twenty-two point five (22.5) square feet.
- d. Awning signs shall not exceed twenty percent (20%) of the area of the awning.
The size of the Farmer's awning would be thirty (30) square feet.
- d. Awning signs shall not exceed twenty-five percent (25%) of the area of the awning.
The size of the Farmer's awning would be thirty-seven point five (37.5) square feet.

Any of the above criteria would be similar to the criteria for attached signs in the B-1 District. Those signs are permitted based upon the frontage of the building, with a maximum size of 48 square feet. To be consistent with the attached sign criteria, the Council may want to impose a maximum size of awning sign.

The above criteria are written to include only the B-1 district. The council may also want to adopt a similar regulation for signs in the B-2, B-3, R-3 and O/I Districts. The maximum size of awning signs in the B-2, B-3, and O/I districts is sixteen (16) square feet; in the R-3 district it is eight (8) square feet.

Council member Eggers felt that awning sign copy should be larger and suggested the 48-square-foot maximum, while allowing the same in the B-2, B-3 and O/I zoning districts. Council member Wilcox agreed and stated the Town would be allowing more sign copy on awnings, without allowing additional signs. After some discussion, on a motion by Council member Eggers, seconded by Council member Spann, Council moved to send the proposed amendment, including awning signage shall not exceed 25% of the area of the awning, have a 48-square foot maximum size, and be applied to three additional zoning districts, to the August Quarterly public hearing.

VOTE: Aye-All

Nay-None

Planning Director Spear then presented the following information regarding temporary signs:

[a] Temporary signs must conform to all regulations of this section. No type of temporary sign shall be placed in the public right-of-way. Owners of these signs shall not be required to obtain a sign permit **(except for community event signs)**.

[1] Community event signs are permitted for ~~civic events sponsored by a public agencies~~, schools, churches, civic-fraternal organizations or similar non-commercial organizations. These signs may be erected provided that:

- a. ~~The organization sponsoring the event may display one (1) off premise banner and the size of any such sign shall not exceed twenty four (24) square feet in area.~~ **Such groups shall be non-profit corporations or associations organized and operated for charitable purposes that are licensed as non-profit groups with the North Carolina Secretary of State.**
- b. ~~Off premise community event signs are allowed. Only one sign per lot is allowed with permission of the property owner or registered agent. Off premise signs may not exceed four (4) square feet in area and four (4) feet in height. Any funds being raised by the community event must be used for charitable or non-profit purposes.~~
- c. ~~Each community event is allowed to display no more than twelve (12) off premise signs in the Town of Boone and the ETJ.~~ **All community events must occur within Watauga County. Planners of a community event that does not occur within Watauga County may receive permission to display signs with the approval of the Boone Town Council.**
- d. ~~The signs are not illuminated.~~ **A no fee Community Event Sign Permit Application must be completed by the sponsor of the event and approved by the Development Services Department. The sponsor must organize all aspects of a community event. A representative of the organization must sign the permit application and will be jointly responsible with the organization for insuring that the regulations are followed.**
- e. ~~The signs may not be displayed earlier than seven (7) days prior to the event to which they pertain and must be removed within forty eight (48) hours after the event.~~ **Planners of each community event are allowed to display no more than twelve (12) off-premise signs that do not exceed four (4) square feet in area and four (4) feet in height. Only one sign per lot is allowed with the permission of the property owner or registered agent. One (1) off-premise banner and one (1) banner at the event site are allowed. Each banner may not exceed twenty-four (24) square feet.**
- f. **A community event may display allowable signage annually.**

- g. **The signs are not illuminated.**
- h. **The signs may not be displayed earlier than seven (7) days prior to the event and must be removed within forty-eight (48) hours after the event.**

Planning Director Spear said the current regulations are difficult to enforce and he hopes that the proposed language will clarify that community event signs will be permitted for non-profit corporations, such as Relay for Life and humane society events. Planning Director Spear said that motorcycle shows, Armory events and farmers' market signs would not be allowed since they are not non-profit organizations. Council member Mason felt that procedures should be changed in order to reduce the number of signs but that the Town should provide a kiosk in order to promote activities within Town. Council member Clawson agreed that more control is needed; however, she indicated that some exceptions are needed for directional signs. Examples are the Highland Games and Trade Days. After some discussion, Council agreed to have the Planning Department study the temporary sign regulations further, providing for some exceptions.

INITIATION OF AMENDMENT TO STORMWATER MANAGEMENT AND TREE PRESERVATION PROVISIONS

Landscape Architect Brian Johnson presented the report:

New Subdivisions-Background and Analysis

Impact of New Subdivisions on the town's overall Urban Forest has been less than 100 acres, or around 1.5% of the town's 8311 total acres over the last (5) years. The less than 100 acres affected was around 2% of the town's 5898 residentially zoned acres. The acreage that was affected was not totally cleared and it has been or will be replanted. Taking these numbers into consideration shows a very insignificant impact on the town's Urban Forest.

