MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
SEPTEMBER 27, 2004

The regular meeting of the Boone Town Council was called to order Monday, September 27, 2004, in the Council Chambers, 1500 Blowing Rock Road. Mayor Velma C. Burnley presided. Council members present were Mayor Pro-Tem Loretta Clawson, Graydon Eggers, Lynne Mason, Bunk Spann and Dempsey Wilcox. Town Attorney Sam Furgiuele was also present. Staff present were Town Manager Greg Young; Town Clerk Freida Van Allen; Finance Director Amy Davis; Resource Director Jim Byrne; Public Services Director Blake Brown; Police Chief Bill Post; Fire Chief Reggie Hassler; Public Utilities Director Rick Miller; Development Services Director John Spear and Personnel Director Peri Moretz.

ANNOUNCEMENTS

Mayor Burnley requested a few moments of silence to pray for hurricane victims, our troops and our country.

TENTATIVE AGENDA ADOPTION

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

-Addition of Adoption of Resolution: Applying for a Capacity Building Grants Program to Consent Agenda.
-Addition of Unscheduled Appearance by Mac Forehand.
-Addition of ASU Issues and McCreary Condemnation to Closed Session.

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

VOTE: Aye-All
Nay-None

CONSENT AGENDA ADOPTION

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

Minutes: August 12, 2004, Quarterly Public Hearing
August 17, 2004, Special Meeting
August 19, 2004, Regular Meeting
Tax Releases: August, 2004

Taxpayer	Year	Amount	Description

Jean Probinsky	2004	$8.48	Value reduced-high mileage,damage
Keri B. Vivona	2004	9.75	Adj for high mileage
Helen T. & William B. Murray	2004	6.76	Turned in tag
Burlon M. Eckerd	2003	77.26	Does not live in TOB
Tereasa L. Hudson	2003	21.61	Lives in Buncombe Co.
O.K. & Betty J. Webb	2003	17.16	Turned in tag
Robert B. & Joann Phillips	2003	73.48	Incorrect fire district
Dean W. Brown	2003	49.26	Lives in Catawba Co.
Deborah L. Cash	2003	26.35	Turned in tag
Bradley R. Smart	2003	35.19	Turned in tag
Hospitality House of Boone Area	2003	32.30	Turned in tag
Kenneth E. Page	2003	56.12	Incorrect tax situs
TOTAL		**$413.72**	

Tax Refunds: August, 2004

Taxpayer	**Year**	**Amount**	**Description**
Ashok & Jill A. Patel	2003	$9.23	Sold vehicle/turned in tag
Ashok & Jill A. Patel	2003	2.00	Sold vehicle/turned in tag
James C. Stanley	2003	14.46	Sold vehicle/turned in tag
Kasey D. Kovalcik	2003	1.77	Sold vehicle
TOTAL		**$27.46**	

Adoption of Resolution: Approving Financing Terms.

WHEREAS: The Town of Boone ("Town") has previously determined to undertake a project for vehicles and equipment, and the Finance Officer has now presented a proposal for the financing of such Project.

BE IT THEREFORE RESOLVED, as follows:

1. The Town hereby determines to finance the Project through Branch Banking and Trust Company ("BB&T"), in accordance with the proposal dated September 1, 2004. The amount financed shall not exceed A. $63,474.00, B. $25,820.00, and C. $137,796.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed A. 2.53%, B. 2.53%, and C. 2.89%, and the financing term shall not exceed A. two (2) years, B. two (2) years and C. three and a half (3.5) years, respectively, from closing.

2. All financing contracts and all related documents for the closing of the financing

(the "Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the Town are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and a Project Fund Agreement as BB&T may request.

3. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by Town officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Officer shall approve, with the Finance Officer's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.

4. The Town shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The Town hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265(b)(3).

5. All prior actions of Town officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

Adopted this 27th day of September, 2004

_____

Mayor

ATTEST:

_____

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 270)

Approval of ASU Homecoming Parade for Saturday, October 23 at 10:00 a.m.

Designation of FEMA Agent: **(EXHIBIT A)**

Adoption of Resolution: Applying for Capacity Building Grants Program.

