

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
SEPTEMBER 15, 2005**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, September 15, 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, and Bunk Spann. Council member Dempsey Wilcox was absent due to illness. Town Attorney Sam Furgiuele was also present. Staff present were Town Manager Greg Young; Town Clerk Freida Van Allen; Human Resources Director Peri Moretz; Special Assistant to the Manager Jim Byrne; Finance Director Amy Davis; Fire Chief Reggie Hassler; Police Chief Bill Post; Development Services Director John Spear; Public Utilities Director Rick Miller and Public Services Director Blake Brown.

ANNOUNCEMENTS

Mayor Burnley observed a few moments of silence for hurricane victims on the Gulf and NC coasts and our troops around the world.

Mayor Burnley announced that the Daniel Boone Monument dedication will be Friday, September 16th at 1:00 p.m. Mayor Burnley invited all to attend.

Mayor Burnley then read the following announcement:

In conjunction with the statewide "Litter Sweep" campaign issued by Governor Mike Easley for September 17 – October 1, 2005, the Town of Boone will hold a "Fall Boone Clean-Up Day" on Saturday, September 24, 2005. Interested participants may come by the Town of Boone Public Works Department located on 321 East King Street between 9:00am – 2:00pm to pick up cleaning supplies. For more information, contact Marsha Story at 262-4560. Rain Date: Sat., Oct. 1st.

TENTATIVE AGENDA ADOPTION

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

-Deletion of Item 6.D. Requested Appearance - Ms. Michelle Hollars.

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
Absent-1 (Wilcox)

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: August 11, 2005, Special Meeting.
August 11, 2005, Quarterly Public Hearing.
August 15, 2005, Special Meeting.
August 18, 2005, Regular Meeting.
Tax Releases: August, 2005

TAXPAYER	YEAR	AMOUNT	DESCRIPTION
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RAINES, WENDY RENEE	2005	\$33.84	INCORRECT SITUS
BERRY, WESLEY LOFTON	2005	7.23	SOLD VEHICLE
COVERT, RONALD MAURICE COVERT, JANE ELLEN	2005	19.48	LIVES IN CUMBERLAND CO
TAYLOR, THOMAS G & CYNTHIA	2005	75.28	LIVES IN FIRE DISTRICT
ZEHNDER, JOHN JEFFREY JR	2005	6.00	HIGH MILEAGE & BODY DAMAGE
GOHEEN, NANCY LYNN	2005	9.38	SOLD VEHICLE TURNED IN TAG
DEWHIRST, MATTHEW LEE POND, KARL S E	2005	12.20	ADJ PER BILL OF SALE
KELLER, MARY ANN FLANNERY KELLER, TOMMY RANDALL	2005	12.20	INCORRECT FIRE DISTRICT
SMITH, ERIC DUSTIN	2005	47.20	LIVES IN SURRY COUNTY
ELLIS, THOMAS B ELLIS, MEGAN L	2005	70.24	INCORRECT TAG TO OWNER DMV ERROR
QUINN, PATRICIA P	2005	16.02	SOLD CAR
CORREA, NANCY JEAN	2005	70.24	INCORRECT FIRE DISTRICT
REDER, JAMES WAYNE JR	2005	25.12	LIVES IN ALAMANCE CO
MCKENZIE, CHARLES SCOTT	2005	5.98	SOLD BOAT IN 2004
APPALACHIAN GALLERY & FRAME	2005	44.00	NEW OWNER LISTED UNDER ACCT. 1596017
SAGEBRUSH OF NC LLC	2005	46.20	EQUIP LISTED INCORRECTLY
BEVERLY GUY ACCOUNTING INC GUY, BEVERLY ACCOUNTING INC	2005	30.12	INCORRECT BILLING MOVED 7/04
GOODY’S FAMILYCLOTHING INC 15	2005	56.40	EQUIPMENT DOUBLE TAXED
GREGORY, RYAN THOMAS	2005	13.08	INCORRECT SITUS
GREGORY, RYAN THOMAS	2004	30.76	INCORRECT SITUS
LAFFIN, JOSEPH F LAFFIN, SHERRYL P	2004	21.55	SOLD VEHICLE
BURNS, RAEANN	2004	10.72	TURNED IN TAG
CHURCH, HARRY THOMAS CHURCH, DEBORAH GIBSON	2004	40.04	LIVES IN IREDELL
KELLER, MARY ANN FLANNERY KELLER, TOMMY RANDALL	2004	6.20	INCORRECT FIRE DISTRICT
SOLLECITO, LORRAINE	2004	43.12	DOES NOT LIVE IN TOB
TOTAL		\$752.60	

Tax Refunds: August, 2005

TAXPAYER	YEAR	AMOUNT	DESCRIPTION
WILLIAMS, VICKY LYNN	2004	\$3.04	SOLD VEHICLE TURNED IN TAG
QUINN, CHARLES EDWARD	2004	1.46	SOLD CAR
TOTAL		\$4.50	

Adoption of Code Amendments: Sections 75.06; 114.11; 114.34

To: Section 75.06 USE OF PARKING CONTROL DEVICES OR METHODS IN
PARKING LOTS AND SPACES

A. It shall be unlawful for any person to authorize, direct, contract for, implement or apply a parking control device or method to a vehicle in any parking lot or space in the Town of

Boone unless and except if it is clearly and conspicuously posted on the premises, in a location(s) designed to be easily seen by an unauthorized person utilizing the parking lot or space, on a sign or combination of signs each no smaller than two square feet and no larger than four square feet, that the parking lot or space is a private parking lot or space, that unauthorized vehicles will be subjected to the use of a parking control device or method, and disclosing the amount of any charge imposed to remove the boot **or other parking control device** from the vehicle. The sign must disclose the specific type of parking control device or method used, e.g., “Private Parking Lot - Unauthorized Vehicles will be Booted, \$50.00 charge for removal.” **The print on the sign must be large enough that it can be easily seen and read by a person of ordinary vision from a distance of twenty feet.**

- B. It shall be unlawful for any person to authorize, direct, contract for, implement or apply a parking control device or method to a vehicle in any parking lot or space in the Town of Boone unless and except when a person is on duty and present in the parking lot or space at all times when any vehicle is subjected to a parking control device or method, and such person has the means and ability to remove the parking control device or method upon payment of the posted charges. **No person may implement or apply a parking control device or method to a vehicle, and no person may demand or accept payment for the non-application or removal of any parking control device or method to or from a vehicle unless that person has obtained a privilege license from the Town of Boone, in accordance with Chapter 114 of this Code, defined therein as “parking lot attendant,” and has on display on his or her person the picture identification issued by the Town of Boone upon the payment of such tax.**

75.07 PENALTY

- (A) *Civil Penalties.* Whoever violates any provision of this Chapter shall be subject to the penalty provisions of §10.99.
- (B) *Criminal Penalties.* Any person who violates section 75.03, 75.04, or 75.06A ~~or 75.06B~~ of this Chapter shall be guilty of an infraction for each violation, pursuant to N.C. Gen. Stat. § 14-4 (b), punishable by a penalty of up to \$50.00 per violation.
- (C) Any person who violates section 75.05 by charging more than the fees permitted under this Chapter, or who violates sections 75.06B or 75.06C shall be guilty of a Class 3 misdemeanor, pursuant to N.C. Gen. Stat. § 14-4 (a), punishable by a fine of up to \$500.00. Any person who violates any other provision of section 75.05 of this Chapter shall be guilty of an infraction, pursuant to N.C. Gen. Stat. § 14-4 (b), punishable by a penalty of up to \$50.00.

To: Section 114.11

- (C) **An application for parking lot attendant, with one or more of the duties described in Chapter 75.06, shall include a signed authorization from the owner of the property on which the parking lot or parking space is located. Once the application is accepted and the tax paid, the Town shall issue a photo identification badge for display in accordance with the requirements of Chapter 75.06.**

To: Section 114.34(B)

Parking Lot Attendant (with one or more of the duties described in Chapter 75.06[B])\$50.00 per year

Approval of 2005 WHS & ASU Homecoming Parades.
Adoption of Resolution: Surplus Property Auction.