Text Amendment pertaining to Tree Survey Requirements

A potential problem submitted by council member Graydon Eggers stated:

Tree Survey Requirements: A tree survey is currently required for single-family subdivisions as their development is considered a "commercial" activity; however, a potential end user who is building a single-family residence has no restriction placed upon him with regard to saving significant or historical trees on the single-family lot. Except for the roadway/infrastructure consideration of saving significant and/or historical trees, by realignment of same, the tree survey on the subdivided building lots is of no effect and a waste of the petitioner's time and money.

Town Council made a motion for evaluation and proposals to correct the inconsistency.

A: Exempt new subdivisions from tree survey requirements except for the roadways and infrastructure.

A tree survey will be required in areas of proposed streets in subdivisions from the centerline of the road out to the Right-of-Way and areas of infrastructure(stormwater mgmt. areas etc.)

PRO

CON

Reduces the scale of the survey
Saves developers time and money
Most homeowners will try to save trees
Will prevent developer from clear-cutting

Entire residentially subdivided site
could eventually be cleared

B: Exempt new residential subdivisions from tree survey requirements entirely.

PRO

Eliminates tree survey for
all residential uses
Reduced costs

CON

Eliminates the possibility of any tree
preservation in residential uses

C: Keep the tree survey requirements as currently written; however, to correct the inconsistency with this approach you will have to place tree save regulations on the residential homeowner in a subdivision.

PRO

Will protect our overall forest.

CON

Places restrictions on homeowners
Could result in homeowner violations/fines
Enforcement issues
Raises development costs

D: Keep the tree survey requirements as currently written.

PRO

Possibility of homeowner
preserving trees

CON

Waste of developers time and money
Entire residentially subdivided site
could eventually be cleared

Mr. Johnson said the Tree Board discussed the options at length and recommended the Town Council pursue Option A. Council member Eggers argued that with Option A the layout of trees will essentially design the road. Council discussed at length clear cutting within the Town. Council member Mason asked if our regulations could be developed to prevent clear cutting in Town. Mr. Johnson said both Options A and B will allow homeowners the option to save trees on their property. After some discussion, on a motion by Council member Mason, seconded by Council member Clawson, Council moved to develop a text amendment for the August Quarterly public hearing using Option A and including flexibility language.

VOTE:Aye-All

Nay-None

Planning Director John Spear presented the following information on stormwater management:

Recently, concerns have been raised regarding the treatment of stormwater runoff within subdivisions and specifically a perceived inconsistency regarding the requirements for individual residential lots. There is a concern that stormwater from individual lots within new subdivisions is treated, while builders of homes outside of new subdivisions have no requirements.

Some individuals have expressed a lack of understanding regarding the division of applicability of the unified development ordinance between commercial and residential uses. Generally the unified development ordinance regulates development within the Town's jurisdiction without regard to the type of development. Regarding grading and drainage the unified development ordinance has some exceptions that include single family and two family projects, but it is not a reference to residential development as opposed to commercial development.

Current provisions of the Unified Development Ordinance have the following sections that relate to stormwater. Emphasis has been added to the pertinent sections.

Section 94[a] The Town Council shall approve or disapprove major subdivision final plats in accordance with the provisions of this section. **No major subdivision final plat shall be approved until a special use permit has been authorized by the Board of Adjustment.**

Section 165 Table of Permissible Uses

Use 1.110 Single-family detached dwelling, one dwelling unit per lot

Use 1.200 Two-family residences

Use 27.0 Subdivisions

Section 312 [a] Subject to the requirements of Article IV, Section 64 (Applications to be Complete) a Drainage Plan is required to be submitted with all applications for zoning permits, **special use permits**, zoning vested rights or **minor subdivision plat** approval **except in any of the following circumstances:**

[1] **Construction of a single family or two family residence –Land use classification 1.110 or 1.200.**

[2] A change of use of a structure that is no larger than two thousand eight hundred (2,800) square feet and does not involve more than two thousand five hundred (2,500) square feet of land-disturbing activity. The administrator may approve a deviation of the structure square footage requirement (not to exceed 10%) in accordance with the provisions of Section 51[b].

[3] Commercial site improvements that involve no more than two thousand five hundred (2,500) square feet of land disturbing activity.

