MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
NOVEMBER 17, 2005

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, November 17, 2005 in the Council Chambers, 1500 Blowing Rock Road. Mayor Velma C. Burnley presided. Council members present were Mayor Pro-Tem Loretta Clawson, Graydon Eggers, Lynne Mason, Bunk Spann, and Dempsey Wilcox. Council members-Elect Rennie Brantz and Janet Pepin were in attendance. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Deputy Town Clerk Kim Tester, Special Assistant to the Town Manager Jim Byrne, Police Chief Bill Post, Fire Chief Reggie Hassler, Public Services Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, Finance/Customer Service Supervisor Christina Jones, and Development Services Director John Spear.

ANNOUNCEMENTS

Mayor Burnley recognized Council members-Elect Rennie Brantz and Janet Pepin's attendance at the meeting.

Mayor Burnley observed a moment in gratitude for all that we have to be thankful for and for those who are less fortunate.

TENTATIVE AGENDA ADOPTION

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

Addition to Consent Agenda: October 25, 2005 Special Meeting Minutes.

Item 6.H.: Awarding of Bid for SCBA's. Bid minutes and recommendations are attached.

Closed Session: Addition of Closed Session: 143-318.11)a)5) Property Acquisition.
Addition of Norman Cheek Violation.

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

VOTE: Aye - All
Nay - None

CONSENT AGENDA ADOPTION

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

Minutes: October 20, 2005 – Regular Meeting
October 25, 2005 – Special Meeting

Tax Releases: October 2005

TAXPAYER	YEAR	AMOUNT	DESCRIPTION

BROWN, LELIA MRS	2005	$22.53	MH TAXED UNDER ROSCOE BROWN ACCT
WOLF, DIANE JILL	2005	3.45	SOLD VEHICLE
ATKINSON, WILLIAM HENRY JR	2005	96.00	SOLD CAMPER TRAILER TURNED IN PLATE
US CHEMICAL STORAGE LLC	2005	616.00	BUSINESS LISTED IN WILKES CO FOR 05
MILLENNIUM MFG STRUCTURES LLC	2005	675.68	BILL APPEALED DUE TO ASSESS PEND. LISTING PROVIED ADJ. MADE
SOFIELD CHILDRENS LTD PARTSHP.	2005	13.60	ASSESS PENDING BILL APPEALED W/IN 30 DAYS LISTING PROVIDED ADJ MADE
RTS AND SON INC	2005	3.24	ASSESS PENDING BILL APPEALED W/IN 30 DAYS LISTING PROVIDED ADJ MADE
NATION FUNDING GROUP INC	2005	5.84	ASSESS PENDING BILL APPEALED W/IN 30 DAYS LISTING PROVIDED ADJ MADE
Q HUTS INC	2005	12.64	ASSESS PENDING BILL APPEALED W/IN 30 DAYS LISTING PROVIDED ADJ MADE
LEARNING CONCEPTS, INC	2005	316.04	INCORRECT SITUS NOTED ON LISTING FORM
WALLACE, JUSTIN EUGENE WALLACE, NICOLE ANGELIQUE	2005	30.48	RESIDENT MECKLENBURG CO.
LI, KIMBERLY PARKER	2005	18.14	ADJ FOR BILL OF SALE
COOK, JOHN DANIEL AND ROSE	2005	42.80	BILLED WRONG ACCT.
STATE EMPLOYEES CREDIT UNION	2005	38.40	DOUBLE TAXED, ATM MOVED LOCATION
CAREFREE PROPERTIES PORTER, STANLEY SCOTT	2005	41.92	MOBILE HOMES DEMOLISHED IN 04
SHIRLEY ROBERT L – RENTALS	2005	299.20	EQUIP MOVED TO NW OB-GYN IN 04
COE, EF & LEA B	2005	56.40	DOES NOT BELONG TO COE
ELLWOOD, RITA SMITH SMITH, RITA W	2005	62.00	BOARD OF E & R CHANGE FOR 05
DURDEN, JOAN SMYLY DURDEN, NONA HARLESS	2005	19.78	TURNED IN TAG
PETERSON, MICHAEL J	2005	1.15	SOLD VEHICLE TURNED IN PLATE
LEONARD, JOHN RALPH	2005	5.94	NOT IN TOB LIMITS
RAY, JERRY DAVID RAY, LORETTA P	2005	114.56	LIVES IN DEEP GAP
YURA, YOSHIHISA	2005	23.80	SOLD VEHICLE
STORIE, BRIAN CHRISTOPHER STORIE, RONALD HUNTER	2005	10.48	MOVED IN OCT 04
SAPORITO, LORRAINE	2005	9.25	TURNED IN TAG
BRADY, PAUL CHRISTOPHER	2005	73.81	TURNED IN TAG
PHILLIPS, JUDY GRAGG	2004	133.09	OVERLAP IN PLATES/TEMP PLATES
TOTAL		**$2746.22**	

Tax Refunds: October 2005

Taxpayer	Year	Amount	Description
COOK, JOHN DANIEL & ROSE	2004	$42.80	DID NOT OWN PROPERTY, OWNED BY DOT
DURDEN, GAREY CLARK DURDEN, JOAN SMYLY	2004	14.31	TURNED IN TAG
FIDLER, CARL	2004	8.33	TURNED IN TAG
TOTAL		**$65.44**	

Adoption of Lease: Appalachian Community for Progressive Sustainability for a garden space off Leola Street

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF WATAUGA

THIS LEASE AGREEMENT is made this the 1st day of December, 2005, by and between the **Town of Boone**, a North Carolina Municipal Corporation, hereinafter referred to as "**Lessor"** and the **Appalachian Community for Progressive Sustainability, Inc.**, a North Carolina non-profit corporation, hereinafter referred to as "**Lessee,**" collectively referred to as the "parties."