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:

VEHICLES

Asset #	Description
1988	S-10 TRUCK
2308	1990 FORD BRONCO
2301	1995 CHEV CAPRICE
2300	1995 CHEV CAPRICE
2808	1991 3/4 TON CHEVROLET WITH
2643	KNAPHEIDE UTILITY BODY
3042	1993 CHEVROLET ONE-TON
	1990 INTERNATIONAL DO-ALL

OFFICE FURNITURE & EQUIPMENT

Asset #	Description
	BOX OF COMPUTER PAPER
	VIEWSONIC MONITOR W/SCREEN
	ASSORTED KEYBOARDS W/MICE
	PUNBIN BINDING MACHINE
	MONITOR RISER
	SOUND PROOFING CABINET
	BLUE OFFICE CHAIR
	BROWN OFFICE CHAIR
	SMALL DATA STORAGE BOX
3632	DELL POWEREDGE SERVER W/MONITOR
2571	DELL DIMENSION COMPUTER
3635	IBM NETVISA
3636	DELL DIMENSION COMPUTER
	APC SMART UPS
	BOX OF TRACTOR FEED PAPER
	BOX OF TRACTOR FEED PAPER
	GATEWAY 2000 MONITOR
	HP CD-WRITER PLUS
	MIXED BOX OF OFFICE SUPPLIES
	CROSS-CUT SHREDDER
	PORTABLE A/C (2 BOXES)
	IBM SELECTRIC II TYPEWRITER
	HP 750 MULTI-FUNCTION COPIER
	GATEWAY EV700 MONITOR
	MIX BOX SURGE PROTECTORS
	IBM SELECTRIC II TYPEWRITER
	HP 680C DESKJET
	COMPAQ DESK PRO 286E
	SF8100 COPIER
	WOODEN COMPUTER RISER
	GRAY OFFICE CHAIR
	BOX OF TRACTOR FEED PAPER
	BOX OF TRACTOR FEED PAPER
	VIEW SONIC MONITOR
	MITSUBISHI MONITOR
	GATEWAY COMPUTER
	DELL DIMENSION COMPUTER
	EYRETEL RECORDER
	ENVISION MONITOR
	(4) PITNEY BOWES TONER DELL
	TRINITRON MONITOR BROTHER
	MULTIFUNCTION CENTER

PITNEY BOWES COPIER
IBM PRINTER
BAG OF MISC SPEAKERS
ACCO 3-HOLE PUNCH
PRINCETON MONITOR
IBM PRINTER
GATEWAY MONITOR
IBM COMPUTER W/KEYBOARD
5' TABLE BOOK
CASE OFFICE
DESK METAL
CABINET DESK
W/RETURN
WOODEN 2-DR FILE
BOX OF GREENBAR PAPER
COPY STAR COPIER
GATEWAY 2000 MONITOR
HP 540 LASERJET
BOX OF PITNEY BOWES TONER
GATEWAY 2000 MONITOR
ROYAL 2018 COPIER
MURATEC F-92 FAX MACHINE
DELL DIMENSION COMPUTER
CURTIS COMPUTER STAND
MISC PHONES/KEYBOARDS
MAGNAVOX MONITOR
PRINCETON MONITOR
HP 330 OFFICE JET
PIONEX ELITE
HP 692 DESKJET
PRINCETON MONITOR
PIONEX COMPUTER
BOX OF MISC COMPUTER PARTS
BOX OF MISC PHONES
PIONEX ELITE COMPUTER
KONICA 4355 COPIER
GATEWAY 2000 MONITOR
HP 932C PRINTER
HP 670C DESKJET
PRINCETON MONITOR
GATEWAY 2000 MONITOR
OPTIQUEST MONITOR
PIONEX ELITE COMPUTER
PIONEX ELITE COMPUTER
PIONEX ELITE COMPUTER
PIONEX ELITE COMPUTER
HP 880C DESKJET PRINTER
GATEWAY COMPUTER
PRINTER RISER
PIONEX ELITE COMPUTER
HP 692C DESKJET
GATEWAY 2000 MONITOR
VIEWSONIC MONITOR
PRINCETON MONITOR
GATEWAY 2000 LAPTOP
HP 720C PRINTER
IBM THINKPAD LAPTOP
HP 6200C SCANJET
IBM NET VISTA COMPUTER
HP 5550 DESKJET

OTHER EQUIPMENT

	ALTERNATOR TESTER
	HOTPOINT STOVE
	MAYTAG DISHWASHER
	COMPACT FRIDGE
	GE PRECISION SCIENTIFIC REFRIGERATOR
	3 PARK BENCHES
	LIGHT BAR
	DRIVE THRU DRAWER W/SPEAKERS
	WHITE CAMPER SHELL
	PORTABLE DIAPHRAM PUMP
	RING STAND
	MISC BOX OF LIGHTBAR PARTS
	BOX OF CULTURE TUBES
	GLASS CHEMICAL BOTTLES
	DATA ACCESS CONTROLLER
	LARGE WOODEN FRAME
	BRAKE LATHE
	BOX OF MISC LAB EQUIPMENT
	TOILET PATER DISPENSER
	BOX OF MISC LAB EQUIPMENT
	TRANSMISSION JACK
	BOX OF MISC LAB EQUIPMENT
	2 CLOCKS
	TOWEL HOLDER W/BRACKETS
	MISC RADIO PARTS
	BUILDING SIREN
	BOX OF MISC LAB EQUIPMENT
	BRAKE BLEEDING KIT
	TRANSMISSION JACK
	BORING MACHINE PORTABLE
	DIAPHRAM PUMP FISHER
	SCIENTIFIC BALANCE LAB
	SCALE
	SENSUS INTEROGATOR METER READER
	SENSUS INTEROGATOR METER READER
	SENSUS INTEROGATOR METER READER
	BASE & WALL CABINETS
	LAB DESSICATOR
	BOX OF 16X20X1 AIR FILTERS
	PH/ ION METER
	WINCO GENERATOR
	WINCO GENERATOR
	ECHO WEEDEATER
	HT90 MOTOROLA RADIO
	HT90 MOTOROLA RADIO
	HT1000 MOTOROLA RADIO
2837	DETACHED SWEEPER UNIT PATROL
	VEHICLE PARTITION PATROL
	VEHICLE PARTITION WHEELHORSE
	RIDING LAWNMOWER
	4X8 TRAILER

TDA EQUIPMENT

GATEWAY COMPUTER
GATEWAY / CVB MACHINE
GATEWAY COMPUTER
GATEWAY COMPUTER
GATEWAY MONITOR

2. The Finance Director is authorized to receive in behalf of the Council bids at public

auction for the purchase of the described property.

3. The public auction will be held on Saturday, October 22, 2005 at 8:30 a.m. at the Public Works Center, 321 East King Street. The terms of the sale shall be cash, certified or cashiers check.
4. The Town Clerk shall cause a notice of the public auction to be published in accordance with G. S. 160A-270(b).
5. The highest bid, if it complies with the terms of sale, may be accepted by the Finance Director and the sale consummated.

Adopted this the 15th day of September, 2005.

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGES 298-301)

VOTE: Aye-All

Nay-None

Absent-1 (Wilcox)

ADOPTION OF RESOLUTION - DIRECTING CLERK TO INVESTIGATE MARKET COURT ANNEXATION

On a motion by Council member Mason, seconded by Council member Clawson, Council moved to excuse Council member Eggers from voting on this matter.