Section 314[a] **Storm water management facilities shall be constructed in accordance with approved plans and maintained in proper working condition. The property owner is responsible for ensuring that the construction of drainage structures and stormwater management measures are completed in accordance with the approved plan and specifications.** Inspections which may be performed by the Town of Boone during construction will not relieve the developer of his responsibility to install drainage facilities in accordance with the approved plan. **A written certification from a registered professional competent in the area of construction shall be submitted prior to issuance of the certificate of occupancy.**

Section 315[a] In order to reduce drainage related damage and hazards, adequate natural drainage systems or storm water management installations are required to collect and transmit storm water flows into either existing town drainage facilities or a natural drainage system. **The general objectives of this requirement are, but not limited to:**

[1] **The prevention and abatement of flooding and runoff related property damage, nuisances, and hazards,**

[2] **The prevention of stream bank and channel degradation by accelerated erosion caused by increased velocity of runoff, and**

[3] **The reduction of water quality degradation caused by erosion, sedimentation, and non point source pollution.**

Section 316[b][4] **Stormwater detention shall be provided to ensure that the rate of discharge does not exceed the pre-development rate of discharge.** In order to demonstrate this, pre- and post-development hydrographs will be submitted that demonstrate no increase in flow leaving the site during the 10-year, 24-hour storm. Inflow-outflow calculations shall also be submitted for any storm water detention ponds.

Section 316[k][1] Maintenance of stormwater impoundment or detention facilities shall be the responsibility of the property owner.

The effect of these regulations is that all development, with specific exceptions as noted in Section 312[a], is required to provide a stormwater management system. A stormwater management system includes a collection system, conveyance system, detention system and discharge system. The only portion of this system that seems to be creating an issue is the requirement for a detention system. The stormwater system must be prepared under the responsible charge of a licensed engineer and the engineer must certify that the system has been constructed as designed. The current Town regulations have no provision for water quality. When the Town of Boone is designated as a jurisdiction that must comply with the National Pollutant Discharge Elimination System (NPDES) Phase II requirements the Town will have to revise its stormwater regulations to comply with the new requirements. These regulations include all development including residential subdivisions.

Under the current regulations, a new subdivision must include a stormwater management system that addresses all flow from the site, including runoff from the individual lots. In addition, the developer creates a property owners' association to provide maintenance of the stormwater system. The builder of a home on a residential lot, regardless of whether it is in a subdivision, has no responsibility to provide a drainage plan or to construct a drainage system. As a result, those lots that are not within a subdivision for which a drainage system has been constructed create additional runoff that is not mitigated and the objectives contained in section 315[a] are not addressed. Between January 1, 2004 and June 30, 2005, one hundred forty one (141) building permits were issued for new homes and one hundred twenty six (126) new residential lots were created.

Staff has reviewed this situation and determined there are several steps that can be taken regarding stormwater within subdivisions.

1. Make no changes – Continue to require the developers of new subdivisions to provide a stormwater system including a detention system to mitigate all additional flow from the subdivision. This will require the developer to fund the design and construction of the system and set aside sufficient land area to permit construction of the detention system. He must also create a property owners' association with the ability to assess individual lot owners their proportional share of the cost of maintenance. The capital cost of the infrastructure will be passed on to the home buyers. This alternative does not address additional runoff generated when homes are constructed on existing lots. This additional runoff is not currently mitigated and may impact downstream infrastructure.
2. Revise the regulations to delete all detention requirements from residential subdivisions. If this change is implemented, the land disturbing activity related to detention facilities will not be required resulting in less tree removal and less grading activity. In addition, there will not be a continuing requirement for maintenance of the facilities. The additional runoff from the subdivision will not be mitigated resulting in a potential that downstream conveyance systems may be overloaded resulting in flooding. This alternative does not address additional runoff generated when homes are constructed on existing lots. This additional runoff is not currently mitigated and may impact downstream infrastructure. This alternative does nothing to address the objectives contained in section 315[a] as it relates to residential development.
3. Revise the regulation to require the developer to provide detention for the infrastructure only and delete any requirement for detention regarding the individual lots. In this scenario, the developer must still include a detention system for the infrastructure. A property owners' association must still be created to maintain the system. The cost of the detention system will be passed on to the home buyer. The additional runoff from construction of homes will not be mitigated. This additional runoff may impact downstream conveyance systems and may create additional flooding.
4. Revise the regulation to require the developer to provide detention facilities for the subdivision infrastructure only, and require the individual lot builder to provide detention on the lot. In this scenario, the developer must still include a detention system for the infrastructure. The capital cost of the detention system will be passed on to the home buyer, and a property owners' association will be created to generate funds for the maintenance of the infrastructure system. In addition the home buyer must fund engineering

and construction of a system for his lot. The builder must install the system and have it certified as completed before the certificate of occupancy can be issued. The homeowner must then maintain the system. This alternative does not address additional runoff generated when homes are constructed on existing lots. This additional runoff is not currently mitigated and may impact downstream infrastructure.

