

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
AUGUST 19, 2004**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, August 19, 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 Furguele was also present. Staff present were Town Manager Greg Young; Town Clerk Freida Van Allen; Finance Director Amy Davis; Public Utilities Director Rick Miller; Planning Director John Spear; Police Chief Bill Post; Public Services Director Blake Brown; Fire Chief Reggie Hassler and Resource Director Jim Byrne.

ANNOUNCEMENTS

After observing a few moments of silence in support of our troops overseas, Mayor Burnley announced that the Town will be participating in a September 11th observance held at the First Baptist Church at 11:00 a.m.

TENTATIVE AGENDA ADOPTION

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

VOTE: Aye-All
Nay-None

CONSENT AGENDA ADOPTION

On a motion by Council member Mason, seconded by Council member Clawson, Council moved to adopt the following Consent Agenda items:

Minutes: June 7, 2004, Special Meeting
June 29, 2004, Regular Meeting
July 15, 2004, Regular Meeting
Tax Releases: July, 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	Totaled, 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 Mecklenburg County
TOTAL		\$377.92	

Tax Refunds: July, 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 Resolution: Disposition of Surplus Property

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:

Asset # 1456 Engine #3 Serial # 1GBL7DIG76V100710
Asset # 1457 Engine #9 Serial # 1GBL7DIG76V100707
Note: Both are 1,000 GPM Pumper Trucks.
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 \$5,000 each.
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 19th day of August, 2004.

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 269)

Reappointment of Mayor to Rural Transportation Advisory Committee.

VOTE: Aye-All
Nay-None

ADOPTION OF ZONING AMENDMENTS

Planning Director John Spear presented the following zoning amendments:

CASE NO. RZ2004-9 The Town of Boone has filed a UDO text amendment request which would eliminate conditional-use zoning districts and conditional-use permits. If adopted, the amendment would establish the use of conditional zoning districts. Planning Director Spear said the Planning Commission unanimously recommended approval of the amendment. On a motion by Council member Clawson, seconded by Council member Mason, Council moved to adopt the following zoning amendment: **Exhibit A**.

VOTE: Aye-All
Nay-None

CASE NO. RZ2004-10 The Town of Boone has filed a UDO text amendment request which would reduce the regulatory burden for small business redevelopment. Planning Director Spear said the Planning Commission unanimously recommended approval of the amendment. Council member Spann expressed his concern that this amendment would affect R-1 neighborhoods and suggested an amendment that multi-family structures be required to undergo the permitting process. Council member Mason asked if other communities have redevelopment regulations. Planning Director Spear said yes, that some municipalities have special redevelopment or historic districts. Council member Mason said she originally suggested the regulations to facilitate the redevelopment of houses along Highways 105, 321 and 421; however, she felt that the 2,800-square-foot requirement was too broad. Council member Clawson agreed and suggested that the amendment be sent back to the Planning Commission. Council member Wilcox asked if we have regulations that would cover outdoor storage. Planning Director Spear

said no, that the Town may want to consider the possibility when allowing redevelopment. On a motion by Council member Clawson, seconded by Council member Mason, Council moved to table this amendment until the next meeting.

VOTE:Aye-All
Nay-None

CASE NO. RZ2004-11 **The Town of Boone** has filed a UDO text amendment request which would reflect the departmental name change from “Planning and Inspections Department” to “Development Services Department.” Planning Director Spear said the Planning Commission unanimously recommended approval of the zoning amendment. On a motion by Council member Mason, seconded by Council member Wilcox, Council moved to adopt the amendment.

VOTE:Aye-All
Nay-None

CASE NO. RZ2004-12 **Charles B. Michael and Gwyn M. Costner** have filed a general-use district map amendment request to reclassify property from R-1, Single Family Residential, to B-3, General Business. The property is located at 183 Delmar Street and is further described as Watauga County PIN #2910-68-5966-000 and 2910-68-6897-000. Planning Director Spear said the Planning Commission with an 8-aye, 1-abstention vote, recommended denial of this map amendment. On a motion by Council member Mason, seconded by Council member Clawson, Council moved to deny the zoning map amendment since it will negatively impact the neighborhood. Before voting, Council member Eggers suggested that the property owners investigate the conditional-use permitting process for this particular piece of property since it is not really suited for R-1 use either.