VOTE: Aye-All

Nay-None

Absent-1 (Wilcox)

Development Services Director John Spear said this contiguous annexation petition is submitted as a requirement of a water request previously approved by Council. The property is owned by Larry and Kim Hughes, Joseph and Lynda Miller, Graydon and Carolyn Eggers, and Mihug, LLC. and contains 4.809 acres. The property is located off Market Hills Drive. Mr. Spear said this is the first step in the annexation process. On a motion by Council member Mason, seconded by Council member Spann, Council moved to adopt the following resolution directing the clerk to investigate the annexation petition:

WHEREAS, a petition requesting annexation of an area described in said petition was received on September 15, 2005 by the Town Council; and

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

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

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

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

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 302)

VOTE: Aye-All

Nay-None

Excused-1 (Eggers)

Absent-1 (Wilcox)

ACCEPTANCE OF ROAD MAINTENANCE - YOSEF DRIVE

Public Services Director Blake Brown presented a petition for road acceptance from Mountaineer Village, LLC for Yosef Drive. Mr. Brown explained that Yosef Drive serves Mountaineer Village Apartments and has a 50 foot right-of-way, street lights and sidewalks. Mr. Brown said that a one-year warranty will be effective from the date of acceptance. Mr. Brown recommended the Town accept the road and place it on the Powell Bill map for future funding. On a motion by Council member Eggers, seconded by Council member Spann, Council moved to accept maintenance of Yosef Drive, the street lights and sidewalks.

VOTE: Aye-All

Nay-None

Absent-1 (Wilcox)

TRANSPORTATION COMMITTEE RECOMMENDATIONS

Public Services Director Blake Brown presented the following recommendations by the Transportation Committee:

The Transportation Committee met Tuesday, September 13th and discussed the following matters:

One-way section of Oak Street from Pine Street to Horn in the West Drive: *The Transportation committee recommended delaying action at this time until the survey of Oak Street right-of-way is complete. The Committee felt this additional information is needed before making a final recommendation.* Mr. Brown said the Transportation Committee will meet again in November and make a recommendation at the November Council meeting.

Pride Drive - *The bridge inspection is complete with a recommendation that the guardrails be replaced. The Committee requested guidance from Council regarding the maintenance needs of this private road.* Mr. Brown said the Town has the option to require the property owners to maintain the road and bridge or the Town can pursue obtaining the proper easements in order to provide the necessary maintenance. Council member Mason questioned who owns Pride Drive. Mr. Brown said the various business along the Drive own the road, such as Kentucky Fried Chicken, High Country Host, Ride with Pride Car Wash, Kmart, Tri-Corp, Southgate II Properties and Laura Williams Shrake. After some discussion, Council member Eggers made a motion to pursue dialogue with Pride Drive property owners about the Town's obtaining easements in order to provide maintenance of the street. It was noted that, if property owners wish to retain the street, they will be required to provide all the necessary maintenance.

VOTE: Aye-All

Nay-None

Absent-1 (Wilcox)

APPROVAL OF DOT BRIDGE AGREEMENT

Public Services Director Blake Brown said the Town has five structures that the Department of Transportation traditionally inspects every two years. Mr. Brown said it will cost the Town about \$1,500 for these inspections. On a motion by Council member Clawson, seconded by Council member Mason, Council moved to adopt the following agreement:

THIS AGREEMENT, made and entered into this the 15th day of September, 2005, between the DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina, hereinafter referred to as the Department, and the TOWN OF BOONE, a municipal corporation, hereinafter referred to as the Municipality;

WITNESSETH:

WHEREAS, the Surface Transportation Assistance Act of 1978 provided funding for a Federal-Aid Highway Bridge Replacement and Rehabilitation Program; and

WHEREAS, the Highway Bridge Replacement and Rehabilitation portion of the law requires that all structures defined as bridges located on public roads must be inspected on a cycle, not to exceed two years in accordance with the National Bridge Inspection Standards (NBIS); and

WHEREAS, the Municipality has requested the Department or a Consultant retained by the Department to reinspect and analyze all public bridges located on its Municipal Street System in compliance with the National Bridge Inspection Standards; and

WHEREAS, the Department and the Municipality are authorized to enter into an agreement for such work under the provisions of G.S. 136-18(12), G.S. 136-41.3, and G.S. 136-66.1; and

WHEREAS, the Town Council of the Municipality has approved the hereinabove referenced inspections and has agreed to participate in certain costs thereof in the manner and to the extent as hereinafter set out.

NOW, THEREFORE, the Department and the Municipality agree as follows:

1. *The Department or a consulting engineering firm retained by the Department shall inspect, analyze and prepare the necessary inspection reports for all bridges on the Municipal Street System in accordance with the National Bridge Inspection Standards.*
2. *All work shall be done in compliance with the following documents:*
 - (A) *National Bridge Inspection Standards (23 CFR, Chapter 1, Part 650)*
 - (B) *AASHTO Manual for Maintenance Inspection of Bridges - 1994 including all Interim Revisions.*
 - (C) *Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges - December, 1988.*
3. *The Municipality shall be responsible for providing any required traffic control personnel during the work period.*
4. *The Municipality shall furnish all data in the possession of the Municipality that can be released that will help the Department or its Consultant in the accomplishment of the work including but not limited to appropriate municipal maps showing the location of the bridges, plans for the bridges when available, and any prior inspection reports.*
5. *During the inspection process, some repairs may be discovered that require immediate attention or repair, or a regulatory sign may be missing, damaged or incorrect. A Prompt Action Notice or Regulatory Sign Notice will be issued in these cases. It is required that the Municipality resolve the Prompt Actions and/or Regulatory Sign Notice within ninety (90) days of issuance.*
6. *The Municipality shall designate a responsible Municipal Official with whom the Department or its Consultant will coordinate the work.*

7. *It is understood by the parties hereto that the Federal Highway Administration, through the Department, is to participate in the costs of the work to the extent of eighty (80) percent of actual costs, subject to compliance with all applicable federal policy and procedural rules and regulations. All costs not participated in by the Federal Highway Administration shall be borne by the Municipality.*
8. *Upon completion of the bridge reinspection, and analysis work, the Department shall invoice the Municipality for accumulated project costs not participated in by the Federal Highway Administration. Upon FHWA final audit, the Department shall invoice/refund the Municipality any differences in the amount previously invoiced and the actual costs not participated in by the Federal Highway Administration. Reimbursement shall be made by the Municipality within sixty (60) days of the invoice date. After the due date, a late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23 and G.S. 105-24.1 (I).*
9. *In the event the Municipality fails for any reason to pay the Department in accordance with the provisions for payment hereinabove provided, the Municipality hereby authorizes the Department to withhold so much of the Municipality's share of funds allocated to said Municipality by the General Statutes of North Carolina, Section 136-41.1, until such time as the Department has received payment in full.*
10. *Upon completion of the work the Department shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this agreement. Further, the Department shall make such materials available at its office for three (3) years from the date of payment of the Final Voucher by the Federal Highway Administration under this agreement, for inspection and audit by the Federal Highway Administration, or any authorized representatives of the Federal Government.*

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

IN WITNESS WHEREOF, this agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given, as evidenced by the attached certified copy of resolution, ordinance or charter provision, as the case may be.

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

APPROVAL OF BID FOR TWO FIRE TANKER TRUCKS

Fire Chief Reggie Hassler presented the following bid minutes:

The Town of Boone opened bids for a Stainless Steel Elliptical Tanker on Thursday, August 25th, 2005 at 10:00 a.m. Town personnel present were Jimmy Isaacs and Becky Love. Ed Finch with Emergency Apparatus, Mark Pless representing S&S Fire Apparatus, and J.B. Eller representing U.S. Tanker were present at 10:00 a.m.

Jimmy Isaacs started the bid opening with a welcome to those in attendance. It was announced at 10:00 a.m. that no other bids would be accepted at that time.

*The bids received for opening at, or prior to, 10:00 a.m. were:
S&S Fire Apparatus
Emergency Apparatus
4 Guys Custom Stainless Steel Fire Apparatus
U.S. Tanker*

*Jimmy Isaacs opened the bids, and the bid amounts were announced as follows:
S&S Fire Apparatus - \$179,293 / 1,800 gal. tanker
Emergency Apparatus - \$153,214 / 1,500 gal. tanker & \$155,567 / 1,800 gal. tanker
4 Guys Custom Stainless - \$316,838 / 1,500 gal tanker & \$322,384 / 1,800 gal. tanker
U.S. Tanker - \$164,000 / 1,500 gal. tanker & \$166,000 / 1,800 gal. tanker
All valid bids had the proper bid bonds included with proposals.*

A bid from Ferrara Fire Apparatus was delivered at 10:15 and it was announced to those in attendance that this was an invalid bid and it would not be considered in any way.