WHEREAS, The 1998 Critical Needs Bond Act has authorized the making of loans and grants to aid eligible units of government in financing the cost of construction of wastewater treatment works, wastewater collection systems, and water supply systems, water conservation projects, and

WHEREAS, The Town of Boone has need for and intends to construct or rehabilitate a publicly-owned treatment works or an alternate wastewater system, for wastewater collection systems or for water supply and distribution systems, project described as the Town of Boone water supply study; and

WHEREAS, The Town of Boone intends to request grant assistance from the Capacity Building Grants Program for the project;

NOW THEREFORE BE IT RESOLVED, BY THE COUNCIL OF THE TOWN OF BOONE:

That the Town of Boone will arrange financing for all remaining costs of the project, if approved for a grant.

That the Town of Boone will provide for efficient operation and maintenance of the project on completion of construction thereof.

That Jim Byrne, Assistant to the Manager, and successors so titled, are hereby authorized to execute and file an application on behalf of the Town of Boone with the NCREDC (rural center) for a grant to assist in the construction of the project described above.

That Jim Byrne, Assistant to the Manager, and successors so titled, are hereby authorized and directed to furnish such information as the Rural Center may request in connection with such application or the project; to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That the Town of Boone has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to the grants pertaining thereto.

Adopted this the 27th day of September, 2004 at Boone, North Carolina.

_____
Mayor

ATTEST:

_____
Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 271)

VOTE: Aye-All
Nay-None

ADOPTION OF ZONING AMENDMENTS

Planning Director John Spear presented the following zoning text amendment:

Case RZ2004-10 Town of Boone has filed a petition to amend the UDO for the purpose of reducing the regulatory burden on small business. Planning Director Spear reminded Council that the Planning Commission recommended approval of the zoning amendment. Planning Director Spear said since the text amendment was tabled last month, Council has three options for action.

1. Take action on the amendment as recommended by the Planning Commission.
2. Take action on the amendment with modifications of the Planning Commission's recommendation; or
3. Withdraw the application.

Council member Mason thanked the Planning Commission member for their time and efforts on this text amendment; however, she did not want to dilute the intentions of the UDO either. Council member Mason said she is looking for a text amendment that will support redevelopment of small business, while minimizing unintended negative consequences. On a motion by Council member Mason, seconded by Council member Clawson, Council moved to withdraw the application and referred the text amendment to the Planning Commission for further study. Council member Mason suggested the Planning Commission address the following issues when discussing the text amendment:

1. Limiting exemption to certain types of uses;
2. Addressing outdoor storage and displays;
3. Addressing multi-family units;
4. Possibly exempting of 2,800 square-foot-floor area from grading, soil erosion and storm water management sections of UDO provided there is no land-disturbing activity and no enlargement of the existing structure.
5. Considering requiring a redevelopment plan, such as the Town of Cary's.

Each Council member agreed there were certain items about the proposed text amendment that concerned them and that it would be best to study the matter further.

VOTE: Aye-All
Nay-None

PRESENTATION OF DRAFT WATER HYDRAULIC MODEL BY W.K. DICKSON

Mr. David Pond, engineer with W.K. Dickson presented the following draft water hydraulic model via powerpoint: **(EXHIBIT B)** Mr. Pond summarized that the Town's distribution system is in excellent condition with just a few isolated areas that could use improvement. Mr. Pond also said the Town's storage capacity is excellent; however, he suggested the Town begin planning now for raw water expansion. Mr. Pond said the study reflects that the Town's water supply is not what the Town thought it would be. Council member Wilcox asked how the term "housing unit" is defined in the study. Mr. Pond answered that the population of Boone was divided by the total number of connections to determine the housing units already supplied by the Town's water system. Mr. Pond said two persons is considered a "housing unit" in the study. Council member Spann questioned where the Town could get additional raw water. Mr. Pond answered that the Town has three options: expanding the existing reservoir at Winklers Creek, placing a pump station downstream from the Wastewater Treatment Plant, or transferring water from the Watauga River. Council member Wilcox asked what type of approval is needed for transferring water. Mr. Pond said inter-basin transfers are discouraged by the State, but that an environmental impact study would have to be completed. Council member Wilcox then asked if the Town could be forced to inter-connect with the Town of Blowing Rock. Mr. Pond said no, but the matter could be raised if either Boone or Blowing Rock were short of water. After discussing the matter at length, Council members Mason and Wilcox suggested placing the matter on the next agenda to discuss prioritizing future connections.

