

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
OCTOBER 21, 2004**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, October 21, 2004, in the Council Chambers, 1500 Blowing Rock Road. Mayor Velma C. Burnley presided. Council members present were Mayor Pro-Tem Loretta Clawson, Graydon Eggers, Lynne Mason, Bunk Spann and Dempsey Wilcox. Town Attorney Sam Furguele was also present. Staff present were Town Manager Greg Young; Town Clerk Freida Van Allen; Deputy Town Clerk Kim Tester; Finance Director Amy Davis; Personnel Director Peri Moretz; Resource Director Jim Byrne; Police Chief Bill Post; Fire Chief Reggie Hassler; Development Services Director John Spear; Public Services Director Blake Brown; and Public Utilities Director Rick Miller.

ANNOUNCEMENTS

Mayor Burnley observed a few moments of silence in support of our troops, our nation and the Sudanese people.

Public Services Director Blake Brown recognized Raymond Brown for 20 years service with the Town of Boone. General Maintenance Supervisor Eric Gustaveson said that Raymond is a familiar face in the Town's neighborhoods and that he always has a positive attitude while he works. Mayor Burnley agreed and said Town crews always receive many compliments on the jobs they do.

TENTATIVE AGENDA ADOPTION

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

Deletion of Item 6.B. - Requested Appearance - Bostic Development.
Change Update on Bear Trail to Action instead of Information.

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 Eggers, seconded by Council member Clawson, Council moved to adopt the following consent agenda items:

Minutes: September 27, 2004, Regular Meeting
Tax Releases: September, 2004

Taxpayer	Year	Amount	Description
Dennis, Danny L. & Brenda C.	2004	34.79	Lives in Durham Co.
Rose, Kenneth B.	2004	68.95	Lives in Ashe Co.
Freeman, John J.	2004	8.87	Turned in tag
Kirk, Johnie J.	2004	58.19	Incorrect tax situs
Patel, Ushaben S.	2004	4.47	Sold vehicle
ASU Athletics	2004	49.30	Exempt
Wilson, Joan W.	2004	143.20	Mis-transfer
Town of Boone	2004	14.40	Exempt
Grice, Jason P.	2003	5.98	Sold vehicle
Rook, Randy L. & Andrea Z.	2003	23.35	Overlapped Temp Plates
Edge, Anna M.	2003	4.99	Turned in tag
TOTAL		\$416.49	

**MSD TAX RELEASES
SEPTEMBER, 2004**

Taxpayer	Year	Amount	Description
Town of Boone	2004	7.56	Exempt
Tereasa L. Hudson	2003	11.63	Lives in Buncombe Co.
TOTAL		\$19.19	

Tax Refunds: September, 2004

Taxpayer	Year	Amount	Description
Childers, Gary L. & Emily	2003	.78	Turned in tag
Uzelac, Douglas J.	2003	1.17	Turned in tag
TOTAL		\$1.95	

Adoption of Resolution: Approving Watauga County Hazard Mitigation Plan.

WHEREAS, the citizens and property within Town of Boone are subject to the effects of natural hazards and man-made hazard events that pose threats to lives and cause damages to property, and with the knowledge and experience that certain areas, i.e., flood hazard areas, are particularly susceptible to flood hazard events; and

WHEREAS, the Town desires to seek ways to mitigate situations that may aggravate such circumstances; and

WHEREAS, the Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Legislature of the State of North Carolina has in Section 1 Part 166A of the North Carolina General Statutes (adopted in Session Law 2001-214—Senate Bill 300 effective July 1, 2001), states in Item (a) (2) “For a state of disaster proclaimed pursuant to G.S. 166A-6(a) after November 1, 2004, the eligible entity shall have a hazard mitigation plan approved pursuant to the Stafford Act”; and

WHEREAS, Section 322 of the Federal Disaster Mitigation Act of 2000 states that local government must develop an All-Hazards Mitigation Plan in order to receive future Hazard Mitigation Grant Program Funds, and

WHEREAS, it is the intent of the Town Council of the Town of Boone to fulfill this obligation in order that the Town will be eligible for state assistance in the event that a state of disaster is declared for a hazard event affecting the Town;

NOW, therefore, be it resolved that the Town Council of the Town of Boone hereby:

1. Adopts the Town of Boone Hazard Mitigation Plan; and
2. Vests the Town Manager with the responsibility, authority, and the means to:
 - (a) Inform all concerned parties of this action.
 - (b) Cooperate with Federal, State and local agencies and private firms which undertake to study, survey, map, and identify floodplain or flood-related erosion areas, and cooperate with neighboring communities with respect to management of adjoining floodplain and/or flood-related erosion areas in order to prevent aggravation of existing hazards.
 - (c) Adjust the boundaries of Watauga County and the municipal planning jurisdiction whenever a municipal annexation or extraterritorial jurisdiction revision results in a change whereby the municipality assumes or relinquishes the authority to adopt and enforce floodplain management regulations for a particular area in order that all Flood Hazard Boundary Maps (FHBM)s and Flood Insurance Rate Maps (FIRM)s accurately represent current planning jurisdiction boundaries. Provide notification of boundary revisions along with a map suitable for reproduction, clearly delineating municipal corporate limits and extraterritorial jurisdiction boundaries to all concerned parties.
3. Appoints the Town Manager to assure that the Hazard Mitigation Plan is reviewed annually

and in greater detail at least once every five years to assure that the Plan is in compliance with all State and Federal regulations and that any needed revisions or amendments to the Plan are developed and presented to the Town of Boone Town Council for consideration.

4. Agrees to take such other official action as may be reasonably necessary to carry out the objectives of the Hazard Mitigation Plan.

Adopted on October 21, 2004.

Mayor

Attest:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGES 272-273)

Adoption of Contract: Watauga County Board of Education

This Agreement, entered into this 21st day of October, 2004 between Watauga County Board of Education, a public body corporate organized and existing under the Constitution and laws of the State of North Carolina, hereinafter referred to as the "School Board," and Town of Boone, a municipal corporation organized and existing under the laws of the State of North Carolina, through its Police Department, hereinafter referred to as the "Police Agency,"

Witness that:

The School Board and Police Agency mutually agree as follows:

1. That the School Board shall:

- a. Provide funds, not to exceed \$46,927 for services rendered by Police Agency during the term of this agreement, to the Police Agency for providing, through a law enforcement officer employed by Police Agency, those services set forth in this agreement and the attachments hereto.
- b. Develop desired schedule of work for the School Resource Officer, understanding that the School Resource Officer will comply with the Town of Boone Personnel Policies as a Town of Boone employee.

2. That the Police Agency shall:

- a. Cause to be provided for and on behalf of the School Board one school resource officer to carry out the duties and responsibilities listed in this agreement. The School Board or

their representatives will approve the officer to be assigned.