VOTE:Aye-All
Nay-None

CASE NO. RZ2004-13 **Watauga Medical Center** has filed a general-use district map amendment request to reclassify property from R-2, Two-Family Residential, to O/I, Office/Institutional. The properties are located at 104, 122, 140 & 152 Virginia Street and are further identified as Watauga County PIN #2910-71-9114-000, 2910-71-8097-000, 2910-70-8988-000 and 2910-70-8889-000. Planning Director Spear said the Planning Commission unanimously recommended approval of the map amendment. On a motion by Council member Wilcox, seconded by Council member Mason, Council moved to excuse Council member Eggers from voting on this matter due to his relationship with the Medical Center. On a motion by Council member Wilcox, seconded by Council member Mason, Council moved to approve the zoning map amendment.

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

RZ2004-14 **The Town of Boone** has filed a UDO text amendment request which would update

current enforcement procedures. Planning Director Spear said the Planning Commission unanimously recommended approval of the text amendment. On a motion by Council member Clawson, seconded by Council member Spann, Council moved to adopt the following zoning text amendment: **Exhibit B.**

VOTE: Aye-All

Nay-None

DISCUSSION OF TRANSPORTATION COMMITTEE RECOMMENDATIONS

Public Services Director Blake Brown recommended that Council discuss each of the Transportation Committee recommendations individually:

Prohibition of left-turns off Hwy. 105 at Poplar Hill Drive and Highland Avenue. Council member Mason said the Town needs to pursue dialogue with the Department of Transportation about placement of left-turn lanes. Mayor Burnley said the Town has talked with DOT about traffic issues on 105 on several occasions in the past. Council member Spann suggested having DOT meet with Council and citizens to discuss Highway 105 traffic issues. Public Services Director Brown suggested having the Transportation Committee attend also. Mayor Burnley said she would contact DOT about scheduling the meeting. Council member Mason asked if the Town would consider placing a three-way stop at Stadium and Dogwood. Both Mayor Burnley and Council member Eggers said this placement has been tried before with no success.

One-waying a section of Oak from Pine Street to Horn in the West Drive. Council member Wilcox suggested one-waying this section on a 60-day trial basis. Council discussed at length and agreed to the 60-day trial.

Placement of speed table adjacent to Jaycees Park on Oak Street. Council agreed this would be a good location for a speed table since park patrons cross Oak Street to access the restrooms.

Placement of speed table adjacent to Horn in the West Parking Lot on Horn in the West Drive. Council decided to wait until later to evaluate the need for this speed table.

Placement of 3-way stop at the intersection at Oak Street and Horn in the West Drive. Council agreed this placement would help in slowing traffic in preparation of the new one-way section.

One-waying a section of Bear Trail from Junaluska Park to Eastview Drive. Council member Mason suggested implementing this one-way immediately because the road is so dangerous. Council agreed that the section should be one-way while the Town receives cost estimates for a trip light and/or widening the road.

Conversion of Westbrook to a one-way street going south and conversion of Eastbrook Drive to a one-way street going north. Council agreed that there was overwhelming

opposition voice at the public hearing on this suggestion; however, Council did agree to add more speed tables on both streets.

On a motion by Council member Mason, seconded by Council member Eggers, Council moved to adopt the above recommendations.

VOTE: Aye-All

Nay-None

Council member Mason requested that the Transportation Committee continue to look at long-term solutions to the Town's traffic problems and installation of sidewalks in the neighborhoods.

ADOPTION OF LEASE - HORN IN THE WEST

Town Manager Greg Young presented a revised lease with the Southern Appalachian Historical Association for the Horn-in-the-West property. Mr. Young said the revised lease provides clarification about maintenance, and repairs and insurance requirements and is much broader in concept than the previous lease. On a motion by Council member Wilcox, seconded by Council member Eggers, Council moved to adopt the following lease and to present it to the Southern Appalachian Historical Society for negotiation.