DBDA APPOINTMENTS

On a motion by Council member Eggers, seconded by Council member Clawson, Council moved to appoint the following members to the Downtown Boone Development Association: All terms will expire 6/30/07.

Teresa Godwin Scott Warren Ben Smith

Dave Jameson will complete the unexpired term of Robert Wolfson. Jameson's term will expire 6/30/05.

RECREATION COMMISSION NOMINATIONS

On a motion by Council member Mason, seconded by Council member Clawson, Council moved to nominate the following individuals to the Watauga County Recreation Commission:

Joe Robinson West Eppley Maggie McFadden

Final appointment is made by the Watauga County Board of Commissioners. If they are appointed terms will expire 12/30/07.

VOTE: Aye-All
Nay-None

COMMUNITY APPEARANCE NOMINATIONS

On a motion by Council member Clawson, seconded by Council member Spann, Council moved to appoint Larry Bordeaux to serve out Patrick Belville's term on the Community Appearance Commission. Mr. Bordeaux's term will expire June 30, 2006.

VOTE: Aye-All
Nay-None

ADOPTION OF BUDGET AMENDMENTS

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

DESCRIPTION	ACCOUNT #	TO:	FROM:
Overtime-Police Department	010-500-300-501201	$23,920.	
FICA-Police Department	010-500-300-508101	1,830.	
Retirement-Police Department	010-500-300-508211	1,143.	
401(K)-Police Department	010-500-300-508221	1,196.	
Fund Balance Appropriated	010-000-000-499900		$28,089.
Fund Balance Appropriated	010-000-000-499900	$421.	
Transfer to Pension Trust Fund	010-500-300-598042		421.

VOTE: Aye-All
Nay-None

REQUESTED APPEARANCE - JOHN COOPER

Mr. John Cooper appeared before Council to request an encroachment agreement for the old Vance Building on North Depot Street. Mr. Cooper said he would like to renovate the building to include a brick facade which would encroach upon the Town's property by a couple of inches. Mr. Cooper also pointed out that the doors would swing out into the pedestrian walkway. Planning Director John Spear relayed that if more than 50 people use the door, then it must be recessed. Council member Clawson said she supports the idea of brick facade and said Mr. Cooper does much to enhance the downtown area. On a motion by Council member Clawson, seconded by Council member Mason, Council moved to adopt the following encroachment agreement:

THIS ENCROACHMENT AGREEMENT, made and entered into this the 27th day of September, 2004 , by and between the **TOWN OF BOONE**, party of the first part; and Mast General Store, Inc. party of the second part,

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

THAT WHEREAS, the party of the second part desires to encroach on the right of way of the public road designated as North Depot Street located between King and Queen Streets with the following: A brick facade on the Old Vance Recapping Building; and

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

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

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

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

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

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such facilities,

within the highway or street rights of way limits, in carrying out its construction and maintenance operations.

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

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

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

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

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

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

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

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

VOTE: Aye-All
Nay-None

REQUESTED APPEARANCE - ROCKY NELSON

Mr. Rocky Nelson, Watauga County Manager, appeared before Council to request a water and sewer tap to a new facility at the Watauga County Landfill. Mr. Nelson said a new transfer station and recycling facility is being constructed; and, once completed, the old facilities will be demolished. Mr. Nelson said this request would not increase the impact to the Town's system since no additional employees are planned at the new facilities. On a motion by Council member Wilcox, seconded by Council member Clawson, Council moved to grant the water and sewer tap at outside rates.