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

3. **Reporting Authority:**

- a. For issues of school policy, the School Resource Officer will follow recommendations and coordinate activities with Watauga High Administration.
 - b. For all other law enforcement duties and general supervision as per Town of Boone and Boone Police Department Personnel Policy, the School Resource Officer will report to the Boone Police Department.
4. This agreement shall remain in effect from July 1, 2004 until June 30, 2005, unless terminated sooner pursuant to Section 9 of this agreement.

5. **Performance Responsibilities:**

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

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

6. **Prevention:**

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

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

7. **Intervention:**

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

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

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

9. **Termination:**

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

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

North Carolina.

Adoption of Code Amendment: Parking Control Devices.

75.01 DEFINITIONS.

PARKING CONTROL DEVICE OR METHOD - For purposes of this Chapter, a “parking control device or method” shall include, but not be limited to, the use of any mechanical device, such as a ‘boot’ or other device or instrument intended to disable a vehicle or prevent a vehicle from being removed from a private parking lot or space, or the imposition of a private charge for the removal of a vehicle from a private parking lot or space, or any other non-consensual means by which a vehicle is prevented from being removed from a parking lot or space.

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 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.”
- 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.
- C. It shall be unlawful for any person operating or in control of a parking lot or space to state, or for any such person to otherwise inform the owner or operator of an unauthorized vehicle that the Boone Police Department has any enforcement role with regard to the unauthorized use of a private parking lot or parking space.

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 section 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.

Adoption of Code Amendment: Knox Boxes.

§92.37 Knox Box.

- A. Knox Box Required. A Knox box key entry system is required in all new and existing commercial and multi-tenant residential structures containing automatic sprinkler systems and or fire alarm systems.
- B. An authorization order form shall be obtained from the Fire Prevention Bureau, which will identify the appropriate size, type and placement of the key box.
- C. Notwithstanding the sale of the structure or change of tenant, the owner/tenant is responsible for all entry keys for that business retained in the Knox box to be current at all times.
- D. Exceptions for existing structures:
1. For existing commercial and multi-tenant residential structures presently without a Knox box system but, otherwise containing an automatic sprinkler system and or alarm system prior to January 1996, a Knox box is not required.
 2. Response to the structure shall be provided by the owner or a designated key holder within 15 minutes of the initial alarm for fire department access. This shall be provided 24 hours a day, 365 days a year.
 3. A current list of key holders shall be submitted to the Fire Prevention Bureau.
 4. Failure to meet these requirements shall automatically constitute the immediate conformance to the Knox box key system designated and described by this chapter.

VOTE: Aye-All

Nay-None

AWARDING OF BID - CENTURION STREET SWEEPER

Public Services Director Blake Brown requested that Council award a bid for a Centurion street sweeper in the amount of \$196,126.22. Mr. Brown said this street sweeper uses a dry system and has a filtering system so dust will not be noticeable. Mr. Brown said this street sweeper will last between 10-12 years and will do a better job than other sweepers because it cleans in one sweep. Council member Spann asked the age of the current sweeper. Mr. Brown said it is 8-years old and is starting to fail mechanically. On a motion by Council member Clawson, seconded by Council member Mason, Council moved to award the bid for the Centurion street sweeper to Tennant in the amount of \$196.126.22.

VOTE:Aye-All

Nay-None

ADOPTION OF LEASE - WATAUGA COUNTY INDUSTRIAL FIELDS

Town Manager Greg Young said the Town leased the Industrial Fields to Watauga County in 1979 for 25 years. That lease expired August 31, 2004. Town Manager Young said the Town Attorney reviewed the lease agreement and prepared an updated lease, with another 25-year, \$1-per-year term. On a motion by Council member Mason, seconded by Council member Eggers, Council moved to adopt the following lease:

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF WATAUGA

THIS LEASE AGREEMENT is made this the ____ day of _____, 2004, by and between the **Town of Boone**, a North Carolina Municipal Corporation, hereinafter referred to as "**Lessor**" and **Watauga County**, a body politic of the State of North Carolina, hereinafter referred to as "**Lessee**," collectively referred to as the "parties."

1. **Leased Premises:** The **Lessor** hereby leases to the **Lessee** that certain piece, parcel or lot of land situated, lying and being in Boone Township, Watauga County, North Carolina, and improvements thereto, more particularly described in "Exhibit 'A,'" incorporated by reference herein, and hereinafter referred to as "the premises."
2. **Term:** The term of this lease shall be twenty-five years, commencing on _____, 2004 and ending on _____, 2029, but in accordance with the provisions herein, may be renewed from time to time by the parties. Renewal of this lease for any additional periods of time, however, shall only be effective with the approval of the Boone Town Council.
3. **Rent:** The rent for the above-described premises is one dollar (\$1.00) per year, and shall be due and payable on the date the Lease is executed and on a like date on each succeeding calendar year.
4. **Repairs and Maintenance:** **Lessee** accepts the leased premises in their current condition. The **Lessee** shall provide all maintenance necessary to keep the premises in good and

sanitary condition. Unless expressly assumed by **Lessor**, **Lessee** shall also be responsible for all repairs necessary to maintain the premises and any improvements in safe, sanitary and good condition. Any repairs made to the premises shall be done in a workmanlike manner and shall become the property of **Lessor**. In making any repairs, **Lessee** shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all relevant federal and state laws relating to its operation of facilities and enterprises open to the public. At the conclusion of the lease, **Lessee** shall return the premises in as good condition as they were received by Lessee.

5. **Alterations:** **Lessee** agrees to neither make nor arrange for any permanent alterations to the premises without the advance written approval of **Lessor**. Should any alterations be approved by **Lessor**, they shall be done in a workmanlike manner, and they shall become the property of **Lessor**. In making any alterations, **Lessee** shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all relevant federal and state laws relating to its operation of facilities and enterprises open to the public. Should **Lessee** erect any building or improvements upon the leased premises, unless they can be removed without damage to the leased premises, they shall become the property of **Lessor**. At the conclusion of the lease, any building or improvement left on the leased premises shall become the property of **Lessor**.
6. **Compliance with Laws:** In particular, and not by way of exclusion, in any and all its actions and activities, **Lessee** will comply with and hereby certifies its compliance with the Americans with Disabilities Act, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Fair Labor Standards Act, as amended, the Occupational and Health Safety Act, as amended, the North Carolina Employment Security Act, as amended, and the North Carolina Worker's Compensation Act, as amended, to the extent each such law applies to **Lessee** and/or any of its activities.
7. **Assignments or Subletting:** The **Lessee** shall not assign nor sublease the premises without the prior written consent of the **Lessor**. No sublease or assignment to a private entity shall be approved unless the sub-lessee or assignee shall provide adequate liability insurance protection for its activities and actions, which insurance protection inures to the benefit of **Lessor**, and unless the sub-lessee or assignee agrees to defend, indemnify and hold harmless **Lessor** from all claims, demands and liability of any kind whatsoever. All proposed subleases or assignments must be in writing and shall be submitted to **Lessor** at least thirty days in advance of the proposed effective date of the sublease or assignment. All proposed assignments and subleases shall include, and all assignees and sub-lessees shall execute, a written waiver absolving Lessor of any and all responsibility for damage which might occur to the assignees or sub-lessees or their personal property. **Lessor** shall have no responsibility to approve any proposed sublease or assignment and may reject any such proposal for any reason which **Lessor**, in its sole discretion, considers adequate. .
8. **Utilities:** The **Lessee** shall be responsible for paying all utility costs incurred in

connection with its use of the premises, including all charges for electricity, heat, water and sewer. **Lessee** shall provide all lighting necessary for its activities.