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF WATAUGA

THIS LEASE AGREEMENT is made this the ____ day of _____, 2004, by and between the **Town of Boone**, a North Carolina Municipal Corporation, hereinafter referred to as "**Lessor**" and the **Southern Appalachian Historical Association, Inc.**, a North Carolina non-profit corporation, hereinafter referred to as "**Lessee**," collectively referred to as the "parties."

1. **Leased Premises:** The **Lessor** hereby leases to the **Lessee** that certain piece, parcel or lot of land situated, lying and being in Boone Township, Watauga County, North Carolina, and improvements thereto, more particularly described by the boundaries shown on the photographic exhibit attached hereto as "Attachment 'A,'" hereinafter referred to as "the premises."
2. **Ownership of Historical Buildings:** All historical buildings on the premises which were donated specifically to **Lessee** and which may be removed from the premises without causing damage or destruction to the premises shall remain the property of **Lessee** unless abandoned by **Lessee**. However, prior to the effective date of this lease, the parties shall inventory said buildings and shall attach a description of those buildings owned by **Lessee** to this Lease as "Attachment 'B'" and this attachment shall serve as identification of those buildings owned by **Lessee**. Thereafter, Lessee shall have a claim of ownership only to those buildings so identified.

3. **Term:** The term of this lease shall be five years, commencing on _____, 2004 and ending on _____, 2009, but in accordance with the provisions herein, may be renewed from time to time by the parties. Renewal of this lease for any additional periods of time, however, shall only be effective with the approval of the Boone Town Council.
4. **Rent:** The rent for the above-described premises is one dollar (\$1.00) per year, and shall be due and payable in full upon the execution of this Lease, and on or before the same date in each subsequent year during the term of this Lease.
5. **Repairs and Maintenance:** The **Lessee** shall provide all maintenance necessary to keep the premises in good and sanitary condition. Unless expressly assumed by **Lessor**, **Lessee** shall also be responsible for all repairs necessary to maintain the premises and improvements in safe, sanitary and good condition. **Lessee** agrees to notify **Lessor**, in writing, of any and all conditions in need of correction or repair. **Lessee** further agrees that no repairs will be undertaken, and no person or entity will be hired to undertake any repairs without first notifying **Lessor** in writing, at least ten days in advance, of **Lessee's** intention to undertake or make such repairs, or in the event of an emergency, without first notifying **Lessor** by telephone at (828)262-4530 of the condition and repairs contemplated. Any repairs made to the premises shall be done in a workmanlike manner and shall become the property of **Lessor**. In making any repairs, **Lessee** shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all relevant federal and state laws relating to its operation of a facility and enterprise open to the public, and to its use of paid employees therein.
6. **Alterations:** **Lessee** agrees to neither make nor arrange for any alterations to the premises without the advance written approval of **Lessor**. Should any alterations be approved by **Lessor**, they shall be done in a workmanlike manner, and they shall become the property of **Lessor**. In making any alterations, **Lessee** shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all relevant federal and state laws relating to its operation of a facility and enterprise open to the public, and to its use of paid employees therein.
7. **Compliance with Laws:** In particular, and not by way of exclusion, in any and all its actions and activities, **Lessee** will comply with and hereby certifies its compliance with the Americans with Disabilities Act, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Fair Labor Standards Act, as amended, the Occupational and Health Safety Act, as amended, the North Carolina Employment Security Act, as amended, and the North Carolina Worker's Compensation Act, as amended, to the extent each such law applies to **Lessee** and/or any of its activities. **Lessee** commits that it will act in accordance with its duly adopted by-laws and will comply with all laws related to its status as a non-profit North Carolina Corporation. **Lessee** shall provide **Lessor** with its current by-laws at any time requested by **Lessor**. Should **Lessee's** corporate status be revoked by the North Carolina Secretary of State, or should the **Lessee's** non-profit status

be revoked by the United States Internal Revenue Service or otherwise, this lease shall immediately terminate.