1. **Leased Premises**: The **Lessor** hereby leases to the **Lessee** that certain piece, parcel or lot of land situated, lying and being in Boone Township, Watauga County, North Carolina, more particularly described on the exhibit attached hereto as "Attachment 'A,'" hereinafter referred to as "the premises."

2. **Term**: The term of this lease shall be one year, commencing on December 1, 2005 and ending on November 30, 2006, 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 in full upon the execution of this Lease, and on or before the same date in each subsequent year during any renewal term of this Lease.

4. **Repairs and Maintenance**: The **Lessee** shall provide all maintenance necessary to keep the premises in good and sanitary condition. Unless expressly assumed by **Lessor**, **Lessee** shall also be responsible for all repairs necessary to maintain the premises and any improvements in safe, sanitary and good condition. **Lessee** agrees to notify **Lessor**, in writing, of any and all conditions in need of correction or repair. **Lessee** further agrees that no repairs will be undertaken, and no person or entity will be hired to undertake any repairs without first notifying **Lessor** in writing, at least ten days in advance, of **Lessee**'s intention to undertake or make such repairs, or in the event of an emergency, without first notifying **Lessor** by telephone at (828)262-4530 of the condition and repairs contemplated. Any repairs made to the premises shall be done in a workmanlike manner and shall become the property of **Lessor**. In making any repairs, **Lessee** shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all relevant federal and state laws relating to its operation of a facility and enterprise open to the public, and to its use of paid employees therein.

5. **Alterations**: **Lessee** agrees to neither make nor arrange for any alterations to the premises, other than those required to create and maintain a community garden, without the advance written approval of **Lessor**. Should any alterations be approved by **Lessor**, they shall be done in a workmanlike manner, and they shall become the property of **Lessor**. In making any alterations, **Lessee** shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all relevant federal and state laws relating to its operation of a facility and enterprise open to the public, and to its use of paid employees therein.

6. **Compliance with Laws**: In particular, and not by way of exclusion, in any and all its actions and activities undertaken on the premises, **Lessee** will comply with and hereby certifies its compliance with the Americans with Disabilities Act, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Fair Labor Standards Act, as amended, the Occupational and Health Safety Act, as amended, the North Carolina Employment Security Act, as amended, and the North Carolina Worker's Compensation Act, as amended, to the extent each such law applies to **Lessee** and/or any of its activities. **Lessee** commits that it will act in accordance with its duly adopted by-laws and will comply with all laws related to its status as a non-profit North Carolina Corporation. **Lessee** shall provide **Lessor** with its current by-laws at any time requested by **Lessor**. Should **Lessee**'s corporate status be revoked by the North Carolina Secretary of State, or should the **Lessee**'s non-profit status be revoked by the United States Internal Revenue Service or otherwise, this lease shall immediately terminate.

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 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.

9. **Keys and Locks**: Should **Lessee** change any of the locks or add any locks to any locked feature of the premises, **Lessee** shall, at its own expense, immediately provide duplicate keys to all such locks to **Lessor**. At the end of the lease term, **Lessee** shall return or turn over all keys which relate to the premises to **Lessor**.

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.

12. **Use of Premises**: The premises are to be used for the purposes of operating a "community garden," and such other activities as may be necessary to support those purposes, including parking in appropriate locations on the premises. Should **Lessee** fail to produce a community garden for a period of time exceeding one continuous year, this failure shall be considered its abandonment of the premises, and any renewal of this lease shall immediately terminate. Any specific activity beyond those listed shall be subject to

the advance approval of **Lessor**, but **Lessor** shall only consider such proposed activities if they are in keeping with the general purposes of this lease and are consistent with **Lessee's** status as a non-profit corporation. In the off-season, **Lessor** shall properly secure and make safe all structures, and shall either remove or secure and make safe any portable structures and equipment. The **Lessee** shall not use or knowingly permit any part of the Leased Premises to be used for any purpose which violates any law, and **Lessee** shall comply with all land use ordinances of **Lessor**. **Lessor** reserves the right to use the premises described herein at such times as said premises are not being used by the **Lessee**, as well as in ways which do not unduly interfere with **Lessee.** **Lessee** will take no action(s) which is in any way inconsistent with **Lessor**'s ownership interest in the property. This Lease does not and shall not be construed to establish or create a partnership, joint venture, franchise or other form of business association between **Lessor** and **Lessee**.

13. **Information Required to be Furnished:** Within ten days of any change, **Lessee** shall provide to **Lessor** any change to its by-laws, shall notify **Lessor** of any change to its management staff, and at the execution of this lease and any time such composition changes, shall advise **Lessor** of the names and addresses of each member of board of directors and officers of the **Lessee**.

14. **Rules for Operation**: **Lessee** shall have the right to promulgate such rules and regulations as it may deem appropriate for the behavior of its employees, volunteers and its other licensees and invitees. However, **Lessee** shall provide **Lessor** with a copy of such rules and regulations as it may promulgate reasonably prior to their effective date.

15. **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.

16. **Termination of Lease other than Default** : **Lessor** may terminate this Lease without cause by action of the Town Council upon thirty days written notice to **Lessor.**

17. **Abandoned Property**: Following the termination of this lease or subsequent tenancy, 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.

18. **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 possession 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.

19. **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.

20. **Waiver**: **Lessor's** failure to strictly enforce its rights under this Lease shall not constitute a waiver of such rights with respect to any violation of the Lease by **Lessee**, and the parties agree that this provision may itself not be waived by the conduct of the parties.

21. **Partial Invalidity**: If any term, covenant, condition or provision of this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

22. **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.

23. **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.

24. **Notices**: All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested; to the following addresses:

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

If to **Lessee**, to:
Appalachian Community for Progressive Sustainability, Inc.

_____

_____

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.