9. **Keys and Locks:** At the end of the lease term, **Lessee** shall return or turn over all keys which relate to the premises to **Lessor**.
10. **Insurance:** The **Lessee** shall provide and maintain insurance coverage against loss, destruction, or other damage to its property located on the premises, as well as against all risks for which **Lessee** is required to indemnify and hold **Lessor** harmless. **Lessee's** liability insurance coverage shall provide coverage for personal injury or bodily harm occurring during the term of the lease, whensoever a claim is made, in an amount no less than two million dollars (\$2,000,000.00) per occurrence, and shall insure against injuries or damages which occur as a result of **Lessee's** own operations, as well as the operations of any assignee or sub-lessee approved by **Lessor**. Certificates of insurance for each insurance policy required to be obtained by **Lessee** in compliance with this paragraph shall be filed and maintained with **Lessor** annually during the term of the Lease. **Lessee** shall immediately advise **Lessor** of any assertion of claim or litigation that may result in a claim of liability against **Lessor**.
11. **Lessor's Right to Enter Premises:** The **Lessor** reserves the right and may enter the premises at any reasonable time for the purpose of inspecting said premises, making such repairs as the **Lessor**, in its sole discretion, desires to make, and for any other purpose in any way related to **Lessor's** ownership or **Lessee's** use of the premises. **Lessor** specifically reserves the right to go upon, cross and install upon the leased premises any water and/or sewer lines, provided, however, that **Lessor** shall restore any portion of the surface off the leased premises disturbed by **Lessor** to the condition that such surface existed immediately prior to such installations.
12. **Use of Premises:** Should **Lessee** fail to use the leased premises for a period of time exceeding one continuous year, this failure shall be considered its abandonment of the premises, and this lease shall terminate. When the leased premises are not in use, **Lessee** shall properly secure and make safe all structures, and shall either remove or secure and make safe any portable structures. The **Lessee** shall not use or knowingly permit any part of the Leased Premises to be used for any purpose which violates any law, and **Lessee** shall comply with all land use ordinances of **Lessor**. This Lease does not and shall not be construed to establish or create a partnership, joint venture, franchise or other form of business association between **Lessor** and **Lessee**.
13. **Default:** If the **Lessee** defaults in the payment of rent or in the performance of any of the conditions of this Lease or its responsibilities thereunder, all of which are deemed material, the **Lessor** may give the **Lessee** written notice of default for the first violation. If the **Lessee** does not cure said default within seven (7) days after the receipt of notice thereof, the **Lessor** may terminate this Lease. In the event of any repeated violation by **Lessee** of its responsibilities under this Lease, **Lessor** may terminate the Lease without affording **Lessee** any further opportunity to cure its violation. On the date specified in any such notice of default (unless the default is cured) or notice of termination, this Lease

shall terminate and the **Lessee** shall at once quit and surrender the premises to the **Lessor**. If this Lease is terminated by the **Lessor**, it may thereafter resume possession of the premises by any lawful means and remove the **Lessee** and any other occupants and their property therefrom.

14. **Abandoned Property**: Following the termination of this lease, by action of **Lessor** or the expiration of the term without renewal, any property left by **Lessee** on the premises shall be considered abandoned and may be retained by or disposed of by **Lessor** as it sees fit.
15. **Indemnity**: The **Lessee** shall defend, indemnify and hold harmless the **Lessor** from any and all claims, actions, damages, and liability associated with personal injury and/or damage to property and/or any other matter arising out of any occurrence in, upon or at the premises, or associated with any act or omission of the **Lessee**, its agents, employees or invitees, or associated with **Lessee's** use of the premises. In the event that the **Lessor** is made a party to any litigation brought against the **Lessee** or by reason of the **Lessee's** use or occupancy of the premises, the **Lessee** shall defend, protect and hold harmless the **Lessor** from any and all liability that may result therefrom, including **Lessor's** costs in defending itself against any claim, action, litigation or other assertion of liability.
16. **Modification of Lease**: This Lease Agreement contains all of the terms and conditions agreed to by the **Lessor** and the **Lessee** concerning the Lease of the above-described premises. There are no oral terms or conditions agreed to by the parties hereto which are not contained in this written agreement. There shall be no modification of this Lease Agreement unless the modification is in writing and signed by both parties.
17. **Governing Law and Venue**: This Lease shall be governed by and construed in accordance with the laws of the State of North Carolina, and venue of any dispute between the parties shall be in Watauga County, North Carolina.
18. **Execution**: **Lessor** and **Lessee** each represent and warrant to the other that all necessary authorizations and approvals required for execution and performance of this Lease have been given and that the undersigned individual is duly authorized to execute this Lease and bind the party for which it signs.
19. **Notices**: All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered to the following addresses:

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

If to **Lessee**, to: Rocky Nelson
 County Manager
 Watauga County

842 West King Street
Boone NC 28607

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

VOTE:Aye-All
Nay-None

TDA APPOINTMENTS

On a motion by Council member Clawson, seconded by Council member Mason, Council moved to appoint Jim Wooten, Edward Brown and Jim Martin to 3-year terms on the Tourism Development Authority. Terms will expire 10/31/07.

VOTE:Aye-All
Nay-None

RESIDENTIAL OCCUPANCY TASK FORCE APPOINTMENT

Planning Director John Spear said task force members Pat Vines, Gene Miller and Gayle Turner resigned from the Task Force because of scheduling conflicts. The remaining task force members nominated William Pollard for appointment. On a motion by Council member Wilcox, seconded by Council member Clawson, Council moved to appoint Mr. Pollard to the task force.