8. **Assignments or Subletting:** The **Lessee** shall not assign nor sublease the premises without the prior written consent of the **Lessor**. No sublease or assignment shall be approved unless the sub-lessee or assignee shall provide adequate liability insurance protection for its activities and actions, which insurance protection inures to the benefit of **Lessor**, and unless the sub-lessee or assignee agrees to defend, indemnify and hold harmless **Lessor** from all claims, demands and liability of any kind whatsoever. All proposed subleases or assignments must be in writing and shall be submitted to **Lessor** at least thirty days in advance of the proposed effective date of the sublease or assignment. All proposed assignments and subleases shall include, and all assignees and sub-lessees shall execute, a written waiver absolving Lessor of any and all responsibility for damage which might occur to the assignees or sub-lessees or their personal property. **Lessor** shall have no responsibility to approve any proposed sublease or assignment and may reject any such proposal for any reason which **Lessor**, in its sole discretion, considers adequate. Operation by **Lessee** of a "Farmer's Market" or like undertaking on the premises shall be subject to this provision and all vendors participating therein are subject to these requirements.
9. **Utilities:** The **Lessee** shall be responsible for paying all utility costs incurred in connection with its use of the premises.
10. **Keys and Locks:** Should **Lessee** change any of the locks or add any locks to any of the doors, windows or other locked feature of the premises, **Lessee** shall, at its own expense, immediately provide duplicate keys to all such locks to **Lessor**. At the end of the lease term, **Lessee** shall return or turn over all keys which relate to the premises to **Lessor**.
11. **Insurance:** The **Lessee** shall provide and maintain insurance coverage against loss, destruction, or other damage to its property located on the premises, as well as against all risks for which **Lessee** is required to indemnify and hold **Lessor** harmless. **Lessee's** liability insurance coverage shall provide coverage for personal injury or bodily harm occurring during the term of the lease, whensoever a claim is made, in an amount no less than two million dollars (\$2,000,000.00) per occurrence, and shall insure against injuries or damages which occur as a result of **Lessee's** own operations, as well as the operations of any assignee or sub-lessee approved by **Lessor**, including participants in any "Farmer's Market" or like undertaking on the premises. Certificates of insurance for each insurance policy required to be obtained by **Lessee** in compliance with this paragraph shall be filed and maintained with **Lessor** annually during the term of the Lease. **Lessee** shall immediately advise **Lessor** of any assertion of claim or litigation that may result in a claim of liability against **Lessor**.
12. **Farmer's Market:** All structures, whether buildings, outbuildings, sheds, stands, mobile stands, trailers or otherwise, used in connection with the operation of a "Farmer's Market" or like undertaking, must be maintained in a safe and sanitary condition and, absent written permission from **Lessor** as to a particular structure, must be removed at

the end of every season, a “season” being defined as that period during which the “Farmer’s Market” is occupied and operated on a weekly basis by at least 90% of the usual number of vendors.

13. **Lessor’s Right to Enter Premises:** The **Lessor** reserves the right and may enter the premises at any reasonable time for the purpose of inspecting said premises, making such repairs as the **Lessor**, in its sole discretion, desires to make, and for any other purpose in any way related to **Lessor**’s ownership or **Lessee**’s use of the premises.
14. **Use of Premises:** The premises are to be used for the purposes of operating an outdoor theater, historical village sites, picnic grounds, and such other activities as may be necessary to support those purposes, including parking in appropriate locations on the premises. Should **Lessee** fail to produce its outdoor theater production for a period of time exceeding one continuous year, this failure shall be considered its abandonment of the premises, and this lease shall terminate. Any specific activity beyond those listed shall be subject to the advance approval of **Lessor**, but **Lessor** shall not unreasonably withhold approval for any such proposed activities, so long as they are in keeping with the general purposes of this lease and are consistent with **Lessee**’s status as a non-profit corporation. In the off-season, **Lessor** shall properly secure and make safe all structures, and shall either remove or secure and make safe any portable structures. The **Lessee** shall not use or knowingly permit any part of the Leased Premises to be used for any purpose which violates any law, and **Lessee** shall comply with all land use ordinances of **Lessor**. **Lessor** reserves the right to use the premises described herein at such times as said premises are not being used by the **Lessee**, as well as in ways which do not unduly interfere with **Lessee**. **Lessee** will take no action(s) which are in any way inconsistent with **Lessor**’s ownership interest in the property. This Lease does not and shall not be construed to establish or create a partnership, joint venture, franchise or other form of business association between **Lessor** and **Lessee**.
15. **Information Required to be Furnished:** Within ten days of any change, **Lessee** shall provide to **Lessor** any change to its by-laws, shall notify **Lessor** of any change to its management staff, and at the execution of this lease and any time such composition changes, shall advise **Lessor** of the names and addresses of each member of board of directors.
16. **Rules for Operation:** **Lessee** shall have the right to promulgate such rules and regulations as it may deem appropriate for the behavior of patrons and its other licensees and invitees. However, **Lessee** shall provide **Lessor** with a copy of such rules and regulations as it may promulgate reasonably prior to their effective date.
17. **Default:** If the **Lessee** defaults in the payment of rent or in the performance of any of the conditions of this Lease or its responsibilities thereunder, all of which are deemed material, the **Lessor** may give the **Lessee** written notice of default for the first violation. If the **Lessee** does not cure said default within seven (7) days after the receipt of notice thereof, the **Lessor** may terminate this Lease. In the event of any repeated violation by **Lessee** of its responsibilities under this Lease, **Lessor** may terminate the Lease without