EXHIBIT "A"

BEING a 1.205 acre portion of a 1.679 acre tract conveyed by Zeb V. Farthing and wife, to William H. Kohler and T. G. Proctor, Jr., by Deed recorded in Book 129, at Page 812, said 1.205 acre parcel as shown on survey and plat by Burkett & Stern Land Surveyors dated May 31, 1972, revised September 13, 1982, Map #72302 and more particularly described as follows:

BEGINNING at a computed point, said point being corner of right of way of Greenway Road and 0.474 acre tract of Kohler, said point being located South 86E 14' East 80.00 feet from the corner of Greenway Road and Leola Street rights of way; thence from the beginning and with a new line through the 1.679 acre tract North 06E 33' East 235.67 feet to a computed point in the center of Winkler's Creek; thence with the creek South 55E 43' East 81.21 feet to a point, corner to 0.474 acre parcel, Alfred Adams and Brown & Williams; thence with the Brown & Williams line, South 57E 00' East 104.00 feet; South 80E 30' East 62.00 feet; North 79E 00' East 78.00 feet; North 28E 00' East 7.15 feet, corner to Brown & Williams and Brown & Coe; thence with the Brown & Coe line, South 01E 21' West 4.73 feet to an iron set in fence; thence South 01E 21' West 15.00 feet to a point in the northern right of way of Greenway Road; thence with said right of way North 86E 14' West 319.15 feet to the BEGINNING.

Adoption of Lease: Watauga County for Anne Marie/Elizabeth Drive park area.

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF WATAUGA

THIS LEASE AGREEMENT is made this the ___ day of _____, 2005, 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."

25. **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 depicted in "Exhibit 'A,'" attached hereto and incorporated by reference herein, and hereinafter referred to as "the premises."

26. **Term**: The term of this lease shall be ten years, commencing on November 18, 2005 and ending on November 17, 2015, 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.

27. **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.

28. **Use of the Premises:** The parties acknowledge that the premises are being leased for use as athletic fields, recreational activities and their supporting functions and uses more particularly depicted in "Exhibit 'B,'" attached hereto and incorporated by reference herein. **Lessee** shall not change the use of the premises without ninety days advance notice to **Lessor.** 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**.

Lessee acknowledges that the leased premises were purchased by **Lessor** with funds and assistance, from, among others, the North Carolina Department of Crime Control and Public Safety, the conduit for Federal Emergency Management Act funds, the North Carolina Department of Commerce, the source and conduit for Community Development Block Grant funds, as well as the State's Acquisition and Relocation Fund Grant, for among other things, flood hazard mitigation. **Lessee** further acknowledges that there are certain conditions and limitations regarding the use, preparation for use, and condition of the premises which are a condition of said funds and assistance or otherwise provided by law or regulation, and that violation of said conditions and limitations can result in the forfeiture of funds and other penalties. **Lessee** expressly commits that it will comply with all contractual and regulatory conditions and limitations related to the aforesaid funds and assistance.

29. **Repairs and Maintenance**: **Lessee** accepts the leased premises in their current condition. The parties acknowledge that significant and extensive construction is necessary before **Lessee** can utilize the premises for their intended purpose as athletic fields, recreational sites, and supporting functions, in accordance with plans submitted by **Lessee**. The parties acknowledge that **Lessee** intends to use its force account, up to the levels authorized by law, to accomplish said construction. Any construction, maintenance, or repairs made to the premises shall be done in a workmanlike manner and shall become the property of **Lessor**. 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. 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, all relevant federal and state laws relating to its operation of facilities and enterprises open to the public, and all conditions and limitations imposed by the contracts between **Lessor** and the various governmental agencies and units which granted or approved the funds used by **Lessor** to purchase the premises. At the conclusion of the lease, **Lessee** shall return the premises in good condition.

30. **Alterations**: Following the initial construction, **Lessee** agrees to neither make nor arrange for any further permanent alterations to the premises without the advance 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, all relevant federal and state laws relating to its operation of facilities and enterprises open to the public, and all conditions and limitations imposed by the contracts between **Lessor** and the various governmental agencies and units which granted or approved the funds used by **Lessor** to purchase the premises. Should **Lessee** erect any permitted structure 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 permitted structure or improvement left on the leased premises shall become the property of **Lessor.**

31. **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, the North Carolina Worker's Compensation Act, as amended, and the Federal Emergency Management Act, as amended, and pertinent regulations, to the extent each such laws and regulations apply to **Lessee** and/or any of its activities and/or the premises.

32. **Grant Applications**: Without advance permission of the Boone Town Council, **Lessee** will not apply for any grants, funds, funding, or other assistance to support its construction, operation or use on or of the premises.

33. **Assignments or Subletting**: The **Lessee** acknowledges that as a result of the funding obtained by **Lessor** to acquire the premises, there are contractual and legal restrictions upon the assignment or subletting of the premises, and it shall not assign nor sublease the premises without the prior written consent of the **Lessor**, and when necessary, the pertinent funding agencies**.** All proposed subleases or assignments must be in writing and shall be submitted to **Lessor** at least ninety days in advance of the proposed effective date of the sublease or assignment. **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.

34. **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.

35. **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**.

36. **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**. **Lessee** shall promptly advise **Lessor** of any assertion of claim or litigation that may result in a claim of liability against **Lessor**.

37. **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 premised any water, sewer or other utility lines which when completed do not interfere with the use of the premises by **Lessee**, provided, however, that **Lessor** shall restore any portion of the surface off the leased premised disturbed by **Lessor** to the condition that such surface existed immediately prior to such installations. The parties acknowledge that **Lessor** may, during the term of this lease, construct sites for recreational activities or other purposes on property adjacent to the premises, and may need to reenter said premises in order to accomplish, conduct or maintain such construction. **Lessor** specifically reserves the right to go upon and cross the leased premises for these purposes, provided, however, that once any such construction or maintenance is complete, **Lessor** shall restore any portion of the surface off the leased premised disturbed by **Lessor** to the condition that such surface existed immediately prior to such construction or maintenance.