5. Revise the regulations to require the developers of new subdivisions to install a detention system for the infrastructure only and require the builders of homes on all lots within the Town's jurisdiction to create on-site detention systems. In this scenario, the developer must still include a detention system for the infrastructure. A property owners' association must still be created to maintain the system. All home builders within the Town's jurisdiction will be required to retain an engineer to design a system for the lot. This system must be installed and certified before a certificate of occupancy is approved, and the home owner will be required to maintain the system.
6. Continue the regulations to require the developers of new subdivisions to install stormwater systems for the entire subdivision including the individual lots and revise the regulations to require the builders of homes on lots that are not within subdivisions that have stormwater systems that mitigate the increased runoff from individual lots to design and construct such a system. This will continue the present system in which the cost of design and construction of systems in new subdivisions are passed on to new home buyers and a requirement that property owners' associations be created in the new subdivisions. In addition, homebuilders on lots that are located outside new subdivisions must fund design, construction, and maintenance of individual stormwater systems. This alternative will not decrease existing flooding conditions, but will require steps so that additional flooding is not created.

Before beginning discussion, Council member Eggers requested permission to be excused from discussion on this matter and requested that he be allowed to speak as a private citizen on the matter. On a motion by Council member Spann, seconded by Council member Clawson, Council excused Council member Eggers from voting on this matter.

VOTE: Aye-All

Nay-None

Council member Spear said that the Planning Commission members had discussed the regulations and options at their meeting on July 18th and recommended that Council endorse Option #1. Council member Mason stated that Council member Spann and she, after attending the Planning Commission meeting, felt it would be premature for the Town to change the UDO until the matter is studied in depth. Council member Mason felt a task force should be implemented to study the matter. Assistant to the Manager Jim Byrne felt a task force may be premature since the State is finalizing a draft model ordinance for smaller municipalities. Council member Mason said she was opposed to creating homeowner associations for stormwater maintenance purposes, but endorsed the Planning Commission recommendation to not change the current regulations. Graydon Eggers pointed out the inconsistency of the current regulations which require no stormwater detention measures for existing single-family lots, yet do require detention for any new single-family lots created by new subdivisions. Eggers said that if detention continues to be required for new subdivision lots, then for the town to be consistent with stormwater control, detention should be considered for all existing subdivision lots as well. Eggers endorsed Option 2, deleting all requirements for residential lots for the time being, and stated that by leaving current regulations in place, a single-family subdivision developer will have to pay for the implementation of detention measures, the cost of which will be passed on to future homeowners who must then establish homeowner associations to escrow funds and inspect and file reports on detention status in the future. Council member Spann asked Eggers if he felt that the town should be responsible for stormwater detention measures and if

that would be more economical, to which Eggers agreed. Planning Supervisor George Cole clarified that Option #1 has one entity (the owner's association required to be formed) as responsible for additional stormwater run-off and that Option #6 requires individual homeowners to pay for design and construction to contain their own detention site. Upon being asked, Mr. Cole estimated that the cost to provide detention to a single-family lot by a homeowner would be around \$10,000. Council member Clawson said she didn't think the regulations should be changed at this point, and after some discussion, on a motion by Council member Mason, seconded by Council member Clawson, Council moved to accept Option #1, leaving the stormwater regulations unchanged. Before Council voted, Graydon Eggers argued that by leaving regulations unchanged, an additional \$10,000 tax or fee is a cost being levied against the eventual individual property owners who acquire lots in the affected new single-family subdivisions.

VOTE: Aye-3 (Clawson, Mason, Spann)
Nay-1 (Wilcox)
Excused-1 (Eggers)

ADOPTION OF ORDINANCE - BLUST ANNEXATION

Planning Director John Spear said this is the third and final step in the non-contiguous annexation of property located off George Wilson Road. Planning Director Spear stated that the property contains 4.346 acres with the effective date of annexation as January 1, 2006. On a motion by Council member Eggers, seconded by Council member Spann, Council moved to adopt the following annexation ordinance:

Ordinance #05-08 AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE TOWN OF BOONE, NORTH CAROLINA (Blust Annexation)

WHEREAS, the Town Council has been petitioned under G.S. 160A-58.1 to annex the area described below; and

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

WHEREAS, the Town Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at Council Chambers at 1500 Blowing Rock Road at 6:30 p.m. on July 21, 2005 after due notice by Watauga Democrat on July 6, 2005; and

WHEREAS, the Town Council finds that the area described therein meets the standards of G.S. 160A-58.1(b), to wit:

- a. The nearest point on the proposed satellite corporate limits is not more than three (3) miles from the corporate limits of the Town;
- b. No point on the proposed satellite corporate limits is closer to another municipality than

- to the Town;
- c. The area described is so situated that the Town will be able to provide the same services within the proposed satellite corporate limits that it provides within the primary corporate limits;
 - d. No subdivision, as defined in G.S. 160A-376, will be fragmented by this proposed annexation;
 - e. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, does not exceed ten percent (10%) of the area within the primary corporate limits of the Town, and

WHEREAS, the Town Council further finds that the petition has been signed by all owners of real property in the area who are required by law to sign; and

WHEREAS, the Town Council further finds that the petition is otherwise valid, and that the public health, safety and welfare of the Town and of the area proposed for annexation will be best served by annexing the area described;

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

Section 1. By virtue of the authority granted by G.S. 160A-58.2, the following described non-contiguous territory is hereby annexed and made part of the Town of Boone, as of January 1, 2006.