affording **Lessee** any further opportunity to cure its violation. On the date specified in any such notice of default (unless the default is cured) or notice of termination, this Lease shall terminate and the **Lessee** shall at once quit and surrender the premises to the **Lessor**. If this Lease is terminated by the **Lessor**, it may thereafter resume possession of the premises by any lawful means and remove the **Lessee** and any other occupants and their property therefrom.

18. **Termination of Lease other than Default** : **Lessor** may terminate this Lease without cause, by action of the Town Council. **Lessee** may terminate this Lease without cause upon ten days written notice to **Lessor**.
19. **Abandoned Property**: Following the termination of this lease, by action of **Lessor** or the expiration of the term without renewal, any property left by **Lessee** on the premises shall be considered abandoned and may be retained by or disposed of by **Lessor** as it sees fit. However, **Lessee** shall have a sixty day period following the termination of this lease to remove any historical building(s) designated in accordance with paragraph 2 of this Lease. Thereafter, such building(s) will be deemed donated to **Lessor**.
20. **Indemnity**: The **Lessee** shall defend, indemnify and hold harmless the **Lessor** from any and all claims, actions, damages, and liability associated with personal injury and/or damage to property and/or any other matter arising out of any occurrence in, upon or at the premises, or associated with any act or omission of the **Lessee**, its agents, employees or invitees, or associated with **Lessee's** use of the premises. In the event that the **Lessor** is made a party to any litigation brought against the **Lessee** or by reason of the **Lessee's** use or occupancy of the premises, the **Lessee** shall defend, protect and hold harmless the **Lessor** from any and all liability that may result therefrom, including **Lessor's** costs in defending itself against any claim, action, litigation or other assertion of liability.
21. **Modification of Lease**: This Lease Agreement contains all of the terms and conditions agreed to by the **Lessor** and the **Lessee** concerning the Lease of the above-described premises. There are no oral terms or conditions agreed to by the parties hereto which are not contained in this written agreement. There shall be no modification of this Lease Agreement unless the modification is in writing and signed by both parties.
22. **Waiver**: **Lessor's** failure to strictly enforce its rights under this Lease shall not constitute a waiver of such rights with respect to any violation of the Lease by **Lessee**, and the parties agree that this provision may itself not be waived by the conduct of the parties.
23. **Partial Invalidity**: If any term, covenant, condition or provision of this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.
24. **Governing Law and Venue**: This Lease shall be governed by and construed in accordance with the laws of the State of North Carolina, and venue of any dispute between the parties shall be in Watauga County, North Carolina.