38. **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 fourteen (14) 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.

39. **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.

40. **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. **Lessee** is solely responsible for any forfeiture or other penalty assessed as a result of the use of the premises in violation of any of the conditions or limitations of the use of the premises as the result of the source of funds for **Lessor's** purchase of the premises, whether such conditions or limitations are contractual or regulatory in nature. **Lessee** shall promptly indemnify **Lessor** for any forfeiture or other penalty incurred as the result of the use of the premises in violation of such condition(s) or limitation(s).

41. **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.

42. **Waiver**: **Lessor's** failure to strictly enforce its rights under this Lease shall not constitute a waiver of such rights with respect to any violation of the Lease by **Lessee**, and the parties agree that this provision may itself not be waived by the conduct of the parties.

43. **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.

44. **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.

45. **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 Courthouse
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.

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.

Modification of Lease: Southern Appalachian Historical Association.

STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

MODIFICATION OF LEASE AGREEMENT

THIS MODIFICATION OF LEASE AGREEMENT is made this the _____ day of , 200__, by and between the **Town of Boone**, a North Carolina Municipal Corporation, hereinafter referred to as "**Lessor"** and the **Southern Appalachian Historical Association, Inc.**, a North Carolina non-profit corporation, hereinafter referred to as "**Lessee,**" collectively referred to as the "parties," modifying the lease entered into between the parties on the _____ day of **,** 2004, relating to the use of the "Horn in the West Property."

1. By substituting the following for Paragraph 12 of the existing lease:

Farmer's Market:

A. All structures, whether buildings, outbuildings, sheds, stands, mobile stands, trailers or otherwise, used in connection with the operation of a "Farmer's Market" must be maintained in a safe and sanitary condition and must be removed at the end of every season, a "season" being defined as that period during which the "Farmer's Market" is occupied and operated on a weekly basis by at least 90% of the ususal number of vendors, except with respect to five buildings, outbuildings, sheds, stands, mobile stands, or trailers, currently situated on the premises, to be selected by **Lessee** and approved by **Lessor**.

B. In order for said buildings, outbuildings, sheds, stands, mobile stands or trailers to be left on the premises, **Lessee** must, within ten days of the execution of this modification, and before the end of any subsequent "season," provide **Lessor** with the names, addresses and telephone numbers of the owners of such buildings, outbuildings, sheds, stands, mobile stands, or trailers, along with proof that **Lessee** or each **Sub-Lessee** owner of the building, outbuilding, shed, stand, mobile stand, or trailer in question has liability insurance which insures against loss, destruction, or other damage to each such building, outbuilding, shed, stand, mobile stand, or trailer, as well as against all risks for which each **Sub-Lessee** is required to indemnify and hold **Lessor** harmless. Said 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 one million dollars ($1,000,000.00) per occurrence, and two million dollars ($2,000,000.00) aggregate coverage.

C. A certificate of insurance for each insurance policy required to be obtained by **Lessee** or its **Sub-Lessees** 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 against **Lessee** and/or its **Sub-Lessees**.

D. The **Lessee** and its **Sub-Lessees** 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 arising from the buildings, outbuildings, sheds, stands, mobile stands, or trailers being left on the premises. **Sub-Lessees** whose building are left on the property in the off-season must execute indemnification agreements to the **Lessor** within ten days of the execution of this modification and prior to the end of the season in each subsequent year.

E. The **Lessor** reserves the right and may enter the premises at any reasonable time for the purpose of inspecting said premises and for any other purpose in any way related to **Lessor**'s ownership or **Lessee's** or any **Sub-Lessee's** use of the premises. **Lessor** may move the buildings, outbuildings, sheds, stands, mobile stands, or trailers being left on the premises, if necessary to make repairs, install or maintain utilities, or other reasonable purpose. If it is necessary to move such buildings, outbuildings, sheds, stands, mobile stands, or trailers being left on the premises, **Lessor** will, if feasible, first give **Lessee** or its **Sub-Lessees** an opportunity to move them. Should **Lessor** have to move said buildings, etc., **Lessor** shall not be responsible for any damage caused by its actions, or resulting from the buildings, etc. being moved. **Lessee** and its **Sub-lessees** will take no action(s) which are in any way inconsistent with **Lessor**'s ownership interest in the property.

F. Following the termination of the lease, by action of **Lessor** or the expiration of the term without renewal, any property left by and **Sub-Lessee** or participant in the "Farmer's Market" on the premises shall be considered abandoned and may be retained by or disposed of by **Lessor** as it sees fit.

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.

Adoption of Agreement: Watauga County for parking spaces.

STATE OF NORTH CAROLINA

AGREEMENT

COUNTY OF WATAUGA

THIS AGREEMENT is made this the ___day of _____, 2005, by and between the **Town of Boone**, a North Carolina Municipal Corporation, hereinafter referred to as

"**Town"** and **Watauga County**, a North Carolina County, hereinafter referred to as "**County,**" collectively referred to as the "parties."

W I T N E S S E T H

WHEREAS, Town owns certain parking which would aid and assist County in meeting its parking needs while County undertakes construction on the Watauga County Courthouse and surrounding facilities, which will significantly reduce its parking for patrons of its facilities; and

WHEREAS, County expects that the period of time during which the construction in question will be ongoing will be approximately two years, after which County expects to be able to more easily meet its parking needs; and

WHEREAS, Town, while wishing to accommodate the needs of County, must also ensure the continued stream of income which it receives from its parking facilities, for which it expended significant funds to develop; and

WHEREAS, Town is willing to provide County with forty parking spaces for its use during the aforesaid construction period, at a discounted rate; and

WHEREAS, the parties have agreed that it is in their mutual interests to confirm the promises between them; and

WHEREAS, the governing board of each of the parties has duly adopted this Agreement;

FOR AND IN CONSIDERATION of the mutual promises contained herein, which consideration is acknowledged by the undersigned as adequate and fair, the undersigned, for themselves, their governing boards, officers, and employees, agree as follows:

46. **Premises : Allocation of Parking Spaces**: During the term of this Agreement, Town shall make available and County and its agents, employees, invitees, licensees and designees the exclusive use of thirty-four (34) metered parking spaces on Queen Street, identified as spaces 83-99 and 55-71, approximately half each on each side of the street, excluding the spaces reserved for law enforcement vehicles, nearest to the intersection of Water Street and Queen Street, and excluding any spaces which have been previously leased to others.