*Jimmy Isaacs announced that there were two incorrect statements in the bid request:
1) In the specs, the part number for an exhaust brake should have been listed as an engine brake.
2) The light bar for the tanker did not correctly specify the MX7000 as the light bar required.
Jimmy Isaacs announced that these two items would be considered in the bid evaluations.*

The opening was adjourned at 10:25 a.m.

On a motion by Council member Clawson, seconded by Council member Eggers, Council moved to award the bid to Emergency Apparatus dba Semo Tank/Baker Equipment in the amount of \$312,364.

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

ABC BOARD APPOINTMENT

On a motion by Council member Clawson, seconded by Council member Spann, Council moved to appoint Lester Hardin to another three-year term on the ABC Board. His new term will expire 9/08.

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

MONTHLY WATER USE STATUS REPORT

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

As requested by Town Council, staff and I have compiled the following information concerning water use for the month of August. The Water Treatment Plant recorded a maximum daily demand of 2.255 million gallons on Tuesday, August 16, 2005, and the average daily demand was 1.817 million gallons for the entire month. The maximum daily demand is attributed to a water leak which occurred in the early hours of Monday, August 15, 2005.

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 the Utilities Department has not approved any projects that subtracted from our allotment.

As you can see in the attached chart, and as noted last month, the Public Utilities Department has 755 gallons 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
Advance Auto	Aug-05	496				755

			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

REQUESTED APPEARANCE - MATT COOPER

Mr. Matt Cooper appeared before Council to request permission to lease the property located at the corner of Leola Street and Pride Drive for a community garden. Mr. Cooper said he is working with the Appalachian Cooperative for Progressive Sustainability (ACPS) in coordinating the community garden. Mr. Cooper said he envisioned the Hunger Coalition, as well as neighborhood gardners, would benefit from the harvest, along with providing educational opportunities for the neighborhood. Mr. Cooper said he hoped to provide a shelter and kiosk for participants. Council member Eggers questioned Development Services Director Spear if the Town had planned a use for that property. Development Services Director Spear said no, but that it could be connected with the greenway in the future. Council member Mason felt that since most of the property is in a floodplain there is not much the Town could do with the property. Council member Mason wondered if the property has a “wetland” designation and if ACPS could work around such designation. Mr. Cooper said yes. Town Manager Greg Young said a standard lease agreement would need to be prepared including a fee and term. After some discussion, on a motion by Council member Mason, seconded by Council member Clawson, Council moved to have the Town Attorney prepare a lease with ACPS, for a \$1 per year fee, renegotiated annually.

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

REQUESTED APPEARANCE - SCOTT EGGERS

Mr. Scott Eggers of Watauga Housing Opportunities updated Council on the affordable housing issue in Watauga County. Mr. Eggers said the group has restructured by using a new name and reducing the number of people serving on the task force to 16. With that restructuring, the County Commissioners have asked that Council appoint a member to the new task force. On a motion by Council member Clawson, seconded by Council member Spann, Council moved to appoint Lynne Mason to the Watauga Housing Opportunities task force.

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

REQUESTED APPEARANCE - DONALD MORRISON

Town Attorney Sam Furguele opened the public hearing at 7:22 p.m. to hear sworn testimony from Donald Morrison, Public Utilities Director Rick Miller and Development Services Director John Spear for a request for sewer service to two parcels located off Knowles Haven Lane. Mr. Morrison said he appeared before Council twice to request water and sewer services and was denied both times because of the lack of easements and Council was yet to review the water study plan. Mr. Morrison said he has on-site a 20-gallon-per-minute well that will serve both properties. Mr. Morrison said he plans to construct three duplexes for a total of six units and needs sewer service before he can begin construction. Council member Mason asked if Mr. Morrison would be willing to tap onto the water if it were available. Mr. Morrison said yes. Mr. Morrison presented a map (**EXHIBIT A**) showing lots that have previously received approval of water and/or sewer services from the Town. Council member Mason asked if Mr.

Morrison has the proper easements at this time. Mr. Morrison said yes and that they will be recorded once the sewer request is granted. Council member Eggers asked if this would be an extension of the sewer or just a service tap. Mr. Miller said it would be a public line extension which would require an engineer and a 25' easement dedicated to the Town. Mr. Morrison was unaware of this requirement thinking he would need a service tap. Mr. Miller said if he owns both properties then he could get a service tap. Mr. Morrison said he did own both properties and that he would try to install both service lines within the same easement. Council member Mason asked in what growth area this property is located. Development Services Director Spear said it is located in the secondary growth area. Council discussed at length approving the request. Council member Mason questioned Mr. Morrison if he would be willing to comply with the Town's zoning requirements for multi-family housing. Mr. Morrison said yes. There being no further testimony, the public hearing closed at 7:45 p.m. Town Attorney Sam Furgiuele reminded Council members that they could place any type of conditions on the approval. On a motion by Council member Spann, seconded by Council member Eggers, Council moved to approve the sewer request with the following conditions:

1. A requirement that the well be metered.
2. Compliance with the construction description as presented tonight.
3. Compliance with the Town's UDO requirements for multi-family housing.

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

REQUESTED APPEARANCE - ROB HOLTON

Mr. Holton appeared and requested that this matter be tabled until the October meeting. On a motion by Council member Eggers, seconded by Council member Mason, Council moved to table the matter until the next meeting.

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

Mayor Burnley declared a break at 7:55 p.m. Council reconvened at 8:07 p.m.

CLOSED SESSION

On a motion by Council member Eggers, seconded by Council member Spann, Council moved to enter Closed Session at 8:07 p.m., pursuant to NCGS 143-318.11a)3) in order to discuss the legal ramifications of the Franklin request.

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

On a motion by Council member Eggers, seconded by Council member Clawson, Council moved to exit Closed Session at 8:17 p.m.

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

REQUESTED APPEARANCE - CHARLES ULERY

Mr. Richard Franklin, representing Mr. Charles Ulery, appeared before Council to request an amendment to the Town Code to allow the discharge of firearms and air rifles within the Town limits. Presently the Town Code does not allow for such discharges. Mr. Franklin said Mr. Ulery plans to construct an indoor firing range, which will include a paintball arena. Mr. Franklin presented a draft of the proposed safety plans. Council member Eggers questioned how

the safety plans are modeled. Mr. Franklin said they were modeled from NRA standards. After some discussion, on a motion by Council member Mason, seconded by Council member Clawson, Council moved to direct the Police Chief, Town Attorney, Town Manager and Development Services Director study this request and to have a recommendation back to Council by the October meeting.

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

REQUESTED APPEARANCE - RICHARD FRANKLIN

Mr. Franklin said that since this request is tied to the previous request it should be delayed until next month also.

UNSCHEDULED APPEARANCE - LYNN WHITE

Ms. Lynn White appeared before Council to complain about the grading and development that is being constructed by Catacorner Investments. Ms. White felt that the development is in violation of the Comprehensive Plan and UDO and she requested that the Town enforce the violations.

CLOSED SESSION

On a motion by Council member Eggers, seconded by Council member Mason, Council moved to enter Closed Session at 8:40 p.m. pursuant to NCGS 143-318.11a)3) in order to discuss the ASU violations, Phillips/Van Huesen violations, and the potential litigation by AMP properties.

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

On a motion by Council member Mason, seconded by Council member Clawson, Council moved to exit Closed Session at 11:17 p.m.

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

POSSIBLE ACTION FOLLOWING CLOSED SESSION

On a motion by Council member Spann, seconded by Council member Eggers, Council moved to adopt the following agreement with ASU and to stipulate that the same agreement be hand-delivered:

This Agreement, made this ____ day of _____, 2005, by and between Appalachian State University, a constituent institution of the University of North Carolina hereafter referred to as "ASU") and the Town of Boone, a North Carolina Municipal Corporation (hereafter "the Town"), known and referred to collectively as "the parties."