25. **Execution:** Lessor and Lessee each represent and warrant to the other that all necessary authorizations and approvals required for execution and performance of this Lease have been given and that the undersigned individual is duly authorized to execute this Lease and bind the party for which it signs.
26. **Notices:** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested; to the following addresses:

If to Lessor, to: Greg Young
Town Manager
Town of Boone
P.O. Drawer 192
Boone, NC 28607

If to Lessee, to: _____

IN WITNESS WHEREOF, the Lessor and Lessee have executed this Lease Agreement in duplicate originals, and agree to all of the terms and conditions set forth above, the day and year first above written.

VOTE:Aye-All
Nay-None

STATUS REPORT ON COMP PLAN UPDATE

Planning Director John Spear reported that the Planning Commission is in the final stages of its analysis of the Comprehensive Plan. Mr. Spear said the final report should be completed within the next two or three months. Council member Clawson questioned when the water study report would be complete. Town Manager Greg Young said it will be completed by the end of August and presented at the September Council meeting.

COMMUNITY APPEARANCE NOMINATIONS

Council agreed that Patrick Belville will continue to serve on the Community Appearance Commission until his term ends.

Mayor Burnley declared a break at 8:10 p.m. Council reconvened at 8:25 p.m.

PERMISSION TO APPLY FOR WALMART GRANT

Police Chief Bill Post requested permission to apply for a grant from Walmart Corporation to

secure funding for a new canine officer. Chief Post said he will not be able to get all the funds to purchase a dog from Walmart, but there are other grants from the Red Cross and Black Jack Dog Food Company that he can pursue. On a motion by Council member Clawson, seconded by Council member Eggers, Council granted permission to the Police Department to apply for the Walmart grant.

VOTE:Aye-All

Nay-None

DISCUSSION OF POLICE DEPARTMENT OVERTIME

Police Chief Bill Post said that more resources are needed to address speeding in neighborhoods. Chief Post felt that granting officers overtime will allow them to target their enforcement at specific times. Chief Post felt that, at this time, providing overtime pay is the most cost effective. Council member Wilcox agreed, stating that the Police Department is our key to alleviating the traffic/speeding problems in the neighborhoods and that Council needs to investigate how the Police Department will be funded in the future. Council member Wilcox said that police officers also need to concentrate on the high-traffic areas, such as Highways 321 and 105. Council member Mason agreed that every area is important, but that quality of life in neighborhoods is also important. She continued by stating that the Town needs to send a clear message that we want safe communities. On a motion by Council member Wilcox, seconded by Council member Clawson, Council move to allocate \$28,089 in the Police Department's budget for overtime pay.

VOTE:Aye-All

Nay-None

Police Chief Post said, as soon as the signs are installed, a "zero-tolerance" policy will be enforced on neighborhood streets and that the District Attorney has indicated he would not allow as much plea-bargaining as before. Police Chief Post also said that soon citizens will be invited to ride with the Police as they patrol the neighborhoods. Chief Post has also set up appointments with local news media about the new enforcement policies.

ADOPTION OF ORDINANCE - PARK RULES & REGULATIONS

Town Attorney Sam Furguele explained that Council directed him last year to draft rules for all Town parks. Town Attorney Furguele said that the Police Chief has reviewed the rules and has a concern only about the \$10 penalty. Town Attorney Furguele explained that, if a violator does not pay the \$10 penalty, he/she will then be subjected to a \$100 per day civil penalty. On a motion by Council member Mason, seconded by Council member Spann, Council moved to adopt the following ordinance:

ORDINANCE 04-06

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

WHEREAS, pursuant to N.C. General Statute 160A-351, the Town is given general authority to create, establish and operate the use of the parks for the recreation and enjoyment of its citizens; and

WHEREAS, the Town Council of the Town wishes to provide for consistent rules and regulations for the purpose of maintaining its parks and enhancing their beauty and safety, and the enjoyment and welfare of those using its parks; and

Now, Therefore, Be it Ordained by the Town Council of the Town of Boone, North Carolina, that the Town of Boone, North Carolina Code of Ordinances be amended, and it is hereby amended, to add the following provisions as Chapter 102 of the Code of Ordinances:

CHAPTER 102: PARK RULES AND REGULATIONS

§102.01 RULES AND REGULATIONS GOVERNING THE USE OF TOWN PARKS, INCLUDING THE TOWN OF BOONE GREENWAY.