1. **Term**: The term of this agreement shall be one year, commencing on November 18, 2005 and ending on November 17, 2006, with an option to renew for one (1) additional year upon mutual consent.

2. **Rent:** The rent for the foregoing shall be at the rate of $10,000.00 per annum.

3. **Repairs and Maintenance**: Town shall be responsible for all repairs necessary to maintain the aforesaid spaces in a safe and useable condition. County shall promptly notify Town of any condition in need of repair.

4. **Town's Right to Enter Premises**: Town reserves the right and may enter the premises at any reasonable time for the purpose of inspecting said premises, making such repairs as Town, in its sole discretion, desires to make, and for any other purpose in any way related to Town's ownership or County's use of the premises. Town specifically reserves the right to go upon, cross and install upon the leased premised any utility lines, provided, however, that Town shall restore any portion of the surface off the leased premised disturbed by Town to the condition that such surface existed immediately prior to such installations.

5. **Indemnity**: County shall defend, indemnify and hold harmless Town 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 County, its agents, employees,

invitees, licensees and designees, or associated with County's use of the premises. In the event that Town is made a party to any litigation brought against County or by reason of County's use or occupancy of the premises, County shall defend, protect and hold harmless Town from any and all liability that may result therefrom, including Town's costs in defending itself against any claim, action, litigation or other assertion of liability.

6. **Modification of Lease**: This Lease Agreement contains all of the terms and conditions agreed to by Town and County 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.

IN WITNESS WHEREOF, the **Lessor** Town and **Lessee** County 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.

Approval of Closed Session Minutes: January 15, 2004 to October 20, 2005.

VOTE: Aye - All
Nay - None

PUBLIC HEARING ON MARKET COURT ANNEXATION

Mayor Burnley opened a public hearing at 6:31 p.m. on the Market Court annexation. Development Services Director John Spear stated this is the final step in the annexation process for this property. With no public testimony, Mayor Burnley closed the public hearing at 6:32 p.m.

PRESENTATION OF FY 04/05 AUDIT REPORT - BILLY G. COMBS, PC

Mr. Billy G. Combs, PC, presented the Fiscal Year 2004-2005 audit report. He listed several highlights within the report and praised the Town's finance department for the hard work and good job they perform.

ENDORSEMENT OF FINAL DESIGN SCHEME - HOWARD STREET PROJECT

Mr. Brian Tripp of WK Dickson Company presented the following power point presentation on the final design scheme for the Howard Street project **(on file with permanent Council packet)**. He stated that there are several critical issues, such as sidewalk design and lighting, that need to be addressed by the Council. In regard to the lighting issue, Mr. Tripp pointed out that two designs are being considered: streetlights, such as the ones on the ASU campus, and streetlights similar to the ones along Queen Street. He further noted that the design will utilize a natural landscape theme to accent the surroundings. Mr. Tripp listed several options in regard to the sidewalks including brick banding (one-band vs. two-band options) or using concrete pavers. Upon a motion by Council member Spann, seconded by Council member Mason, Council moved to accept the recommendation from WK Dickson Company and to receive cost estimate information for both lighting and sidewalk options to be provided by the engineer at the next meeting.

VOTE: Aye - All
Nay - None

RE-ESTABLISHMENT OF TOWN'S POSITION - HOWARD STREET RIGHT-OF-WAY

Town Manager Greg Young asked for direction from the Council as to acquiring the right-of-way along Howard Street. He stated that several property owners in the past were agreeable to the idea of property donation. Several Council members agreed that the Town needs to gauge current opinion on this issue. Upon a motion by Council member Wilcox, seconded by Council member Eggers, the Council moved to authorize the Town Manager to proceed with acquiring commitments from property owners along Howard Street for voluntary easements.

VOTE: Aye - All

Nay - None

ADOPTION OF ORDINANCE - MARKET COURT ANNEXATION

Upon a motion by Council member Mason, seconded by Council member Clawson, Council moved to excuse Council member Eggers from deliberating on this case.

VOTE: Aye - All
Nay - None

Development Services Director John Spear stated that adoption of this ordinance for the Market Court voluntary contiguous annexation pursuant to NC General Statues Chapter 160A is the final step in the annexation process for this property. Upon a motion by Council member Wilcox, seconded by Council member Spann, Council moved to adopt the following ordinance:

Ordinance 05-10

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE TOWN OF BOONE, NORTH CAROLINA
(Market Court Annexation)

WHEREAS, the Town Council has been petitioned under G.S. 160A-31 to annex the area described below; and

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

WHEREAS, the Town Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at Council Chambers at 1500 Blowing Rock Road at 6:30 p.m., November 17, 2005, after due notice by Watauga Democrat on November 3, 6, 2005; and

WHEREAS, the Town Council finds that the petition meets the requirements of G.S. 160A-31;

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

Section 1. By virtue of the authority granted by G.S. 160A-31, the following described territory is hereby annexed and made part of the Town of Boone as of January 1, 2006:

A 4.809 acre of land lying on the east side of Market Hill Drive and being comprised of three (3) lots and a 30' Right-of-Way all being shown on a plat recorded in Plat Book 018 at page 121 with the perimeter being surveyed by me, Donald H. McNeil, P.L.S. L-2809, on August 12, 2005 as: BEGINNING on an existing 5/8 inch rebar, the northeast corner of Lot 1 as shown in the aforementioned plat book and said rebar being located South 15 degrees 43 minutes 36 seconds East 359.95 feet from an existing 5/8 inch rebar, the common corner to James Barnes (Deed Book 171 page 177), Robert Len Richards (Book of Records 327 page 399), and Tract A (Plat Book 018 page 121); THENCE from the beginning and with the eastern line of New Market Estates (Plat Book 012 page 084 and Plat Book 013 page 274) South 15 degrees 43 minutes 36 seconds East 506.70 feet to an existing 5/8 inch rebar, said rebar being the southeast corner of Lot 3 (Plat Book 018 page 121); THENCE leaving the line of New Market Estates South 49 degrees 23 minutes 06 seconds West 217.00 feet to an existing 5/8 inch rebar, the southernmost corner of Lot 3; THENCE North 55 degrees 31 minutes 18 seconds West 105.21 feet to an existing 5/8 inch rebar; THENCE North 37 degrees 51 minutes 48 seconds West 118.96 feet to an existing 5/8 inch rebar, said rebar being the south east corner of Lot 2 and being located South 38 degrees 33 minutes 42 seconds West

222.18 feet from an existing 5/8 inch rebar in the southern margin of a 30' Right-of-Way; THENCE South 81 degrees 57 minutes 12 seconds West 216.70 feet to an existing 5/8 inch rebar, the southwest corner of Lot 2; THENCE North 04 degrees 40 minutes 30 seconds West 198.76 feet to an existing 5/8 inch rebar, the northwest corner of Lot 2; THENCE North 78 degrees 01 minutes 36 seconds East 176.31 feet to an existing 5/8 inch rebar, the southwest corner of Lot 1; THENCE North 13 degrees 58 minutes 18 seconds West 212.20 feet to an existing 5/8 inch rebar, the northwest corner of Lot 1; THENCE North 77 degrees 35 minutes 42 seconds East 303.75 feet to the BEGINNING having bearings relative to the North Carolina Geodetic Survey (NAD 27) and all distances being horizontal measurements.

Section 2. Upon and after January 1, 2006, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Boone and shall be entitled to the same privileges and benefits as other parts of the Town of Boone. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

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

_____
Mayor

ATTEST:

_____
Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3 PAGES 279-280)

VOTE: Aye - 4 (Clawson, Mason, Spann, Wilcox)
Nay - None
Excused - 1 (Eggers)

ADOPTION OF RESOLUTION - DIRECTING CLERK TO INVESTIGATE SHOEMAKE ANNEXATION

Development Services Director John Spear presented a staff report on the petition for voluntary contiguous annexation for approximately .09 acre located on VFW Drive filed by Benjamin and Nora Shoemake and a resolution directing the clerk to investigate sufficiency of the petition for annexation. Upon a motion by Council member Wilcox, seconded by Council member Clawson, Council moved to adopt the following resolution:

RESOLUTION DIRECTING THE CLERK TO INVESTIGATE A PETITION RECEIVED UNDER G.S. 160A-31 (Shoemake Annexation)

WHEREAS, a petition requesting annexation of an area described in said petition was received on November 17, 2005 by the Town Council; and

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

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

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

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

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2 PAGE 305)

VOTE: Aye - All
Nay - None

ADOPTION OF ZONING AMENDMENTS

Development Services Director John Spear presented the following zoning amendments for consideration by the Town Council:

RZ2005-16 - The High Country United Church of Christ map amendment request for property located at 315 State Farm Road. The request is to reclassify 2.9 acres from CUR-3 Multi-family Residential to R-1 Single-family. Mr. Spear stated the Planning Commission had recommended approval for this case. Upon a motion by Council member Clawson, seconded by Council member Eggers, Council moved to approve the request for zoning amendment.

VOTE: Aye - All
Nay - None

RZ2005-17 - The Town of Boone has proposed a zoning text amendment to various sections of the Unified Development Ordinance to reflect and track recent changes to the State of North Carolina Planning Statutes. Upon a motion by Council member Mason, seconded by Council member Spann, Council moved to approve the following text amendment:

Section 15. Definitions of Basic Terms

[a] *Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this chapter.*

Subdivision: The division of a tract ***or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development (whether immediate or future) and shall ~~including~~ include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition ~~nor be subject to the regulations of this ordinance applicable strictly to subdivisions~~:***

a. The combination or recombination of portions of previously ~~platted~~ ***subdivided and recorded*** *lots where the total number of lots is not increased and the resultant lots are equal to or exceed the minimum standards set forth in this ~~ordinance, or,~~* ***ordinance.***

b. The division of land into parcels greater than ten (10) acres where no street right-of-way dedication is ~~involved, or,~~ ***involved.***

c.The public acquisition by purchase of strips of land for widening or opening streets~~, or,~~ ***or for public transportation system corridors.***

*d. The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the ~~minimum~~ standards set forth in this ~~ordinance, or~~ **ordinance.***

~~*e. The division of land solely among members of the same family, which shall include all lineal descendants or ancestors plus brothers, sisters, aunts, uncles, fathers-in-law, mothers-in-law, brothers-in-law, and sisters-in-law, by any method of transfer except where the parties contemplate development for resale. If a plat is recorded at the time of subdivision, the subdivided land must be deeded to the family members at the same time.*~~

~~*f. The division of land by court ordered or court approved partition except where the parties contemplate development for resale.*~~