VOTE:Aye-All
Nay-None

ADOPTION OF ORDINANCE TO INITIATE LEGAL ACTION AGAINST JENNIFER FALLIN

Town Attorney Sam Furgieuele said this ordinance will allow him to initiate legal action against Jennifer Fallin. Ms. Fallin struck a fire hydrant last winter, an action which cost \$1,117.88 to repair. Town Attorney Furgieuele said numerous statements have been sent to Ms. Fallin and there is still no payment on her part. On a motion by Council member Wilcox, seconded by Council member Mason, Council moved to adopt the following ordinance:

ORDINANCE # 04-07

WHEREAS, the Town of Boone operates a water and sewer system and a fire department in Boone, North Carolina, pursuant to its powers enumerated in Articles 14 and 16, Chapter 160A of the North Carolina General Statutes; and

WHEREAS, pursuant to said powers, the Town has a system of fire hydrants throughout the Town of Boone; and

WHEREAS, North Carolina General Statutes § 160A-11 grants the Town the same rights as private property owners in the property owned by the Town, North Carolina General Statutes § 160A-12 authorizes the Town to enforce its rights in conformity with the duly enacted ordinances of the Town; and

WHEREAS, Jennifer Annette Fallin, a resident of Mountain City, Tennessee, on or about February 25, 2004, was operating a vehicle which struck and damaged a Town of Boone fire hydrant located on Old Bristol Road, causing damage to the fire hydrant in the amount of \$1,117.88; and

WHEREAS, despite repeated demands for payment Jennifer Annette Fallin has failed and refused to pay the amount due, or any amount toward the amount due; and

WHEREAS, Jennifer Annette Fallin has been notified, by letter dated September 9, 2004, that unless she made immediate arrangements to address the aforesaid non-payment, the Town would consider instituting a civil action against her, but she has made no response whatsoever to such notice;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA, PURSUANT TO N.C. GEN. STAT. § 160A-11 and 160A-12, AS FOLLOWS:

The Town Attorney is ordered to initiate a legal action in the General Court of Justice, District Court Division in Watauga County, North Carolina against Jennifer Annette Fallin, seeking recovery of \$1,117.88, and available costs, including attorney's fees, if warranted, for her failure to pay for damage caused to Town property.

Adopted this 21st day of October, 2004.

Mayor

Attest:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGE 250)

VOTE: Aye-All

Nay-None

ADOPTION OF ORDINANCE TO INITIATE LEGAL ACTION AGAINST BARE BROTHERS

Town Attorney Sam Furguele said this is a similar ordinance in that Bare Brother Moving Company removed a water meter and it cost \$559.51 to replace. Town Attorney Furguele said

several attempts have been made to seek reimbursement and that he will try to collect one more time before initiating legal action. On a motion by Council member Eggers, seconded by Council member Clawson, Council moved to adopt the following ordinance:

ORDINANCE # 04-08

WHEREAS, the Town of Boone operates a water and sewer system in Boone, North Carolina, pursuant to its powers enumerated in Article 16, Chapter 160A of the North Carolina General Statutes; and

WHEREAS, Bare Brothers House Movers, Inc., a corporation organized and existing under the laws of North Carolina, on or about January 22, 2004, removed a water meter belonging to the Town of Boone, which resulted in the Town incurring costs and expenses in the amount of \$559.51; and

WHEREAS, despite repeated demands for payment; Bare Brothers House Movers, Inc., has failed and refused to pay the amount due, or any amount toward the amount due; and

WHEREAS, Bare Brothers House Movers, Inc., has been notified, by letter dated September 9, 2004, that unless it made immediate arrangements to address the aforesaid non-payment, the Town would consider instituting a civil action against it, but Bare Brothers House Movers, Inc has made no response whatsoever to such notice; and

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA, PURSUANT TO N.C. GEN. STAT. § 160A-11 and 160A-12, AS FOLLOWS:

The Town Attorney is ordered to initiate a legal action in the General Court of Justice, District Court Division in Watauga County, North Carolina against Bare Brothers House Movers, Inc., seeking recovery of \$559.51, and available costs, including attorney's fees, if warranted, for its failure to pay for the aforesaid damages and expenses caused to the Town.

Adopted this 21st day of October, 2004.

Mayor

Attest:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGE 251)

VOTE: Aye-All

Nay-None

ADOPTION OF ORDINANCE TO INITIATE LEGAL ACTION AGAINST WILLIAM LUZA AND AILSA MILLER

Town Attorney Sam Furgiuele said this ordinance will initiate legal action against William Luza and Ailsa Miller for the refusal of demolition or to provide improvements for structures located at 191 and 210 Moretz Streets. Town Attorney Furgiuele said the structures are in a dangerous condition and that the Building Inspector, Jesse Horner, condemned the structures in August, 2004. On a motion by Council member Mason, seconded by Council member Eggers, Council moved to adopt the following ordinance:

ORDINANCE # 04-09

WHEREAS, the Town of Boone has been granted the power to regulate development, pursuant to N.C. Gen. Stat. § 160A-360, *et seq.*; and

WHEREAS, said authority includes the power to condemn unsafe buildings, in accordance with the provisions of N.C. Gen. Stat. § 160A-426; and

WHEREAS, on or about June 7, 2004, two structures located at 191 Moretz Drive, Boone, North Carolina, and 210 Moretz Drive, Boone, North Carolina, within the jurisdiction of the Town of Boone, following inspection by a duly authorized inspector for the Town of Boone, Jesse Horner, Senior Building Inspector for the Town of Boone, were condemned after said building inspector concluded that the structures were in such conditions as to create a fire and safety hazard, and were dangerous to life and health, and likely to contribute to disease, vagrancy and to create a danger to children; and

WHEREAS, following an opportunity for the owners of the properties, William Luza and Ailsa Miller, to present evidence relating to the condition of the properties, Jesse Horner issued, on June 17, 2004, orders to demolish and remove the structures by August 23, 2004; and

WHEREAS, the owners of the properties, William Luza and Ailsa Miller, did not appeal either order, and have failed and refused to comply with the orders, to demolish and remove said structures, or to otherwise render them safe; and

WHEREAS, N.C. Gen. Stat. § 160A-432 authorizes the Town to initiate such legal action as necessary to prevent, restrain, correct, or abate the violations or to prevent the occupancy of the buildings or structures involved;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA, PURSUANT TO N.C. GEN. STAT. § 160A-432, AS FOLLOWS:

The Town Attorney is ordered to initiate a legal action in the General Court of Justice in Watauga County, North Carolina against William Luza and Ailsa Miller and such other parties, if any, as may be necessary, seeking a mandatory injunction requiring William Luza and Ailsa Miller to immediately and permanently abate their failure to comply with the order of the Building Inspector and to prevent, restrain, correct, or abate the violation and to prevent the occupancy of the building or structure involved, located at 191 Moretz Drive, Boone, North Carolina, and 210 Moretz Drive,

Boone, North Carolina, and seek attorney's fees and costs, as available.

Adopted this 21st day of October, 2004.

Mayor

Attest:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGE 252)

VOTE: Aye-All

Nay-None

WATER STUDY RECOMMENDATIONS

Public Utilities Director Rick Miller presented the following recommendations:

As you are aware, W.K. Dickson has completed the "draft" water system hydraulic analysis and master plan for the Town of Boone Public Utilities Department. I am sure after reviewing the information included in this study you may have many questions concerning the priority of planning we must now complete. This memorandum is to serve as suggestion for action.