4.346 acres on NCSR No. 1105 for Annexation into the Town of Boone more particularly described as: 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 2. Upon and after January 1, 2006, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Boone and shall be entitled to the same privileges and benefits as other parts of the Town of Boone. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the Town of Boone shall cause to be recorded in the office of the Register of Deeds of Watauga County and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described herein in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the County Board of Elections as required by G.S. 163-288.1.

Mayor

Attest:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGES 276-277)

VOTE:Aye-All

Nay-None

ACCEPTANCE OF DEEDS - TRACTS A & B NORTH HAMPTON ROAD RIGHT-OF-WAY

Public Services Director Blake Brown said these two tracts are in swap for the portion of North Hampton Road closed on December 16, 2004. On a motion by Council member Clawson, seconded by Council member Mason, Council moved to accept the two deeds for the North Hampton Road right-of-way on file in the Watauga County office of Register of Deeds, in Deed Book 1100, Pages 509-513.

VOTE:Aye-All

Nay-None

DISCUSSION OF BOOTING VEHICLES IN BOONE

Council member Wilcox said the Town is experiencing problems with booting of vehicles in private lots downtown. He indicated that the DBDA had discussed the matter and feel that booting in private lots is not a good business practice. The DBDA in turn requested that the Town develop regulations requiring booting companies to acquire business licenses and provide proper identification. Council member Spann questioned if the Town can mandate uniforms for booting personnel. Town Attorney Sam Furguele said that the Town can not mandate uniforms, but can have the property owners involved in the licensing /registration process. Police Chief Bill Post pointed out that only four of the sixty lots downtown currently boot vehicles; however, he assured that each property owner has a copy of the current booting requirements. After some discussion, on a motion by Council member Wilcox, seconded by Council member Clawson, Council moved to have the Town Attorney prepare an ordinance amendment for the licensing of booting companies within the Town.

VOTE:Aye-All

Nay-None

On a motion by Council member Wilcox, seconded by Council member Wilcox, Council moved to excuse Council member Mason from the remainder of the meeting.

VOTE:Aye-All

Nay-None

ADOPTION OF ORDINANCE AMENDMENT

Public Utilities Director Rick Miller said the amendment to Ordinance 05-01 will allow the Town to grant sewer only connections. On a motion by Council member Eggers, seconded by Council member Clawson, Council moved to adopt the following ordinance amendment:

Insert new section #6.

6. *During the term of this Resolution, Section 3-10(G) of the Town of Boone Water and Sewer Code, which prohibits the connection into the Town's sanitary sewer system of the discharge from private water systems, other than the system of Appalachian State University, is suspended as to those applicants whose application for both water and sewer connections cannot be granted because the request for water service has been denied by the action of the Town Council in applying this Resolution. However, in order to be granted the right to connect to the sanitary sewer system, along with such other conditions as may be placed upon the applicant in accordance with the Town of Boone Water and Sewer Code, the applicant must agree to connect into the Town's water system, should the Town later request that such a connection be made, and the applicant*

must sign a statement of commitment to that effect, which will remain on file with the Town's Public Utilities Department.

VOTE:Aye-All

Nay-None

JONES HOUSE BOARD APPOINTMENT

On a motion by Council member Clawson, seconded by Council member Eggers, Council moved to appoint Tuesdae Rice to the Jones House Advisory Board. Her term will expire February 29, 2007.

VOTE:Aye-All

Nay-None

Excused-1 (Mason)

MONTHLY WATER USE STATUS REPORTS

Public Utilities Director Rick Miller presented the following monthly water use reports:

As requested by Town Council, staff and I have compiled the following information concerning water use for the month of June. The Water Treatment Plant recorded a maximum daily demand of 1.883 million gallons on Friday, June 17, 2005, and the average daily demand was 1.743 million gallons for the entire month.

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 in excess of 500 gallons per day usage will be forwarded to Town Council as required in Ordinance 05-01. Since the last Town Council Meeting four projects were approved by Council that removed water from our remaining allotment and the Utilities Department approved six projects with predicted usage below 500 gallons per day.

As you can see in the attached chart, once the approvals are removed as projected usages from our yearly allotment, the Public Utilities Department has 1,251gallons per day remaining for allotment in 2005. Also, be reminded that Council chose to allocate 15,334 gallons from 2006 leaving a balance of 9,666 gallons remaining for that year. All calculations are based on 60% of the North Carolina Discharge Rate Schedule.