Section 43. Appointment and Terms of Board of Adjustment

[a] *There shall be a Board of Adjustment consisting of eight (8) regular members and eight (8) alternates.* ***Alternates shall serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Each alternate, while attending any regular or special meeting of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member.*** *Five (5) regular members and five (5) alternates, appointed by the council, shall reside within the town. Three (3) regular members and three (3) alternates, appointed by the County Board of Commissioners, shall reside within the town's extraterritorial planning area. (In accordance with N. C. G. S. 160A-362, the town must provide a means of proportional representation based on population for residents of the extraterritorial area being regulated. There shall be at all times at least one representative of the extraterritorial planning area on the Board of Adjustment. An additional member must be appointed to the Board of Adjustment to achieve proportional representation only when the population of the entire extraterritorial planning area constitutes a full fraction of the town's population divided by the total membership of the Board of Adjustment). If, despite good faith efforts, enough residents of the extraterritorial planning area cannot be found to fill the seats reserved for residents of such area, then the County Board of Commissioners may appoint other residents of the county (including residents of the town) to fill these seats. If the County Board of Commissioners fails to make these appointments within ninety (90) days after receiving a resolution from the council requesting that they be made, the council may make them. (When selecting a new representative to the Board of Adjustment as a result of an extension of the extraterritorial jurisdiction, the Board of County Commissioners shall hold a public hearing on the selection. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The County Board shall select appointees only from those who apply at or before the public hearing. The county shall make the appointments within forty five days following the public hearing). In making appointments to the Board of Adjustment, both the Town Council and the County Board of Commissioners shall consider the employment of current board members and alternates, and their spouses, and shall strive to create such employment diversity upon the board so as to minimize the likelihood that a conflict of interest with regard to a particular case will prevent the Board of Adjustment from assembling a full board of eight (8) members to hear the case. Therefore, in order to be considered for appointment to the Board, an applicant must provide the Town with information concerning his or her employment and that of his or her spouse, if any.*

[b] *Board of Adjustment regular members and alternates shall be appointed for three (3) year staggered terms, but both regular members and alternates may continue to serve until their successors have been appointed. Vacancies may be filled for the unexpired terms only.*

[c] *Members may be reappointed to successive terms without limitation.*

[d] *Regular Board of Adjustment members may be removed by the council at any time for failure to attend four (4) consecutive meetings or for failure to attend one fourth of the regular meetings in a calendar year, or for any other good cause related to performance of duties. Alternate members may be removed for repeated failure to attend or participate in meetings when requested to do so in accordance with regularly established procedures. Upon request of*

the member proposed for removal, the council shall hold a hearing on the removal before it becomes effective.

[e] *If a regular or alternate in town member moves outside the town, or if an extraterritorial area regular or alternate member moves outside the planning jurisdiction, that shall constitute a resignation from the board~~, effective upon the date a replacement is appointed~~.*

[f] *Extraterritorial planning area members may vote on all matters coming before the board.*

[g] *The in town alternate may sit only in lieu of a regular in town member and the extraterritorial area alternate may sit only in lieu of the regular extraterritorial area member. When so seated, alternates shall have the same powers and duties as the regular member they replace.*

Section 45. Quorum

[a] *A quorum for the Board of Adjustment shall consist ~~of the number of members equal to four fifths of the regular board membership (excluding vacant seats)~~* ***of seven(7) members****. A quorum is necessary for the board to take official action.*

[b] *A member who has withdrawn from the meeting without being excused as provided in Section 46 shall be counted as present for purposes of determining whether a quorum is present.*

Section 46. Voting

[a] *The concurring vote of four fifths of the regular board membership (excluding vacant seats) shall be necessary to reverse any order, requirement, decision, or determination of the administrator or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance (including the issuance of a special-use permit) or to grant any variance. All other actions of the board shall be taken by majority vote, a quorum being present.* ***For purposes of this Section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculations of the requisite supermajority if there are no qualified alternates available to take the place of such members.***

[b] *Once a member is physically present at a board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with Subsection 46 [c] or has been allowed to withdraw from the meeting in accordance with Subsection 46 [d].*

[c] *~~A member may be excused from voting on a particular issue by majority vote of the remaining members present under the following circumstances:~~*

~~[1] If the member has a direct financial interest in the outcome of the matter at issue; or,~~

~~[2] If the matter at issue involves the member's own official conduct; or,~~

~~[3] If participation in the matter might violate the letter or spirit of a member's code of professional responsibility; or,~~

~~[4] If a member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.~~

A member shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to:

[1] A member having a fixed opinion prior to hearing the matter that is not susceptible to change.

[2] A member having undisclosed ex parte communications

[3] A member having a close familial, business, or other associational relationship with an affected person.

[4] A member having a financial interest in the outcome of the matter.

If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

[d] *A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.*

[e] *A motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.*

[f] *A roll call vote shall be taken upon the request of any member.*

Section 48. Powers and Duties of Board of Adjustment

[a] *The Board of Adjustment shall hear and decide:*

[1] Appeals from ***and review*** *any order, decision, requirement, or* ~~*interpretation*~~ ***determination*** *made by the administrator, as provided in Section 106.*

[2] Applications for special-use permits, as provided in Section 61.

[3] Applications for variances, as provided in Section 107.

[4] Questions involving interpretations of the zoning map, including disputed district boundary lines and lot lines, as provided in Section 109.

[5] Any other matter the board is required to act upon by any other town ordinance.

[b] *The board may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this ordinance.*

[c] The board of adjustment may subpoena witnesses and compel the production of evidence.

Section 49 ~~***Reserved***~~ ***Appeals***

[a] Every decision of the board shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board is filed with the register of deeds of Watauga County or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

Section 50 —— ~~***Reserved***~~ ***Action Subsequent to Decision***

[a] The decision of the board shall be reduced to writing and served upon the applicant or appellant and all other persons who make a written request for a copy. A copy of the decision shall also be placed in the office of the Development Services Department.

[b] If the variance is granted, the nature of the variance and any conditions attached thereto shall be entered on the face of any necessary zoning permit.