Adoption of Water System Hydraulic Analysis and Master Plan

The information you have reviewed is only in "Draft" format. The Public Utilities Department is recommending that Town Council not officially adopt this study and the findings included within it until the November Town Council meeting. This will allow the Water Treatment Facility ample time to calculate the MDD (maximum day demand) for October 2004. If the MDD for 2004 is lower than the 2.6 million gallon day that occurred in October 2003, the report will need to be changed to reflect that information. As of today's date, the MDD at the Water Treatment Facility is 1.893 million gallons and occurred on Friday, October 8.

Raw Water Supply Study

As recommended in the study, this is an "immediate" area of importance and needs to be completed as expediently as possible. The Public Utilities Department recommends that Town Council take consideration of a contract for completion of this study and appropriation of funding for this study. A matching grant has been applied for, of which our portion will be \$40,000.00. No further information has yet been received.

Prioritize Use for Remaining Water Taps

Careful consideration needs to be exercised for all requests made for water service from the Town of Boone. Town Council may wish to establish a water-use committee to study and recommend priorities for the remaining water taps that are available.

Water Treatment Facility Expansion Study

This study is not needed at this time, but will be required in the future as dictated upon the completion of the Raw Water Supply Study.

Raw Water Intake/ Water Facility Design

These designs are not needed at this time, but will be required in the future as dictated upon the completion of the Raw Water Supply Study.

Raw Water Intake/ Water Treatment Facility Construction

This process could take up to four years to complete, but, is not needed at this time. However, it will be required in the future as dictated upon the completion of the Raw Water Supply Study.

Future Interconnections and Service Areas

5. **Town of Blowing Rock Interconnect and US Highway 321 Service Area...** *The Water System Hydraulic Analysis and Master Plan identifies this item as a minimal priority. The Public Utilities Department encourages Town Council to remember that the Town of Blowing Rock has already acquired permission from the State of North Carolina to install a raw water main and a finished water transmission main to a site on Payne Branch Road. This finished water main will be owned by Blowing Rock, thus creating revenue for that entity. Town Council may wish to reprioritize this item to avoid a potential service area loss along the US Highway 321 corridor. Town Council may wish to establish a water-use committee to study and recommend priorities for development of future service areas.*
6. **Appalachian State University Emergency Interconnect...** *The Water System Hydraulic Analysis and Master Plan defines this as an immediate need. As of today's date, ASU has not contacted Town personnel about such a request. The Public Utilities Department recommends that, until contact between the two entities takes place this should not be considered a high priority issue.*
7. **Distribution System Improvements and Future Service Areas...** *The possible areas that were recommended in the study include Project 1, the Southwest Improvements, and Projects 2 & 3, Eastern Expansion Area. Project 1 is an area discovered during the modeling process that has inadequate system pressures. Projects 2 & 3 were selected by the Public Utilities Department as a possible future service area and should only be considered as such. As stated previously, Town Council may wish to establish a water-use committee to study and recommend priorities for development of future improvements and service areas.*

Distribution System Hydraulics

The Water System Hydraulic Analysis and Master Plan states "The existing water distribution system is in excellent condition with only a few areas needing attention." With exception to the Project 1, The Southwest Improvements, and Consolidation of Pressure Zones, the Public

Utilities Department staff has started investigation into correction of the other issues. Chlorine residuals at the water storage tanks have been taken and will be reevaluated with additional samples at a later date and the Glenbridge pressure problems are being investigated.

In conclusion, difficult decisions lie ahead in our planning process and will require a priority order to assist in implementation. Some of these decisions may require new policies and procedures to assist staff in preparing the water system for future growth. Many of these decisions will need to be evaluated and compared with other long-range plans the Town has in place. Town Council may wish to form a water-use committee to assist in such evaluations and comparisons, as well as make recommendations on aforementioned items as well.

Council member Mason asked how many new taps the Town has had over the past year. Public Utilities Director Miller said he was unsure without reviewing quarterly reports. Council member Mason then asked why the maximum daily demand that was cited in the Water System Hydraulic Analysis and Master Plan was so high in 2003. Mr. Miller said there was a major water leak at Deerfield Road. Council discussed at length tank pressure zone and agreed that consolidation of pressure zones should be addressed soon. Public Utilities Director Miller said that ASU will formally request the interconnection via letter to the Town Manager. After some discussion, on a motion by Council member Mason, seconded by Council member Mason, seconded by Council member Spann, Council moved to defer adoption of the Water System Hydraulic Analysis and Master Plan until final maximum daily demand figures are available from October, 2004.

VOTE:Aye-All

Nay-None

Council member Mason then made a motion to appoint a committee consisting of the Town Manager, Public Utilities Director, Development Services Development, two Council members, two Planning Commission members, a community member and developer that will develop priorities for the remaining taps and address future interconnections and consolidation of pressure zones. The committee should meet and have recommendations ready by the November Council meeting. Council member Clawson seconded the motion. Council member Wilcox suggested that all the Council members be included on the committee which would constitute a special meeting. Both Council members Mason and Clawson accepted this suggestion as a friendly amendment to the motion.

VOTE:Aye-All

Nay-None

ADOPTION OF CONTRACT WITH W.K. DICKSON FOR RAW WATER SUPPLY ALTERNATIVES

Public Utilities Director Rick Miller said by adopting this contract W.K. Dickson will start the next phase by evaluating raw water supply alternatives. The cost of this study will be \$15,000.

Council member Mason asked if the Town has applied for a grant to help with the costs of the water supply alternatives. Town Manager Greg Young said yes that the Town has applied for an \$80,000, 50% match, but will not know until January or February if it is awarded. Council member Mason asked where the \$15,000 will come from. Town Manager Young said it will be allocated from the water and sewer reserve funds. On a motion by Council member Mason, seconded by Council member Clawson, Council moved to adopt the following contract:

CONTRACT FOR SERVICES

This CONTRACT for Raw Water Supply Alternatives Study by and between the Town of Boone, hereinafter called the OWNER, and W.K. Dickson & Co., Inc., hereinafter called the CONSULTANT;

The parties hereto do mutually agree as follows:

8. Employment of CONSULTANT. The OWNER hereby engages the CONSULTANT and the CONSULTANT hereby agrees to perform the professional services hereinafter set forth.
9. Scope of Services. The CONSULTANT shall perform, in a professional manner, the services set forth in Attachment A, Scope of Services, which attachment is incorporated herein.
10. Additional Services. The CONSULTANT shall provide additional services, not specifically called for in Attachment A, Scope of Services, upon request or authorization of the OWNER.
11. Time of Performance. The CONSULTANT will commence work on or as soon as practicable after the date of execution of this Contract and receipt of written Notice to Proceed. All work as set forth in the Scope of Services shall be completed within 60 calendar days of that date, assuming the timely submission of all required data and the scheduling of all meetings and reviews by the OWNER or other delays beyond CONSULTANT'S control.