W I T N E S S E T H

THAT WHEREAS certain issues have arisen between the parties which each party, in the best interest of its constituents, wishes to settle and resolve, in such way as to not only conclude all current issues and disagreements between them, but to provide a framework for avoiding similar disputes in the future; and

WHEREAS, the aforesaid issues involve matters relating to sewer service by the Town to ASU, overcharges by the Town to ASU for such services, and the limits of the Town's zoning jurisdiction as it applies to ASU; and

WHEREAS, pursuant to this Agreement, the Town has not agreed to zone any particular

land within its jurisdiction in any particular way; and

WHEREAS, with regard to sewer overcharges, ASU has demanded payment of the principal amount of \$186,184.53, with additional interest in the amount of \$23,844.11 and a penalty of \$18,618.45; and

WHEREAS, the parties have reached an agreement of their free and voluntary wills, after consultation with their respective attorneys, which fully resolves the issues described; and

WHEREAS, the undersigned acknowledge and affirm that in executing this Agreement, they have not been influenced to any extent whatsoever by any representations or statements regarding said matter or regarding other matters, except to the extent recounted herein;

NOW, THEREFORE, for and in consideration of the mutual promises herein contained, the Parties agree as follows:

1. Within ten days after the execution of this Agreement, the Town will pay ASU Two Hundred and Ten Thousand, Twenty-eight dollars and Sixty-four cents (\$210,028.64) in full settlement and satisfaction of any and all sewer charges, whether known or unknown, which exist as of the date of the execution of this Agreement by ASU. Should future sewer overcharges occur, if they are in an amount which is less than the average monthly charge per the respective meter(s) for the preceding twelve months, they shall be credited to ASU against future sewer usage on the sewer account upon which the sewer overcharge(s) was(were) created. If such future sewer overcharges exceed the average monthly charge per meter so computed, within thirty days of its discovery, the overcharge will be remitted by the Town to ASU.
2. Contemporaneously with the execution of this Agreement, the parties shall enter into a licensing agreement, attached as Exhibit "A," and incorporated by reference herein, granting the Town permission to enter onto land owned by ASU for the purpose of maintaining its sewer lines.
3. Contemporaneously with the execution of this Agreement, the parties shall enter into an Agreement respecting the application of the Town's Unified Development Ordinance to ASU, attached as Exhibit "B," with a "plain English" explanation of the agreement attached as Exhibit "C," incorporated by reference herein.
4. Within five years from the execution of this Agreement by ASU, ASU will calibrate all of its sewer meters and will replace or repair any meters which are inaccurate to a degree exceeding + or - 4% of the correct reading, and shall replace all sewer meters which do not have the capacity to measure usage in 1,000 gallon. Any new meters which are installed by ASU in the future will be compatible with the requirements of the Town of Boone's Water and Sewer Code, including the capacity to be "touch read," and within five years from the execution of this Agreement by ASU, ASU will fit all meters which can be so fit with "touch read" capacity. ASU will confer with appropriate staff of the Town's Public Utilities Department before installation of any new meters so as to determine such compatibility. Any meters which are not presently equipped as touch-read meters will be retro-fitted within five years.
5. ASU's execution of this Agreement shall be construed as the withdrawal of its four appeals of the notices of violation issued by the Town in connection with the ASU library, ASU Student Recreation Center and "Marsh" property. Both parties' execution of this Agreement will constitute a withdrawal by the Town of its violation notices to ASU and within five days of the full execution of this Agreement, the Town will issue zoning permits to ASU for the ASU library and ASU Student Recreation Center.
6. The parties shall continue their discussion of the interconnection of the Town's water system with the ASU water system, and at such time as a full agreement is concluded concerning this issue, they will agree that the costs of such interconnection shall be evenly divided between the Town and ASU, that any interconnection agreement shall provide for ASU access to the Town's water supply and for the Town's access to the ASU water supply, and that the charges of water shall be equal, whether Town water is being

provided to ASU, or ASU water is being provided to the Town

7. *The terms described herein constitute the entire agreement between the parties.*
8. *The parties enter this agreement of their own free will and volition, after consultation with their respective legal counsel, and they each confirm that no coercion, force, pressure, or undue influence has been used in the execution of this agreement, either by the other parties hereto, or by any other person.*
9. *Each party shall execute any documents provided for herein or which are necessary to carry out the terms and intent of this agreement.*
10. *The parties hereby submit to the jurisdiction of the courts of the State of North Carolina in any future action brought by either of them to enforce the provisions of this agreement, which shall be interpreted pursuant to the laws of North Carolina. The parties stipulate and agree that venue of any action relating to this agreement shall be in Watauga County, North Carolina.*
11. *Each promise herein is given as consideration for all other promises, and every provision of the agreement is material to this agreement. Every provision shall be binding not only upon each of the parties, but also upon their respective governing and advisory boards, administrators, chief executive officers, managers, agents and employees.*
12. *This Agreement shall be effective when signed by both parties.*

EXHIBIT "A"

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

LICENSING AGREEMENT

This Licensing Agreement, made this ____ day of _____, 2005, by and between Appalachian State University, a constituent institution of the University of North Carolina (hereafter referred to as "ASU") and the Town of Boone, (hereafter "the Town"), known and referred to collectively as "the parties."

WITNESSETH

THAT WHEREAS ASU owns or controls certain land and facilities which are served by utilities (including, but not limited to sewer lines) constructed and/or maintained by the Towns; and

WHEREAS, The Town desires access to such land and facilities for the purposes herein described;

NOW, THEREFORE, for and in consideration of the mutual promises herein contained, the Parties agree as follows:

1.0 Grant:

ASU hereby grants permission to the Town to access all ASU lands and facilities served by Town utilities (hereinafter called "Facilities" for the following purposes: installing, inspecting, operating, maintaining, repairing and reconstructing, a sewer line, and such pipes, manholes, fittings, fixtures and other accessories as from time to time may be required, together with the full right of access to and egress from said area. (hereinafter referred to collectively as "Town activities").

2.0 Term:

This Agreement shall remain in full force and effect unless and until revoked by ASU, in

accordance with this Agreement.

3.0 Conditions of Use:

- 3.1 *The Town shall, in all cases except emergencies, notify the ASU Director of Design and Construction or that person's designees (hereinafter referred to as "Director") of its plans to access Facilities at least three (3) business days prior to the date on which it engages in activities contemplated by this agreement. For purposes of this agreement, an emergency is a situation or set of facts what would lead a reasonable person to conclude that the condition of the Town's utilities presents an immediate or imminent threat to public health or safety. In any case of emergency, the Town shall notify the Director or ASU's Police Department as soon as practicable after Town staff or the Town's contractor enters upon ASU lands. The Town agrees that it will not engage in any land disturbance or activities in which fires, flame, weapons or other similarly potentially dangerous equipment or substances are involved without the prior approval of the Director. Approval will not be unreasonably withheld.*
- 3.2 *This license shall establish a presumptive thirty-five (35) foot wide "zone" over and across the real property of the Grantor, straddling existing sewer lines in such locations as lines currently exist, and creating such zones in areas where sewer lines are to be installed or constructed.*
- 3.3 *ASU, other than while the lines are under actual construction or repair, have the right to use the property of the zone, but shall avoid any use which interferes with or is inconsistent with the use thereof by the Town as provided herein. Among other things, ASU agrees that it will not erect any shed, building, structure or other permanent obstruction within the aforesaid "zone" of established sewer lines, shall not plant trees within the aforesaid zone, and will not construct other utility lines, including but not limited to, electric, gas, telephone, cable, or water lines, within the aforesaid zone without prior written approval by the Town. ASU shall be entitled to landscape the area within the permanent Easement with bushes, flowers, grass and/or mulch, so long as the roots from the bushes do not damage the sewer line. Any utility lines currently existing within the aforesaid zone(s) shall either remain where they are, or at the option of ASU, they shall be relocated at the expense of ASU.*

4. Construction, Maintenance and Damage:

- 4.1 *The Town shall not injure, mar or in any way deface the facilities or any other ASU property except to the extent reasonably necessary to complete the activities involved. If facilities are disturbed, the Town shall restore them to the condition that existed prior to the Town's activities. All waste resulting from the Town's activities shall be removed by the Town at its sole cost and expense.*

4.2 *Placement of permanent structures by the Town on ASU facilities*

5. ASU Equipment:

The Town shall not use equipment, tools or furnishings located in or about the Facilities, other than its own, without prior written approval of the Director.