- (A) The following acts are prohibited in all Town parks, including the Town of Boone Greenway:
- (1) Marking, defacing, disfiguring, injuring, tampering with, displacing or removing any structure, equipment, or facilities;
 - (2) Damaging, cutting or removing any tree, plant or flower;
 - (3) Depositing any trash or litter, except in receptacles placed for that purpose;
 - (4) Driving any motorized vehicle, except for motorized wheelchairs, except in areas paved for that purpose or parking areas designated for that purpose;
 - (5) Consuming or possessing alcoholic beverages;
 - (6) Possessing a firearm or other dangerous weapon, except by duly authorized law enforcement officers;
 - (7) Entering, using or remaining within a park between 30 minutes after sunset and 30 minutes before sunrise;
 - (8) Entering, using or remaining within a park when it has been closed and a sign to that effect is posted at the entrance to such park;
 - (9) Disturbing or unreasonably interfering with another person who is using the park;

- (10) Possessing or using fireworks or any other types of explosive device;
- (11) Camping except in areas specifically designated for that purpose;
- (12) Allowing any animal to be at large;
- (13) Operating a bicycle or other wheeled device and failing to yield to pedestrians;
- (14) Riding a skateboard except in areas specifically designated for the use of a skateboard such as the Greenway Trail.

(B) The Director of Public Works, or his designee, shall post these Rules and Regulations at each Town park.

(C) Violation of the rules and regulations adopted herein shall constitute an infraction, and unless another penalty is specifically provided for within the Code of Ordinances or under North Carolina law, in which case that penalty shall apply, shall subject the responsible person or owner to a penalty of \$10.00. Violators shall be issued written notice of the violation, which must be paid within ten days after the receipt of said notice. If the violator does not pay the penalty within ten 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.

In addition to the aforesaid penalty, a duly authorized law enforcement officer or other authorized agent of the Town may require that any person violating these rules immediately leave the Town's park, and if the person has engaged in repeated violations within a twelve month period, may bar the person from the use of the Town park for a period of sixty days.

Adopted this 19th day of August, 2004.

Mayor

Attest:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGES 248-249)

VOTE: Aye-All

Nay-None

UPDATE ON DARNELL EASEMENT

Town Attorney Sam Furguiele requested that Council table this matter until the next meeting. On a motion by Council member Wilcox, seconded by Council member Spann, Council moved to table this matter until the September meeting.

VOTE: Aye-All

Nay-None

REQUEST FOR CONTRACT EXTENSION ON GRAND BOULEVARD SEWERLINE PROJECT

Public Utilities Director Rick Miller presented change order #1 on the sewerline improvements for Grand Boulevard. Mr. Miller said that the 30-day extension is requested because the contractor took longer than planned in locating the lines and because of the extraordinary amount of rainfall this summer. Council member Wilcox asked if the time extension is warranted. Mr. Miller said yes. Town Manager Greg Young requested that the change order specify 10 days for weather and 20-days for local conditions. On a motion by Council member Eggers, seconded by Council member Clawson, Council moved to adopt the following change order:

ORDER NUMBER: **No. 1**
NAME OF PROJECT: **Sanitary Sewer Improvements for the Town of Boone:
Replace Grand Boulevard Sewer Mains**
PROJECT NO. **BN9909**
OWNER: **Town of Boone**
CONTRACTOR: **Ernie Carpenter, Inc.**
DATE: **August 19, 2004**
AGREEMENT DATE: **April 23, 2004**

The following changes are hereby made to the CONTRACT DOCUMENTS:

The Contract Completion time will be extended from 90-days to 120-days. The new completion date will be August 26, 2004.

Justification:

*Weather Delays: The late spring and summer in the Boone area has been wetter than normal. Construction inspection records indicated were four instances during June and July where the entire day was lost to rainfall. Intermittent showers during the April through July contract term accounted for an equivalent amount of lost time. Additional time is justified when taking into consideration that the 90-day construction period included approximately 64 weekdays.

Allow 10-day extension for time lost to weather.