If the OWNER requests modifications to the Scope of Services of the project, the time of performance of the CONSULTANT shall be adjusted appropriately. Likewise should the CONSULTANT'S services extend past the completion date above, at no fault of the CONSULTANT, the CONSULTANT'S compensation shall be adjusted accordingly in an amount mutually acceptable to the parties.

CONSULTANT'S services under this Contract, and each phase of services, if the Scope of Services is so divided, shall be considered complete at the earlier of (1) the date when the submissions for that phase have been accepted by the OWNER or (2) thirty days after the date when such submissions are delivered to the OWNER.

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

- (d) Meetings. This Contract includes attendance by the CONSULTANT at meetings to make presentations or to otherwise review the progress of the work as identified in Attachment A.
- (e) Reports. The CONSULTANT shall prepare and submit to the OWNER reports called for in Attachment A, Scope of Services, attached hereto.
- (f) Compensation. The CONSULTANT agrees to perform the services provided for in the Scope of Services, and the OWNER agrees to compensate the CONSULTANT for such services as set forth in Attachment B, Basis of Compensation, which attachment is incorporated herein. Compensation for additional services shall also be as set forth in Attachment B, Basis of Compensation.

Payment by the OWNER to the CONSULTANT shall be due and payable on the 25th day of the month following the date of the invoice. Payments not received by the CONSULTANT by said 30th day of the month following the date of the invoice shall be overdue. Should a court action be taken to address collections, reasonable attorney fees and costs shall be paid to the prevailing party. Should the OWNER request a clarification for a legitimate item of any invoice within 30 calendar days of receipt, then the CONSULTANT will revise the invoice to satisfy those concerns or give a written reply to the concerns. If the invoice is still not paid within 30 additional calendar days, then the CONSULTANT will begin collection procedures. CONSULTANT shall not be bound by any provision wherein CONSULTANT waives any rights to a mechanic's lien, or any provision implying payment to CONSULTANT is contingent upon payment to OWNER by a third party. A failure by OWNER to pay CONSULTANT on a timely basis shall entitle CONSULTANT at its election, to stop work on the Project until such time as payment has been made, and upon seven days' notice and OWNER'S failure to pay all amounts then due, to terminate this contract.

- (g) Personnel. The CONSULTANT represents that he has, or will secure at his own expense, all personnel required to perform the services under this Contract and that such personnel will be fully qualified to perform such services.
- (h) Responsibilities of the OWNER. It is agreed that the OWNER will have the following responsibilities under this Contract:
 - a) The timely provision of all available information, data, reports, records, and maps to which the OWNER has access and which are needed by the CONSULTANT for the performance of the services provided for herein.
 - b) Providing assistance and cooperation for the CONSULTANT in obtaining any other needed material, which the OWNER does not have in its possession.
 - c) Making available the services of the OWNER as may be necessary to obtain information

as needed to perform the work program set forth in the Scope of Services.

- d) The designation of a single representative who will be authorized to make necessary decisions required on behalf of the OWNER and will serve to provide the necessary direction and coordination for the project.

All such OWNER responsibilities shall be conducted in a timely manner and without undue delay so as not to delay the CONSULTANT in the performance of his services.

- 12. Opinion of Probable Construction Costs. CONSULTANT'S opinion of probable construction costs, if rendered as a service under this Agreement, is based on assumed labor costs and approximate quantities of material and equipment, and therefore is of a conditional character. CONSULTANT cannot and does not guarantee the cost of work to be performed by others since market or bidding conditions can change at any time and changes in the scope or quality of the project may affect estimates.
- 13. Ownership of Materials. It is agreed that upon receipt of final payment, all final documents, studies, surveys, drawings, maps, models, photographs and reports prepared by the Consultant under this Contract, shall be considered the property of the OWNER. However, the CONSULTANT shall retain such copies thereof as he desires. Any adaptation by OWNER without CONSULTANT'S written verification of adaptation will be at OWNER'S sole risk and without liability or legal exposure to CONSULTANT, and OWNER agrees to indemnify and hold CONSULTANT harmless from and against any claims or liability, including attorneys' fees resulting from any claim against CONSULTANT by any third party arising out of OWNER'S use of the documents referred to herein, for any purpose other than the completion of the Project.
- 14. Delays Beyond the Control of the CONSULTANT. It is agreed that events which are beyond the control of the CONSULTANT may occur which may delay the performance of the Scope of Services. In the event that the performance of the Scope of Services by the CONSULTANT is delayed beyond his control, the CONSULTANT shall notify the OWNER in writing of such delay and the reasons therefore, and the OWNER shall extend the time of performance appropriately.
- 15. Changes. The OWNER or the CONSULTANT may, from time to time, request modifications or changes in the Scope of Services. Such changes, including any increase or decrease in the amount of the CONSULTANT's compensation, which are mutually agreed upon by and between the OWNER and the CONSULTANT, shall be incorporated in written amendments.
- 16. Termination of Contract. This Contract may be terminated by either the OWNER or the CONSULTANT within 7 calendar days after receipt of written notice delivered by certified mail. In the event of such termination, all finished or unfinished plans, specifications and reports prepared by the CONSULTANT shall, at the option of the OWNER, become OWNER's property, subject to the provisions of paragraph 14. The CONSULTANT shall be entitled to receive compensation for work accomplished in compliance with this agreement

and for reimbursable expenses incurred prior to termination.

17. Assignability. This Contract shall not be assigned or transferred by either the CONSULTANT or the OWNER without the prior written consent of the other. Notwithstanding the foregoing, however, the CONSULTANT shall not be prohibited from contracting with qualified sub-consultants or from assigning to a bank, trust company, or other financial institution any claims for compensation due, or to become due, without such prior written consent.
18. Liability and Standard of Care. CONSULTANT'S liability to OWNER for any indemnity commitments, or for any damages arising in any way out of performance of this contract, is limited to \$1,000,000.00. The CONSULTANT agrees to maintain this coverage throughout the contract. The CONSULTANT agrees to indemnify the OWNER for any negligent acts, errors or omissions resulting from this agreement.

OWNER acknowledges that the CONSULTANT is a Corporation and agrees that any claim made by the OWNER arising out of any act or omission of any director, officer or employee of the CONSULTANT in the execution or performance of this agreement shall be made against the CONSULTANT and not against such director, officer, or employee and OWNER waives any claim against all of CONSULTANT'S directors, shareholders, officers and employees.