			Approved Water Connections			
			2005			
Staff Approved	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
			Glenwilde	Jun-05	900	5410
			James West	Jun-05	1440	3970
			Cathy Kosterman	Jun-05	1110	2860
			Blue Ridge Electric	Jun-05	30	2830
William Jackson	Jun-05	90				2740

Family One Inc	Jun-05	394				2346
Dana Willet	Jul-05	150				2196
Watauga Insurance	Jul-05	15				2181
Boone Dermatology	Jul-05	330				1851
			David Thompson	Jul-05	600	1251

			Approved Water Connections			
			2006			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						25000
		4165	John Cook	May-05	8038	16962
			CataCorner Investments	Jul-05	7296	9666

APPROVAL OF BUDGET AMENDMENTS

On a motion by Council member Wilcox, seconded by Council member Clawson, Council moved to adopt 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

Excused-1 (Mason)

Mayor Burnley declared a break at 8:20 p.m. Council reconvened at 8:30 p.m.

SELECTION OF HOWARD STREET TRAFFIC PATTERN

Mr. Brian Tripp, Project Engineer with W.K. Dickson, presented slides showcasing Howard Street currently and how it will look with street, sidewalk, lighting and stormwater improvements. Mr. Tripp then presented specifics on all four traffic concepts. Mr. Tripp said that the first concept is two-way traffic on Howard Street and that the second concept is one-way traffic on Howard Street from Appalachian Street to Water Street. The third concept is one-way traffic on Howard Street from Appalachian Street to Water Street, but with more parking than the second concept. The fourth concept features two-way traffic from Appalachian Street to Depot Street and one-way traffic from Depot Street to Water Street. Mr. Tripp said that Concept One features 22' lane width, 21 on-street parking spaces and 29 street trees with the sidewalks varying from 5 to 8 feet in width. Concept Two features 15' lane width, 51 on-street parking spaces, 36 street trees and sidewalk varying from 6 to 8 feet in width. Concept Three again features a 15' lane width, 54 on-street parking spaces, 35 street streets and 6 to 8 foot wide

sidewalks. Concept Four features a one-way traffic lane of 15 feet and two-way traffic lane width of 22 feet. On-street parking will feature 39 spaces, 33 street trees and a sidewalk width of 6 to 8 feet. Mr. Tripp said that W.K. Dickson recommends that the Town proceed with Concept Four. After some discussion, on a motion by Council member Spann, seconded by Council member Clawson, moved to endorse Concept Four.

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

DISCUSSION OF WATER COMMITTEE RECOMMENDATIONS

Public Utilities Director Rick Miller presented the following water committee recommendations:

On Tuesday, July 19, 2005, the Water Committee met at the Town Council Chambers and discussed voluntary water conservation education. After discussion of the options available, the Committee recommends the Town begin a voluntary water conservation educational program. This program is to be administered by a "program coordinator" within the Public Utilities Department, under the direct supervision of the Public Utilities Director, and operated very similar to the Adopt-A-Street/Stream programs currently in place in the Public Works Department.

I have calculated the expected cost to implement such a program. Listed below are the estimated costs for each service the Water Committee expressed interest in utilizing.

Printing of 5000 educational brochures	\$ 940.00
Purchase of miscellaneous items for public distribution	\$ 2,000.00
30 Second commercial aired 40 times on MTN (\$ 300.00 per month)	\$ 1,800.00
30 Second public service announcement on local radio stations	\$ 000.00
¼ page advertisement in local newspapers on monthly basis (\$190.00 ea)	\$ 2,280.00
Wages for Program Coordinator promotion	<u>\$ 2,571.00</u>
TOTAL	\$ 9,591.00

If approved, the monies required for a Program Coordinator position, advertisement, miscellaneous distribution items, and brochures, were not budgeted for this physical year. Attached you will find a budget amendment for funding of these items for your approval.

If you have any questions, or require any additional information, please feel free to contact me.

On a motion by Council member Clawson, seconded by Council member Spann, Council moved to adopt the recommendations and the following budget amendment:

DESCRIPTION	ACCOUNT #	TO:	FROM:
Utilities & Engineering-Salaries	030-700-801-501101	\$2,156.00	
Utilities & Engineering-FICA	030-700-801-508101	165.00	
Utilities & Engineering-Retirement	030-700-801-508211	124.00	
Utilities & Engineering-401K	030-700-801-508222	126.00	

Utilities & Engineering-Advertising	030-700-801-527001	4,080.00	
Utilities & Engineering-Miscellaneous Supplies	030-700-801-519900	2,940.00	
Appropriated Fund Balance	030-000-000-499900		\$9,951.00

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

DISCUSSION OF TRANSPORTATION COMMITTEE RECOMMENDATIONS

Public Services Director Blake Brown said the Transportation Committee met on July 19th and made the following recommendations:

-Oak Street/Pine Street - The Committee recommended that Council survey property owners and tenants about the current one-way situation. Periodic motorist surveys may be conducted also.

-Bear Trail - The Committee recommended that Council schedule a special meeting to hear the options from HSMM Engineering. After hearing the options, the Committee also recommended that Bear Trail remain one-way.