VOTE: Aye-All
Nay-None

REQUESTED APPEARANCE - STEVE JOHNSON

Mr. Steve Johnson of Bostic Construction appeared before Council to request water and sewer service to property located off Hwy. 421. Mr. Johnson said the property is located adjacent to Perkinsville Drive and contains 44.8 acres. Mr. Johnson said 14 acres are located in the corporate limits, 26 acres are in the ETJ, and 4 acres are in Watauga County. Mr. Johnson said Bostic is proposing a mixed-use development of student housing and flex retail space. Mr. Johnson said the student housing complex will contain 372 units/942 bedrooms and will be phased over three-years, with the first units being made available in the fall of 2006. Council member Mason expressed concern about the project especially after receiving the water study report. Council member Spann said he had a similar concern and questioned if the project would be released to the University once completed. Mr. Johnson said that project release was not in their plans and that Bostic has never released a project, once completed. After some discussion regarding traffic impact on Perkinsville Drive, Council member Mason made a motion to table the request until Council has time to study the water study more thoroughly. Council member Clawson seconded. Before voting, Mr. Johnson requested that Council make a decision on the request at the October 21st meeting. Council member Wilcox agreed that Council should give Bostic an answer as soon as possible. Town Manager Greg Young suggested reviewing water flow for the month of October to gauge the maximum daily demand. Mr. Johnson then asked how Council plans to prioritize water taps. Council member Wilcox responded that Council would investigate commitments in the corporate limits and then survey the primary growth area. Council member Spann responded that Council is not deliberately delaying the project but that he was unsure that a decision would be available in three weeks either.

VOTE: Aye-All
Nay-None

UNSCHEDULED APPEARANCE - MAC FOREHAND

Mr. Mac Forehand, Director of the Boone Convention and Visitors Bureau appeared before Council to request additional funding for the Boone Convention and Visitors Bureau. Mr. Forehand said with the recent flooding in the area it is perceived that our area is devastated and not "open for business." Mr. Forehand said an additional $10,000 is needed for immediate advertising in target areas to spread the word that the Boone area is fine and "open for business." Council member Wilcox felt this is an investment, not only for Town businesses, but also the Town's budget. On a motion by Council member Spann, seconded by Council member Wilcox, Council moved to allocate $10,000 to the Boone Convention and Visitors Bureau for additional advertising.

VOTE: Aye-All
Nay-None

CLOSED SESSION

On a motion by Council member Wilcox, seconded by Council member Spann, Council moved to enter Closed Session at 9:25 p.m. pursuant to NCGS 143-318.11a)3) in order to discuss the MESCO litigation, White Laurel litigation, ASU issues and the McCreary condemnation.

VOTE: Aye-All
Nay-None

On a motion by Council member Spann, seconded by Council member Clawson, Council moved to exit Closed Session at 10:55 p.m.

VOTE: Aye-All
Nay-None

ADOPTION OF SETTLEMENT AGREEMENT WITH MUNICIPAL ENGINEERING

On a motion by Council member Mason, seconded by Council member Clawson, Council moved to reject the mediated settlement with Municipal Engineering dated September 14, 2004 because of numerous violations of the agreement and to adopt the following proposed, revised settlement agreement:

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

AGREEMENT

This Agreement, entered into this ___ day of _____, 2004, by and between Municipal Engineering Services Company, P.A., ("Municipal") and the Town of Boone ("Town"):

1. Town will pay Municipal $25,000 within 5 days of the ratification of this Agreement.

2. The Town will not oppose placement of a plaque on the historical site (Daniel Boone Memorial) of the same size and prominence and position as other providers of professional services to the historical monument site. This provision shall not require placement of a plaque if no such plaques are displayed.

3. Town and Municipal will dismiss with prejudice all claims and counterclaims, respectively, in the 04-CvS-87 and 04-CvS-110 cases (the "lawsuits").

4. Municipal and Town will join in signing a mutual, reciprocal general release prepared by the Town Attorney, each holding the other harmless from all claims and causes of action arising out of the transactions and occurrences alleged in the above-referenced lawsuits, as well as to any and all, but not limited to, claims, causes of actions and demands known or unknown existing as of the date of signing of this Agreement. Town shall not be responsible for any future work not in writing and not ratified by Town Council.

5. Services of Municipal Engineering Services Company, P.A., and Skyline Surveyors, Inc. will be considered and not excluded from doing future work for the Town of Boone. This provision is not intended as a promise from Town to give future work to Municipal.

6. All orders dictated to attorneys by Judge Charles Lamm will be prepared and submitted to the Court in accordance with the Judge's Orders.

7. Each party hereto shall pay its own costs and expenses, including attorney's fees. The parties shall share equally the mediator's fee.

VOTE: Aye-All
Nay-None

ADJOURNMENT

On a motion by Council member Eggers, seconded by Council member Wilcox, Council moved to adjourn at 11:00 p.m.

VOTE: Aye-All
Nay-None

Town Clerk

Mayor