ATTACHMENT A

SCOPE OF SERVICES

On September 27, 2004 CONSULTANT presented the findings of a study entitled "Water System Hydraulic Analysis & Master Plan". Based on this report the OWNER had submitted a grant application to Rural Center to evaluate raw water supply alternatives. While the OWNER awaits the decision as to whether they will be successful in receiving a grant the OWNER desires to proceed with the "due diligence" phase of the study or steps 1 and 2 on page 4-2 of the referenced study. Based on this recommendation the CONSULTANT proposes the following professional services:

1. Reconfirm current published 7Q10 flow with US Geological Survey (USGS)

- Search/review of previous stream flow data
- Confirm drainage basin area
- Meet with USGS if required to reconfirm 7Q10

2. Identify viable raw water supply alternatives

- Review Town
- Review any previous studies completed for the Town and region which identify

- potential water supply alternatives
- Meet with Town staff to brainstorm potential alternatives
- Meet with NCDENR Public Water Supply regional and central office staff to review potential alternatives for input of viability
- Meet with NCDENR Division of Water Resources to identify permitting issues and environmental concerns for viable alternatives
- Meet with other regulatory agencies as appropriate

3. **Letter Report**

- Prepare a letter report summarizing our findings. The report will prioritize the viable alternatives along with time lines and advantages and disadvantages for each alternative.

ATTACHMENT B BASIS OF

COMPENSATION

1. **Basic Services.** The OWNER shall pay the CONSULTANT for services set forth in Attachment A, Scope of Services, on an hourly plus expenses basis.

The total fees for Basic Services shall not exceed the sum of fifteen thousand dollars (\$15,000).

The CONSULTANT will bill the OWNER on the last day of each month for the labor and expenses incurred during that month.

2. **Additional Services.** The OWNER shall pay the CONSULTANT for additional services which are not specifically called for in Attachment A, Scope of Services, in accordance with the CONSULTANT'S standard rates.

VOTE:Aye-All

Nay-None

UPDATE ON BEAR TRAIL ONE-WAY

Public Services Director Blake Brown said there are mixed feelings in the community regarding the one-way streets instituted last month. Council member Clawson said she has received numerous negative comments about the one-waying of Bear Trail. Council member Wilcox reminded Council that Bear Trail was made one-way because of the dangerous condition of the road. Public Services Director Brown presented Council with a price quote from Hanes Electric in the amount of \$26,444 for a trip-light. Council member Mason asked if the Transportation Committee has reviewed this price quote. Mr. Brown said no, but they will at their November 9th meeting. Council member Mason asked how long it would take to install the trip-light if

approved. Mr. Brown said between 10-12 weeks. Council discussed at length changing the street back to two-way traffic and the possibility of widening the road. Public Services Director Brown said it would cost over \$80,000 to widen Bear Trail. Town Attorney Sam Furgiuele said Council could be liable if Bear Trail is opened up to two-way traffic knowing that the street is dangerous. After little discussion, on a motion by Council member Clawson, seconded by Council member Wilcox, Council moved to accept the quote from Hanes Electric in the amount of \$26,444 for the installation of a trip-light on Bear Trail.

VOTE:Aye-All
Nay-None

ACCEPTANCE OF PROPERTY DONATION

Council member Eggers requested that the Town accept the donation from Kenneth and Geri Wilcox and Jim Triplett of property located at the corner of Pride Drive and Leola Street. The parcel contains 1.2 acres. Planning Director John Spear said the property could be used as a potential extension of the Greenway Trail or a small park development since it is in a flood hazard area. On a motion by Council member Eggers, seconded by Council member Clawson, Council moved to accept the following deed (**EXHIBIT A**) and authorized the Mayor to write a thank-you letter to Mr. and Mrs. Wilcox and Mr. Triplett.

VOTE:Aye-All
Nay-None

ADOPTION OF BUDGET AMENDMENTS

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

DESCRIPTION	ACCOUNT #	TO:	FROM:
Capital Outlay-Automobiles	010-500-360-573100	\$28,693.	
Fund Balance Appropriated	010-000-000-499900		\$15,000.
Miscellaneous Revenue	010-000-000-489900		\$13,693.
Boone Tourism Development	010-412-000-549225	\$10,000.	
Fund Balance Appropriated	010-000-000-499900		\$10,000.
Alt. Transp./Greenway	010-411-000-545100	\$25,000.	
Fund Balance Appropriated	010-000-000-499900		\$25,000.
Street Light Maintenance	010-600-401-525210	\$50,000.	

Fund Balance Appropriated	010-000-000-499900		\$50,000.
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VOTE:Aye-All
Nay-None

REQUESTED APPEARANCE - JOE C. MILLER

Council member Eggers requested he be excused from this matter because of personal interest. On a motion by Council member Wilcox, seconded by Council member Mason, Council moved to excuse Council member Eggers from this matter only.

VOTE:Aye-All
Nay-None

Mr. Larry Hughes appeared before Council on behalf of Mr. Joe C. Miller. Mr. Hughes said he and Mr. Miller purchased a 51-acre tract of land adjacent to the New Market Estates last year. Mr. Hughes said they first looked at developing the property into a 29-lot subdivision but there would much tree removal. For their second option they considered developing it into 5-10 acre tracts but were still faced with excessive tree removal. Mr. Hughes said they finally decided to develop three 1.5 acre lots and deed the rest to the High Country Conservancy. Mr. Hughes said the 51-acre tract has access to water via New Market Estates and/or Hidden Valley Circle. Mr. Hughes said that he and Mr. Miller are prepared to relinquish those rights if Council would grant permission for water and sewer taps to the three proposed lots. Council member Wilcox asked if the New Market tank could supply those three lots with water. Public Utilities Director Rick Miller said yes that the lots are below the tank and are adjacent to existing lines. Council discussed at length the relinquishing of water taps in the New Market Estates subdivision with Public Utilities Director Miller agreeing that New Market Estates has relinquished over 35 taps in the past by switching from multi-family to single-family development. Council members Clawson and Mason commended Mr. Hughes and Mr. Miller on the proposed High Country Conservancy gift and agreed that if New Market Estate will not utilize three taps that it will be no problem in transferring them to the three proposed lots. Mr. Graydon Eggers, speaking for New Market Estates, clarified that he has approximately 10 unsold lots remaining in New Market Estates that will require taps. Council member Spann said he was satisfied with the proposal and is pleased with the High Country Conservancy easement. After very little discussion, on a motion by Council member Spann, seconded by Council member Wilcox, Council moved to grant the water and sewer request to the proposed three lots, after verification of the relinquished taps has been satisfied and after the voluntary conservation easement of approximately 48 acres is signed over to the High Country Conservancy, and after annexation petitions have been filed.

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

REQUESTED APPEARANCE - JOHNNY COOK

Mr. Johnny Cook appeared before Council to request a water tap to property located off Camp Rock Road. The property is located outside the Town's limits and ETJ. On a motion by Council member Mason, seconded by Council member Spann, Council moved to table this request until the next meeting so that Council members can have time to discuss future water connections.