Council member Wilcox questioned where the surveys would be mailed. Public Services Director Brown said the survey would include the entire affected area, from Blanwood to Clement. On a motion by Council member Eggers, seconded by Council member Clawson, Council moved to survey the entire area regarding the current one-way situation.

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

On a motion by Council member Clawson, seconded by Council member Wilcox, Council moved to schedule a special meeting to hear the options on Bear Trail for Thursday, August 11th at 4:30 p.m.

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

ADOPTION OF WATAUGA MEDICAL CENTER ENCROACHMENT AGREEMENTS

Public Services Director Blake Brown presented two encroachment agreements that would allow Watauga Medical Center to place fiber-optic cable from the Dialysis Center to the Human Resources and Wellness Centers. Mr. Brown said Watauga Medical Center have also agreed to provide a minimum of a 15' buffer between the Town's utility lines. On a motion by Council member Clawson, seconded by Council member Wilcox, Council moved to adopt the following

encroachment agreements:

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT #1

THIS ENCROACHMENT AGREEMENT, made and entered into this the 21st day of July, 2005 , by and between the TOWN OF BOONE, party of the first part; and Watauga Medical Center party of the second part,
W-I-T-N-E-S-S-E-T-H

THAT WHEREAS, the party of the second part desires to encroach on the right of way of the public road designated as Birch Street, Furman Road and the Greenway located with the following: See Attachments A & B; and

WHEREAS, it is to the material advantage of the party of the second part to effect this encroachment, and the party of the first part in the exercise of authority conferred upon it by stature, is willing to permit the encroachment within the limits of the right of way as indicated, subject to the conditions of this agreement.

NOW, THEREFORE, IT IS AGREED that the party of the first part hereby grants to the party of the second part the right and privilege to make this encroachment upon the following conditions, to wit:

That the said party of the second part binds and obligates itself, and its successors and assigns, to install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said highway or street, nor obstruct nor interfere with the proper maintenance thereof, to reimburse the party of the first part for the cost incurred for any repairs or maintenance to its roadways and structures necessary due to the installation and existence of the facilities of the party of the second part, and if at any time the party of the first part shall require the removal of or changes in the location of the encroaching facilities, that the said party of the second part binds itself, its successors and assigns, to promptly remove or alter the said facilities, in order to conform to the said requirements, without any cost to the party of the first part.

That the party of the second part agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and other warning devices for the protection of traffic in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and Amendments or Supplements thereto. Information as to the above rules and regulations may be obtained from the Public Services Department of the party of the first part.

The party of the second part shall be responsible for all liability associated with the encroaching facility. The party of the second part agrees to indemnify and hold harmless the party of the first part from and against all claims, damages, losses and expenses, including court costs and attorney fees, arising out of or in any way related to the encroaching facility.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such facilities, within the highway or street rights of way limits, in carrying out its construction and maintenance operations.

The party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the Department of Public Services of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; silting or pollution to the rivers, streams, lakes, reservoirs, other water impoundments; ground surfaces or other property; or pollution of the air. There shall be compliance with applicable rules and regulations of the North Carolina Sedimentation Control Commission, and with ordinances and regulations of various counties, municipalities and other official agencies relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover,

the party of the second part agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the satisfaction of the Division Engineer of the party of the first part.

That the party of the second part agrees to assume the actual cost of any inspection of the work considered to be necessary by the Department of Public Services of the party of the first part.

That the party of the second part agrees to have available at the encroaching site, at all times during construction, a copy of this agreement showing evidence of approval by the party of the first part. The party of the first part reserves the right to stop all work unless evidence of approval can be shown.

Provided the work referred to in this agreement is being performed on a completed public street open to traffic; the party of the second part agrees to give written notice of when work will begin to the Department of Public Services of the party of the first part.

That in the case of noncompliance with the terms of this agreement by the party of the second part, the party of the first part reserves the right to stop all work until the facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

That it is agreed by both parties that this agreement shall become void if actual construction of the work contemplated herein is not begun and completed within one (1) year from the date of this agreement unless written waiver is secured by the party of the second part from the party of the first part.

The party of the first part expressly reserves the unrestricted right to require the party of the second part to change the location of the encroachments described herein at no expense to the party of the first part.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed the day and year first above written.

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT #2

THIS ENCROACHMENT AGREEMENT, made and entered into this the 21st day of July, 2005 , by and between the TOWN OF BOONE, party of the first part; and Watauga Medical Center party of the second part,

W-I-T-N-E-S-S-E-T-H

THAT WHEREAS, the party of the second part desires to encroach on the right of way of the public road designated as Doctors Drive and Deerfield Road located with the following: See Attachments A & B; and

WHEREAS, it is to the material advantage of the party of the second part to effect this encroachment, and the party of the first part in the exercise of authority conferred upon it by stature, is willing to permit the encroachment within the limits of the right of way as indicated, subject to the conditions of this agreement.