6 Additional Users:

The license granted under this agreement is non-exclusive. Other events and activities may be held simultaneously in other parts of the Facilities. The Town shall conduct its activities so as to avoid unnecessary interference with such other activities, and ASU shall take necessary action to prevent interference with Town's activities by other licensees or invitees.

7. Parking:

The Town shall not place its vehicles or equipment in such way as to unnecessarily

interfere with ASU parking facilities, and should there be a need to disrupt or use ASU Parking areas, the Town shall give advance written notification to the Director, describing the location and need for the disruption or use.

8. Insurance:

8.1 *Town shall maintain during the term of this agreement, at its own cost and expense, public liability insurance in the minimum limits of ONE MILLION DOLLARS (\$1,000,000.00) for each person injured or killed and not less than ONE MILLION DOLLARS (\$1,000,000.00) for the injury or death of two (2) or more persons in any one occurrence, and property damage insurance in the sum of not less than ONE MILLION DOLLARS (\$1,000,000.00) for each occurrence. Town shall, at the time of the execution of this agreement or no later than ten (10) days prior to the time for which use is authorized, furnish ASU with a certificate showing that such insurance has been issued and is in full force and effect.*

8.2 *Town shall maintain at its own cost and expense workers' compensation insurance in the amount required by statute throughout the term of this agreement.*

9.0 Emergency Medical Service:

Town shall hire at Town's sole expense, or otherwise make available during its use of the Facilities, emergency medical personnel and equipment appropriate for the nature of the Facilities, its use, and the planned activity.

10.0 Non-assignment:

This agreement shall not be assigned by either party without the prior written consent of the other party. Any attempt to assign this agreement without such consent will render this agreement null and void, and all obligations hereunder shall immediately cease.

11.0 Parties:

The relationship between the parties to this agreement is that of licensor and licensee. This agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, guardians, successors and assigns of the respective parties hereto.

12.0 Choice of Law:

This agreement shall be governed by, and construed in accordance with, the laws of the State of North Carolina.

13.0 Termination/Remedies Cumulative:

13.1 *This agreement may be terminated by ASU at its option by giving written notice of termination to the Town if the latter should default in the performance of any obligation or payment of any indebtedness under this agreement.*

13.2 *The rights and remedies herein granted to ASU in the event of default or breach are cumulative, and the exercise thereof shall be without prejudice to the enforcement of any other right or remedy available in equity or authorized by law or this agreement.*

13.3 *In the event that ASU elects to terminate this agreement, ASU will thereafter assume all responsibility and expense for the maintenance of any and all sewer lines crossing its property, but may, at its sole expense, relocate any and all such lines crossing its property which serve either ASU or properties owned by others to new locations off its property. Any such sewer lines which may be relocated shall be built to the specifications required by the Town of Boone Water and Sewer Code.*

14.0 Force Majeure:

In the event that either party shall be interrupted or delayed in completing performance of its obligations hereunder by an act of God or any other occurrence whatsoever which is beyond the control of the parties hereto, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

15.0 Severability:

In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

16.0 Indemnification:

Town shall indemnify and save harmless ASU and its trustees, agents and employees from all liabilities, losses, costs, damages, claims or causes of action of any kind or nature whatsoever, and expenses arising or claimed to have arisen out of any injuries or damages received or sustained by any person or persons or property, as a result of intentional acts or negligence of Town or its agents, employees, patrons or contractors.

17.0 Waiver:

No covenant or condition of this agreement can be waived except by written consent of the parties hereto. A waiver of any covenant or condition on one occasion shall not be deemed a waiver of said covenant or condition on any subsequent occasion unless such fact is specifically stated in the waiver. Forbearance or indulgence by ASU in any regard whatsoever shall not constitute a waiver of any covenant or condition to be performed by Town, and, until Town has completely performed all covenants and conditions of this agreement, ASU shall be entitled to invoke any remedy available to ASU under this agreement or any law or equity despite such forbearance or indulgence.

18.0 Entirety of Contract:

This agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matter. Each party to this agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not included herein, and that no other agreement, statement, or promise not contained in this agreement shall be valid or binding.

19.0 Notices:

All notices, demands and requests to be given or made hereunder shall be given or made in writing and shall be deemed to be properly given or made if sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

*Appalachian State University
438 Academy Street
ASU Box 32050
Boone, North Carolina 28608
Attention: Director of Design and Construction
Telephone: (828) 262-7195
Facsimile: (828) 262-7200*

As to Town:

*Town of Boone
P.O. Drawer 192*

Boone, North Carolina 28607
Attention: Town Manager
Telephone: (828) 262-4530
Facsimile: (828) 262-4572

Any such notice, demand or request may also be transmitted to the appropriate above-mentioned party by telegram, telephone or facsimile and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above. Any of such addresses may be changed at any time on written notice of such change sent by United States registered mail, postage prepaid, to the other parties by the party effecting the change.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement as of _____, 2005.

EXHIBIT "B"

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

AGREEMENT

This Agreement, made this ____ day of _____, 2005, by and between Appalachian State University, a constituent institution of the University of North Carolina (hereafter referred to as "ASU") and the Town of Boone, (hereafter "the Town"), known and referred to collectively as "the parties."

WITNESSETH

THAT WHEREAS, the main campus of ASU and certain other real property owned by ASU are located within the corporate limits of the Town, or within the extra-territorial jurisdiction of the Town, as that term is defined by N.C. Gen. Stat. §160A-360, et seq.; and

WHEREAS, pursuant to powers conferred upon it by Chapter 160A of the North Carolina General Statutes, Article 19, Planning and Regulation of Development, the Town has adopted a Unified Development Ordinance (hereafter, the "UDO"), which regulates development within the corporate limits and extra-territorial jurisdiction of the Town; and

WHEREAS, N.C. Gen. Stat. §160A-392, which states that Chapter 160A, Article 19, Part 3 is "made applicable to the erection, construction, and use of buildings by the State of North Carolina and its political subdivisions" and that "no land owned by the Sate of North Carolina may be included within an overlay district or a special use or conditional use district without approval of the Council of State," extends the zoning power of the Town to certain aspects of development by ASU, but the parties, each acting in good faith and each attempting to reach a common understanding of the applications and limits of said section, have been unable to agree as to which portions of the UDO apply to development activities conducted by ASU on its property within the Town's planning jurisdiction; and

WHEREAS, the parties wish to enter an agreement whereby they can have a common understanding of those areas wherein the UDO will apply to ASU's development of its property within the Town's planning jurisdiction so that there will be predictability and certainty for each of them as to what procedures shall be undertaken in connection with development by ASU, and what powers and role employees of the Town shall have in connection with said development; and

WHEREAS, ASU, unless this Agreement is modified or otherwise negated, has agreed to voluntarily comply with the requirements and procedures of the UDO, whether or not it accepts a determination that under state law it is bound by those requirements, and thus enters this Agreement without prejudice to its later right, should the same be exerted, to contend that provisions of the UDO to which it now voluntarily submits do not apply to it; and

WHEREAS, the parties have reached an agreement of their free and voluntary wills, after consultation with their respective attorneys, which fully resolves the issues described; and

WHEREAS, the undersigned acknowledge and affirm that in executing this Agreement, they have not been influenced to any extent whatsoever by any representations or statements regarding said matter or regarding other matters, except to the extent recounted herein;

NOW, THEREFORE, for and in consideration of the mutual promises herein contained, the Parties agree as follows:

13. *ASU will comply with the substance and procedures created by the following parts of the UDO, and unless this agreement is modified or negated by action of the parties or otherwise, shall adhere to said sections and substantive areas, whether or not they are subsequently amended by actions of the Town taken in accordance with the powers and procedures created by Article 19 of Chapter 160A of the North Carolina General Statutes: Specifically, ASU will comply with and submit to the following portions of the UDO to the extent that such provisions apply to the erection, construction and use of buildings pursuant to Section 160A-392 of the North Carolina General Statutes:*
 - A. *UDO Articles I through VIII, relating to General Provisions, Definitions, Administrative Mechanisms, Permits and Final Plat Approval, Appeals, Variances, Interpretations, Hearing Procedures for Appeals and Applications, Enforcement and Review, and Nonconforming Situations, to the extent such sections are relevant, given the limitations on the applicability of the UDO created by paragraphs 1(B) through 1(J), infra;*
 - B. *UDO Article IX, §§151-155, 161-162, relating to Zoning Districts and the Town's Zoning Map, recognizing that ASU is not subject to the overlay districts created by §§156-158;*
 - C. *UDO Article X, §§ 165-174, relating to the Permissible Uses created by the Town's zoning;*
 - D. *UDO Article XI, §§ 178-181, and 183-191, relating to the Supplementary Uses created by the Town's zoning, as they apply to other than University (U-1) zoning districts;*
 - E. *UDO Article XII, §§ 199-209, relating to land use intensity;*
 - F. *UDO Article XIV, to the extent a proposed development by ASU relates or includes streets, roads and/or sidewalks which are or will be under the jurisdiction and maintenance responsibility of the Town;*
 - G. *UDO Article XV, §267, except as to electrical utilities provided by New River Light and Power, and §268, relating to fire hydrants;*
 - H. *UDO Article XVII, Part II, §§312-316, related to drainage and stormwater management;*
 - I. *UDO Article XX, §§358-370, but only as to building construction which occurs within one hundred feet of property which is not owned by ASU.*
14. *Simultaneously with its submission of plans to the North Carolina Department of Insurance, ASU will furnish its plans to the Boone Fire Department. The Boone Fire Department will submit its response and recommendations to ASU within ten days of its receipt of those plans. ASU will adhere to any recommendations made by the Boone Fire Department with respect to a particular development, which recommendations are necessary to ensure that the Town's fire department will have the ability to provide adequate fire protection to the particular development.*
15. *ASU will submit to the aforesaid provisions, even if a particular development relates to the construction of a parking garage or other structure commonly identified as a*

“building,” whether or not said structure, in ASU’s interpretation of state law, fits the statutory definition of a “building,” under N.C. Gen. Stat. §160A-392. However, the parties agree that an uncovered parking lot does not constitute a “building” for the purposes of this agreement.

16. *The Town shall provide planning, recommendations, and regulatory services to ASU in accordance with the UDO relative to the specified sections and substantive areas, and shall limit any inspections of ASU’s plans and development to the areas specified. However, the parties acknowledge that state-licensed building inspectors have independent powers created under state law which cannot be limited or regulated by the agreement of the parties.*
17. *Prior to the Town taking action to modify any of the aforesaid sections of the UDO or to incorporate new sections of the UDO into the UDO articles to which ASU, by virtue of this Agreement, submits itself, the Town shall provide reasonable notice of the proposed change to ASU, through the offices of the University Attorney and Vice Chancellor for Business Affairs.*
18. *The terms described herein constitute the entire agreement between the parties.*
19. *The parties enter this agreement of their own free will and volition, after consultation with their respective legal counsel, and they each confirm that no coercion, force, pressure, or undue influence has been used in the execution of this agreement, either by the other parties hereto, or by any other person.*
20. *Each party shall execute any documents provided for herein or which are necessary to carry out the terms and intent of this agreement.*
21. *This Agreement shall remain in full force and effect unless by modified, in writing, by the parties, negated by action of the North Carolina General Assembly or by a court of competent jurisdiction, or terminated by either of the parties.*
22. *Termination of this Agreement may occur, with or without cause, upon sixty days’ advance written notification by one party to the other, counting from the date of delivery. Such notification, if instituted by ASU, shall be executed by the Chancellor of ASU, and delivered to the Mayor of the Town. Such notification, if instituted by the Town, shall be executed by the Mayor of the Town and delivered to the Chancellor of ASU.*
23. *The parties hereby submit to the jurisdiction of the courts of the State of North Carolina in any future action brought by either of them to enforce the provisions of this agreement, which shall be interpreted pursuant to the laws of North Carolina. The parties stipulate and agree that venue of any action relating to this agreement shall be in Watauga County, North Carolina.*
24. *Each promise herein is given as consideration for all other promises, and every provision of the agreement is material to this agreement. Every provision shall be binding not only upon each of the parties, but also upon their respective governing and advisory boards, administrators, chief executive officers, managers, agents and employees.*
25. *The Town, by executing this Agreement, waives any pending violations or enforcement action against ASU, and ASU, by executing this Agreement, withdraws any appeals pending before the Town.*
26. *This Agreement shall be effective when signed by both parties.*

EXHIBIT “C”

“Plain Language” Summary of Agreement between Appalachian State University and the Town of Boone regarding compliance with the Town's Unified Development Ordinance.

This Document is an attempt to summarize, in “non-legalese,” the agreement between Appalachian State University and the Town of Boone relative to agreed upon limits and reach of the Town's jurisdiction over the University and the University's voluntary compliance with the Town's Unified Development Ordinance. It is not meant to supplant the actual provisions of the UDO to which the agreement refers, many of which are themselves written in non-technical language.

The agreement first sets out that ASU will voluntarily comply with the substance and procedures of the UDO to the extent that the provisions apply to the "erection, construction and use of buildings." Within that primary boundary, ASU will submit to Article I through VIII of the UDO. To the extent such articles govern matters beyond this limitation, they will not apply to ASU.

Article I contains general provisions of the UDO, including the geographical limits of the UDO (inside the Town limits and the Town's ETJ). By entering the agreement, ASU acknowledges that the UDO is an extension of previously existing Town ordinances regarding zoning, subdivision control and soil erosion and sedimentation control (the latter of which would not apply to ASU), important for purposes of determining grandfathered rights; that the intention of the Town in adopting the UDO was that interpretation of the UDO by Town staff and Town boards would be informed by reference to the Town's comprehensive development plan, which sets out the general goals of the Town for its future development; acknowledges that the UDO prohibits the use of buildings within the Town's jurisdiction except in conformity with the UDO; acknowledges that the UDO establishes a basis for the charging of fees for the Town's various zoning functions under the UDO, such as the cost of an appeal; acknowledges that other UDO sections would be unaffected and remain in full force and effect even if a particular section were to be found unlawful or invalid; and acknowledges that the computation of time periods provided under the UDO excludes the first day, that time periods are extended if the last day falls on a Saturday, Sunday or legal holiday, and that if a period of time to act is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays are excluded.

The agreement adopts Article II of the UDO, simply a definitional article. ASU agrees that the terms used in the substantive sections relevant to ASU be defined in the way articulated in the definitions.

The agreement adopts Article III of the UDO, which includes descriptions of the powers of the various committees and institutional interpreters of the UDO relative to the creation and enforcement of zoning provisions. The article includes descriptions of the Planning Commission, Community Appearance Commission, Tree Board, Board of Adjustment, planning staff, and Town Council.

The agreement adopts Article IV of the UDO. The first part of Article IV relates to the issuance and impact of zoning and special use permits. The UDO dictates under what circumstances permits are required; creates limitations on the occupancy, use and sale of property when permit requirements have not been complied with, outlines the procedures for applying for zoning permits and special use permits, including procedures before the Board of Adjustment; articulates the vested property interests which accompany the issuance of zoning and special use permits; and creates the procedures and standards for amending and modifying permits. The second part of Article IV of the UDO relates to the creation and requirements of major and minor subdivisions within the Town's jurisdiction.