Local Conditions: The approximate location of the existing water and sanitary sewer utilities were largely unknown prior to beginning work. This was especially true of the sanitary sewer where there were no above ground features beyond the manhole at the intersection of Queen Street and Grand Boulevard. Consequently, the Contractor has spent a great deal of time searching for the existing sewer mains and service laterals that must be replaced and reconnected near the edge of the street. Rock encountered in the excavation for the new sewer main also served to slow progress.

Allow 20-day extension for time lost to local conditions.

Original CONTRACT PRICE: \$ **259,078.08**

Current CONTRACT PRICE adjusted by previous CHANGE ORDER: **N/A**

The CONTRACT PRICE due to this CHANGE ORDER will be **increased** by \$ **0.00**
The new CONTRACT PRICE including this CHANGE ORDER will be: \$ 259,078.08

Original CONTRACT TIME: **90 Days**

Current CONTRACT TIME adjusted by previous CHANGE ORDER: **N/A**

The CONTRACT TIME will be **increased** by **30** calendar days. **120 Days**

Approvals Required

To be effective, this Order must be approved by the Federal agency if it changes the scope or objective of the PROJECT, or if it increases the budgeted amounts of Federal funds needed to complete the PROJECT, or as may otherwise be required by the SUPPLEMENTAL GENERAL CONDITIONS.

VOTE: Aye-All
Nay-None

ADOPTION OF BUDGET AMENDMENTS

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

DESCRIPTION	ACCOUNT #	TO:	FROM:
School Resource Officer	010-000-000-452111	\$3,963.	
Regular Salaries	010-500-300-501101		\$3,375.
FICA Tax	010-500-300-508101		258.

401K Contribution	010-500-300-508/221		169.
Retirement	010-500-300-508211		161.
Miscellaneous Supplies	010-500-300-519900	400.	
Contributions/Donations	010-000-000-482200		400.
Capital Outlay-Large Trucks	051-451-000-573300	102,777.	
Appropriated Fund Balance	051-451-000-499900		102,777.

VOTE: Aye-All
Nay-None

REQUESTED APPEARANCE - JOHN WEAVER

Mr. John Weaver, ASU Track Coach, appeared before Council to request a special events permit for the Run Back In Time road race planned for Monday, November 1st at 1:00 a.m. The race will start at the Holmes Convocation Center where participants will travel down Rivers, Water and King Streets before ending at the Holmes Center. Mr. Weaver said he is willing to pay the \$250 fee since Council graciously waived the fee for the Grandfather Mountain Marathon. On a motion by Council member Wilcox, seconded by Council member Mason, Council moved to grant the special events permit.

VOTE: Aye-All
Nay-None

REQUESTED APPEARANCE - RANDY FEIMSTER

Mr. Randy Feimster of the Downtown Boone Development Association appeared before Council to request a special events permit for the 2004 Olde Boone Streetfest. Mr. Feimster requested that Howard Street, between Depot and Water Streets, be closed on Saturday, September 25, 2004, from 10:00 a.m. to 6:00 p.m. There is no charge for this event; however, liability insurance is required. On a motion by Council member Wilcox, seconded by Council member Eggers, Council moved to grant the special events permit.

VOTE: Aye-All
Nay-None

REQUESTED APPEARANCE - CHERRY JOHNSON

Ms. Cherry Johnson, Watauga County Arts Council Director, appeared before Council to request a special events permit for the 2004 Artspace Festival. Ms. Johnson requested that North Depot

Street, between King and Queen, be closed on Saturday, September 25th from 10:00 a.m. to 6:00 p.m. Ms. Johnson said she is holding the Festival in conjunction with the Boone Streetfest. Council member Eggers said many people will be crossing King Street to get to the Artspace Festival, so he suggested that an extra police officer be on hand to help with the crossings. Council decided not to charge for the event; however, liability insurance will be required. On a motion by Council member Clawson, seconded by Council member Eggers, Council moved to grant the special events permit.

VOTE: Aye-All
Nay-None

ADJOURNMENT

On a motion by Council member Spann, seconded by Council member Eggers, Council moved to adjourn at 9:10 p.m.

VOTE: Aye-All
Nay-None

Town Clerk

Mayor