VOTE: Aye-All

Nay-None

REQUESTED APPEARANCE - CHRIS TURNER

Mr. Chris Turner, AppalCART Director, appeared before Council to request water and sewer extensions to property located off the Highway 105 bypass. The property is adjacent to Caldwell Community College property and will be developed as a new operations facility for AppalCART. Mr. Turner felt that this area will be the junction for water on the west end of Town. Mr. Turner said at present AppalCART uses less than 500 gallons of water per day. Mr. Turner said the facility is in the design phase now and that State officials requested that he inquire about the possibility of municipal water and sewer. Council member Mason expressed her concern that this property is not located in our ETJ and that the Town is still developing our future growth strategy map. Council member Mason asked if wells and septic facilities can be placed on the property. Mr. Turner said yes that there is already a well in place, but that a septic system will have to be installed on a hillside. Council member Wilcox asked who would pay for the extensions; Mr. Turner indicated that AppalCART will pay. Public Utilities Director Rick Miller said it would cost between \$500,000 to \$1,000,000 to extend lines to the property and that a sewer lift station would be required. Council member Wilcox asked when a definite answer is needed. Mr. Turner said he will meet with State officials next week. Council member Eggers asked if there would be adequate water pressure to serve this area. Public Utilities Director Miller said yes. After little discussion, on a motion by Council member Wilcox, seconded by Council member Spann, Council moved to table this request until after the Council completes studying the water supply situation.

VOTE: Aye-All

Nay-None

REQUESTED APPEARANCE - RALPH LEONARD

Mr. Mike Wilson appeared before Council on behalf of Mr. Ralph Leonard. Mr. Wilson said Mr. Leonard owns 5 acres of land at the corner of Daniel Boone and Hilltop Drive and plans to develop this into 15 lots for single-family, low-income housing. Mr. Wilson said plans are ready to go to the boards but that water retention requirements as required by the Town's UDO may make this project unfeasible. Mr. Wilson complained that individual single-family homes are exempt from water retention requirements; however, single-family subdivisions are not. Mr. Wilson said the cost of retention systems is usually between \$445,000 and \$1,000,000 depending on the size of the subdivision. Mr. Wilson felt this is an unnecessary requirement for the amount of water that is collected from a single-family home subdivision. Mayor Burnley questioned the cost of a system for this sized subdivision. Mr. Wilson said the cost of materials for a 14-lot subdivision will be about \$70,000 or in this situation about \$10,000 a lot. Mr. Wilson said every

burden the Town puts on a developer squashes affordable housing. Council member Mason suggested reviewing our ordinances to see if our regulations prohibit affordable housing. Council member Mason said she does not want to minimize the importance of stormwater management but this might be an area in which we can help with affordable housing. After a lengthy discussion, on a motion by Council member Mason, seconded by Council member Spann, Council moved to have the Development Services Department evaluate its ordinances as they relate to affordable housing, specifically looking at stormwater management requirements.

VOTE:Aye-All
Nay-None

REQUESTED APPEARANCE - TIMOTHY FORD

Mr. Timothy Ford, Senior Vice-President of Watauga Medical Center, appeared before Council to request that the Town begin street closing procedures on the remaining portion of Virginia Street. Mr. Ford said since the Medical Center owns the property surrounding the street, it is no longer needed. Closing the street will allow the Medical Center to provide an additional 51 parking spaces. Public Utilities Director Rick Miller pointed out that there is a water line under the street and that an easement will be needed for repairs and maintenance. On a motion by Council member Wilcox, seconded by Council member Eggers, Council moved to begin the street closing procedures.

VOTE:Aye-All
Nay-None

CLOSED SESSION

On a motion by Council member Wilcox, seconded by Council member Mason, Council moved to enter Closed Session at 9:15 p.m. pursuant to NCGS 143-318.11a)3) to discuss the Houck vs. WMC litigation; possible White Laurel litigation; Swindell condemnation; possible Glenn Henson litigation; possible Radford Quarries litigation and MESCO litigation.

VOTE:Aye-All
Nay-None

On a motion by Council member Eggers, seconded by Council member Wilcox, Council moved to exit Closed Session at 10:15 p.m.

VOTE:Aye-All
Nay-None

POSSIBLE ACTION FOLLOWING CLOSED SESSION

On a motion by Council member Mason, seconded by Council member Wilcox, Council moved to adopt the following ordinance initiating legal action against Rob Swindell:

ORDINANCE # 04-10

WHEREAS, the Town of Boone has been granted the power to regulate development, pursuant to N.C. Gen. Stat. § 160A-360, *et seq.*; and

WHEREAS, said authority includes the power to condemn unsafe buildings, in accordance with the provisions of N.C. Gen. Stat. § 160A-426; and

WHEREAS, on or about March 13, 2001, a structure located at 162 Riverview Lane, Boone, North Carolina, within the jurisdiction of the Town of Boone burned, and whereas, on March 14, 2001, following inspection by a duly authorized inspector for the Town of Boone, Jesse Horner, Building Inspector for the Town of Boone, condemned said property after concluding that the structure was in a condition that was dangerous to life, health and property; and

WHEREAS, following an opportunity for the owner of the property, Rob Swindell to present evidence relating to the condition of the property, Jesse Horner issued, on March 29, 2001, an order to demolish and remove the structure by May 28, 2001; and

WHEREAS, the owner of the property, Rob Swindell, did not appeal that order, and has failed and refused to comply with the order, and to remove said structure, or to otherwise render it safe; and

WHEREAS, upon information and belief, Rob Swindell is once more occupying the structure in question; and

WHEREAS, N.C. Gen. Stat. § 160A-432 authorizes the Town to initiate such legal action as necessary to prevent, restrain, correct, or abate the violation or to prevent the occupancy of the building or structure involved;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA, PURSUANT TO N.C. GEN. STAT. § 160A-432, AS FOLLOWS:

The Town Attorney is ordered to initiate a legal action in the General Court of Justice in Watauga County, North Carolina against Rob Swindell and such other parties, if any, as may be necessary, seeking a mandatory injunction requiring Rob Swindell to immediately and permanently abate his failure to comply with the order of the Building Inspector and to prevent, restrain, correct, or abate the violation and to prevent the occupancy of the building or structure involved, located at 162 Riverview Lane, Boone, North Carolina, and seek attorney's fees and costs, as available for Mr. Swindell's actions.

Adopted this 21st day of October, 2004.

Mayor

Attest:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGES 253)

VOTE: Aye-All

Nay-None

ADJOURNMENT

On a motion by Council member Clawson, seconded by Council member Mason, Council moved to adjourn at 10:16 p.m.

VOTE: Aye-All

Nay-None

Town Clerk

Mayor