Articles V and VI of the UDO set out the procedures and forums for appealing adverse decisions made by staff and the Board of Adjustment, the procedures for hearings on requests for variances from the strict enforcement of the UDO, and the procedures for the submission and consideration of applications and modifications of applications for special use permits. These apply to ASU.

Article VII of the UDO details the staff procedures used to enforce the UDO, the specific base and daily monetary penalties for violation of the UDO, and the availability of judicial review of enforcement decisions which are believed to be improper. Remedies included in this section include not only the base monetary penalties, but also enhanced monetary penalties for repeat offenders, the issuance and basis for stop work orders, and the basis for enforcement of UDO provisions by persons other than the Town who have established standing under North Carolina

Law to participate in an enforcement action. Within the confines of the statutory language, ASU is governed by these provisions.

Article VIII of the UDO defines nonconforming situations and uses, i.e., uses of property which existed prior to zoning rules (such as multifamily housing in an area zoned for single residential housing), and conditions (such as buffers which are too narrow, buildings which are too tall, and so on) which do not comply with the current provisions of law but were legal when established. The article describes under what situations the "grandfathered" status can be lost by a one hundred and eighty day interruption or non-continuation of a nonconforming use or situation, and defines when a property owner can maintain the nonconformity when repairs must be made to the nonconforming structures. In general, if the cost of repairing a structure is more than fifty percent of the full value of the structure, it must be brought into compliance with the UDO and its non-conforming status is lost.

Article IX of the UDO creates the different zoning districts within the Town's jurisdiction and adopts an official zoning map for the Town. It also sets out the process for amending the official zoning map of the Town, which includes provision for public notice and a public hearing before action by the Town Council. The portions of Article IX which create overlay districts, such as for floodway protection, major corridor development and neighborhood conservation, do not apply to ASU.

Article X of the UDO lists the appropriate uses of property in particular zoning districts, what accessory uses may be made to property when the main use of the property is of a particular kind, e.g., maintaining an artist's studio within a home in an R-1 zoning district; what constitutes a change in use on property, important since it may trigger strict adherence to the requirements of the UDO; combination uses of property and what permit(s) may be required to institute such uses; and residential occupancy controls in each of the zoning districts, i.e., how many unrelated persons can occupy a single unit in a particular district. As to the last, the number of unrelated persons who can cohabitate ranges from two in an R-1 neighborhood to "five plus" unrelated persons in U-1 (the university district) and M-1 (manufacturing) zoning districts.

Article XI of the UDO is entitled to the Town's "Supplementary Use Regulations." Sections within this article include measures for planned residential developments, planned unit developments, the temporary emergency construction or repair of residences, the use of accessory apartments with primary residences, mining and quarrying operations, fraternity or sorority dwellings, homes emphasizing special service treatment or supervision, open-air markets, parking as a principal use, temporary construction and related structures, the conduct of occupations from the home, adult establishments, manufactured home standards, telecommunication towers and related structures, emissions, odors, air pollution, and electrical disturbances or interference, noise, and dust from manufacturing or processing operations. All sections except restrictions on mining and quarrying and telecommunication towers and related structures apply to ASU.

Article XII of the UDO contains the Town's "intensity" regulations for each zoning district, including U-1, where there are currently no requirements for minimum gross land area and minimum lot width. However, maximum floor area ratios, minimum open space ratios, minimum livability space ratios, minimum recreational space ratios, minimum street setbacks, and minimum interior setbacks are defined and set for all other zoning districts.¹ In the U-1 district, minimum interior setbacks are ten feet; minimum street setbacks are twenty feet; minimum recreation space, i.e., the ratio of total open space set aside for recreational use, to living space and enclosed floor area, is established at .039. Minimum livability space, the ratio of total open space outside of a building, including natural areas, lawns, walkways, paved terraces, sitting areas and outdoor recreational spaces is established at .27, or 27% of the construction project. The total open space required in a U-1 district is set at .71 or 71% of the total area. The maximum floor area, the sum of all enclosed areas on all floors in a building to the full project size, is established at 42.9%.

ASU is not subject to Article XIII of the UDO, which governs watershed protection. This is generally achieved through overlay districts.

¹Although there are no minimum lot widths for MH (manufactured homes zoning district, and few intensity minimum and maximums for the B-1, or central business, district.

Article XIV of the UDO designates the dimensions, grade, construction standards, etc., of streets and sidewalks within the Town. ASU is bound by these provisions.

Article XV of the UDO relates to utilities. The agreement makes applicable to ASU two sections of this article, Section 267, requiring the provision of an "as built drawing" to the Town after construction, showing the Town the location of any water, sewer, or other utility lines, except for electrical utilities constructed by New River Light and Power, and Section 268, which sets forth the requirements for the installation and location of fire hydrants.

Article XVI of the UDO sets out the requirements for grading of land, erosion, and sediment control and will not be applicable to ASU. The article requires submission of a grading plan and topographic survey to the Town prior to any grading activity and adherence to certain grading performance standards, which limit maximum cut-grades and maximum fill grades to two-horizontal-feet-to-one-vertical-foot, and mandates slope stabilization measures when a grade exceeds two to one. The latter requires the involvement of a licensed engineer and the submission of plans to the Town.

Article XVII of the UDO includes the sections regarding protection of flood ways and flood fringes, accomplished by overlay districts, which are inapplicable to ASU, and measures relating to drainage and storm water management. ASU will be bound only by sections 312 through 316, drainage and storm water control provisions. These include the submission of a drainage and storm water management control plan to the Town for its prior review and approval, and a commitment to diligence in the construction of drainage structures. The standards for drainage and storm water management design include a capacity for storm drainage facilities to handle the "10-year discharge," and the capacity for "cross drainage facilities in public streets," to deal with a 25-year discharge. ASU will adhere to standards establishing the rate of runoff of storm water from a development sight, the size and construction of culverts and drainage pipes, the location of buildings relative to drainage culverts, and other technical requirements for storm water control.

Article XVIII of the UDO relates to signs and the regulation of signs in various zoning districts. These do not seek to apply to ASU.

Article XIX of the UDO includes zoning provisions regarding parking, such as the number of parking spaces required with regard to a particular project, the dimensions of parking spaces and widths of parking area aisles, the type of surface materials to be used, and the features of loading and unloading areas, among others. These do not apply to ASU.

Article XX of the UDO creates landscape standards and provides for the screening of one property from another, buffering requirements, street trees and shrubs, and the preservation of existing trees and vegetation. These will apply to ASU only within a 100-foot buffer when ASU's construction site is next to non-ASU owned property.

ASU agrees to furnish its development plans to the Boone Fire Department at the same time that it provides its plans to the North Carolina Department of Insurance, allow the Boone Fire Department a ten (10)-day period in which to make recommendations to ASU, and adhere to those recommendations to the extent the recommendations are needed to ensure the fire department's ability to provide adequate fire protection to the particular development.

The agreement puts to rest the controversy between the Town and ASU, by confirming that construction of a parking garage or other structure which would commonly be identified as a building would be subject to the UDO, but that an uncovered parking lot or uncovered parking deck would not constitute a building and would not be under Town control.

In the agreement, the Town commits to providing planning recommendations and regulatory services to ASU with regard to the specified sections and substantive areas and to limit its inspection of ASU plans and development to the areas where Town control exists. In addition, the agreement includes language for both parties to acknowledge that state-licensed building inspectors have independent powers under state law which can not be limited by agreement.

The Town agrees to give advance notice of any modification of the UDO sections applicable to

ASU to ASU itself through the offices of the University Attorney and the Vice Chancellor for Business Affairs.
The agreement also contains a number of standard contract provisions, such as that jurisdiction of any dispute would be in Watauga County, that the agreement would remain in force and effect unless terminated by one of the parties and that termination could occur upon sixty (60) days' written notice from either party to the other.

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

ADJOURNMENT

On a motion by Council member Clawson, seconded by Council member Mason, Council moved to adjourn at 11:20 p.m.

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

Town Clerk

Mayor