NOW, THEREFORE, IT IS AGREED that the party of the first part hereby grants to the party of the second part the right and privilege to make this encroachment upon the following conditions, to wit:

That the said party of the second part binds and obligates itself, and its successors and assigns, to install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said highway or street, nor obstruct nor interfere with the proper maintenance thereof, to reimburse the party of the first part for the cost incurred for any repairs or maintenance to its roadways and structures necessary due to the installation and existence of the facilities of the party of the second part, and if at any time the party of the first part shall require the removal of or changes in the location of the

encroaching facilities, that the said party of the second part binds itself, its successors and assigns, to promptly remove or alter the said facilities, in order to conform to the said requirements, without any cost to the party of the first part.

That the party of the second part agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and other warning devices for the protection of traffic in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and Amendments or Supplements thereto. Information as to the above rules and regulations may be obtained from the Public Services Department of the party of the first part.

The party of the second part shall be responsible for all liability associated with the encroaching facility. The party of the second part agrees to indemnify and hold harmless the party of the first part from and against all claims, damages, losses and expenses, including court costs and attorney fees, arising out of or in any way related to the encroaching facility.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such facilities, within the highway or street rights of way limits, in carrying out its construction and maintenance operations.

The party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the Department of Public Services of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; silting or pollution to the rivers, streams, lakes, reservoirs, other water impoundments; ground surfaces or other property; or pollution of the air. There shall be compliance with applicable rules and regulations of the North Carolina Sedimentation Control Commission, and with ordinances and regulations of various counties, municipalities and other official agencies relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover, the party of the second part agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the satisfaction of the Division Engineer of the party of the first part.

That the party of the second part agrees to assume the actual cost of any inspection of the work considered to be necessary by the Department of Public Services of the party of the first part.

That the party of the second part agrees to have available at the encroaching site, at all times during construction, a copy of this agreement showing evidence of approval by the party of the first part. The party of the first part reserves the right to stop all work unless evidence of approval can be shown.

Provided the work referred to in this agreement is being performed on a completed public street open to traffic; the party of the second part agrees to give written notice of when work will begin to the Department of Public Services of the party of the first part.

That in the case of noncompliance with the terms of this agreement by the party of the second part, the party of the first part reserves the right to stop all work until the facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

That it is agreed by both parties that this agreement shall become void if actual construction of the work contemplated herein is not begun and completed within one (1) year from the date of this agreement unless written waiver is secured by the party of the second part from the party of the first part.

The party of the first part expressly reserves the unrestricted right to require the party of the second part to change the location of the encroachments described herein at no expense to the party of the first part.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed the day and year first above written.

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

REQUESTED APPEARANCE - EDWARD PILKINGTON

Town Attorney Sam Furguele opened the public hearing at 8:55 p.m. to hear sworn testimony from Edward Pilkington and Rick Miller for a request for sewer service to 162 Breckonshire Drive. Mr. Pilkington said that his septic system is failing and that, to correct the system, sewage must be pumped uphill. Council member Eggers asked if he has access to Town water ,too. Mr. Pilkington said yes, but that he would prefer to use well water. Public Utilities Director Rick Miller explained that Mr. Pilkington is inside the Town limits, but was not required to hook on to utility services at the time the area was annexed. There being no further comments, the public hearing closed at 9:06 p.m. After little discussion, on a motion by Council member Clawson, seconded by Council member Spann, Council moved to approve the sewer connection, pursuant to Ordinance 05-01, Section 6.

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

REQUESTED APPEARANCE - SAMARITAN'S PURSE

Town Attorney Sam Furguele said that this case was continued from the June 27th meeting. There being no further comments, the public hearing closed at 9:08 p.m. On a motion by Council member Wilcox, seconded by Council member Clawson, Council moved to grant the sewer request pursuant to Ordinance 05-01, section 6.

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

UNSCHEDULED APPEARANCE

Mr. Steve Brock of Mountain Top Promotions appeared before Council to request that fine art shows be included in the community event sign regulations.

CLOSED SESSION

On a motion by Council member Wilcox, seconded by Council member Clawson, Council moved to enter Closed Session at 9:15 p.m. pursuant to NCGS 143-318.11a)3)6) in order to discuss the ASU violations, Highland Hall sewer account, personnel matters and the Williamson litigation.

VOTE:Aye-All

Nay-None
Excused-1 (Mason)

On a motion by Council member Clawson, seconded by Council member Wilcox, Council moved to exit Closed Session at 10:51 p.m.

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

ACTION FOLLOWING CLOSED SESSION

On a motion by Council member Clawson, seconded by Council member Spann, Council moved to proceed with collection of the Highland Hall sewer account.

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

ADJOURNMENT

On a motion by Council member Spann, seconded by Council member Clawson, Council moved to adjourn at 11:52 p.m.

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

Town Clerk

Mayor