Section 74. Board of Adjustment Action on Special Use Permits

[a] *In considering whether to approve an application for a special use permit, the Board of Adjustment shall proceed according to the following format:*

[1] The board shall consider whether the application is complete. If the board concludes that the application is incomplete and the applicant refuses to provide the necessary information, the application shall be denied. A motion to this effect shall specify either the particular type of information lacking or the particular requirement with respect to which the application is incomplete. A motion to this effect, concurred in by two members of the board, shall constitute the board's finding on this issue. If such a motion is not made and concurred in by at least two members, this shall constitute an affirmative finding that the application is complete.

[2] The board shall consider whether the application complies with all of the applicable requirements of this ordinance. If a motion to this effect passes by the necessary four fifths vote, the board need not make further findings concerning such requirements. If such a motion fails to receive the necessary four fifths vote or is not made, then a motion shall be made that the application be found not in compliance with one or more of the requirements of this ordinance. Such a motion shall specify the particular requirements the application fails to meet. A separate vote may be taken with respect to each requirement not met by the application, and the vote of the number of members equal to more than one fifth of the board membership (excluding vacant seats) in favor of such a motion shall be sufficient to constitute such motion a finding of the board. It shall be conclusively presumed that the application complies with all requirements not found by the board to be unsatisfied through this process. As provided for in Subsection 69 [b], if the board concludes that the application fails to meet one or more of the requirements of this ordinance, the application shall be denied.

[3] If the board concludes that all such requirements are met, it shall issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in Subsection 69 [c]. Such a motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion. ~~Since such a motion is not in favor of the applicant, it is carried by a simple majority vote.~~ Such a motion shall be adopted by an affirmative vote of two (2) members.

Section 76. Authorizing Use, Occupancy, or Sale Before Completion of Development Under Special Use Permits

[a] *In cases when, because of weather conditions or other factors beyond the control of the special use permit recipient (exclusive of financial hardship), it would be unreasonable to require the permit recipient to comply with all of the requirements of this ordinance before commencing the intended use of the property or occupying any buildings or selling any lots in a subdivision, the permit issuing board may authorize the commencement of the intended use or the occupancy of buildings or the sale of subdivision lots (insofar as the requirements of this ordinance are concerned) if the permit recipient provides a performance bond or other security satisfactory to the board to ensure that all of these requirements will be fulfilled within a reasonable period not to exceed twelve (12) months.*

[b] *When the permit issuing board imposes additional requirements upon the permit recipient in accordance with Section 75 or when the developer proposes in the plans submitted to install amenities beyond those required by this ordinance, the board may authorize the permittee to commence the intended use of the property or to occupy any building or to sell any*

subdivision lots before the additional requirements are fulfilled or the amenities installed if it specifies a date by which or a schedule according to which such requirements must be met or each amenity installed and if it concludes that compliance will be ensured as the result of any one or more of the following:

[1] A performance bond or other security satisfactory to the board is furnished,

[2] A condition is imposed establishing an automatic expiration date on the permit, thereby ensuring that the permit recipient' s compliance will be reviewed when application for renewal is made,

[3] The nature of the requirements or amenities is such that sufficient assurance of compliance is given by Section 132 (Penalties and Remedies For Violations) and Section 133 (Permit Revocation).

[c] *With respect to subdivisions in which the developer is selling only undeveloped lots, the council may authorize final plat approval and the sale of lots before all the requirements of this ordinance are fulfilled if the sub divider provides a performance bond or other security satisfactory to the council to ensure that all of these requirements will be fulfilled within not more than twelve (12) months after final plat approval.* ***This surety may be in the form of a surety bond, cash escrow or letter of credit. For any specific project the type of performance guarantee from the range specified shall be at the election of the developer.***

Section 92. No Subdivision Without Plat Approval

[a] *No person may subdivide his land except in accordance with all of the provisions of this ordinance. In particular, no person may subdivide his land unless and until a final plat of the subdivision has been approved in accordance with the provisions of Section 93 or Section 94 and recorded in the Watauga County Registry.* ***Building permits required pursuant to the State Building Code may be denied for lots that have been illegally subdivided.***

[b] *The Watauga County Register of Deeds may not record a plat of any subdivision within the town's planning jurisdiction unless the plat has been approved in accordance with the provisions of this ordinance.*

[c] The provisions of this Section shall not prohibit any owner or its agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not been properly approved under Article IV or recorded with the register of deeds of Watauga County, provided the contract does all of the following:

[1] Incorporates as an attachment a copy of the preliminary plat referenced in the contract and obligates the owner to deliver to the buyer a copy of the recorded plat prior to closing and conveyance.

[2] Plainly and conspicuously notifies the prospective buyer or lessee that a final subdivision plat has not been approved or recorded at the time of the contract, that no governmental body will incur any obligation to the prospective buyer or lessee with respect to the approval of the final subdivision plat, that changes between the preliminary and final plats are possible, and that the contract or lease may be terminated without breach by the buyer or lessee if the final recorded plat differs in any material respect from the preliminary plat.

[3] Provides that if the approved and recorded final plat does not differ in any material respect from the plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than five days after the delivery of a copy of the final recorded plat.

[4] Provides that if the approved and recorded final plat differs in any material respect from the preliminary plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than 15 days after the delivery of the final recorded plat, during which 15-day period the buyer or

lessee may terminate the contract without breach or any further obligation and may receive a refund of all earnest money or prepaid purchase price.

[d] The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease land by reference to an approved preliminary plat for which a final plat has not been properly approved under the subdivision regulations or recorded with the register of deeds where the buyer or lessee is any person who has contracted to acquire or lease the land for the purpose of engaging in the business of construction or residential, commercial, or industrial buildings on the land, or for the purpose of resale or lease of the land to persons engaged in that kind of business, provided that no conveyance of that land may occur and no contract to lease it may become effective until after the final plat has been properly approved under the unified development ordinance and recorded with the register of deeds.

Section 107. Variances

[a] *An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the administrator in the Development Services Department. Applications shall be handled in the same manner as applications for special-use permits in conformity with the provisions of Sections 64, 65 and 71.*

[b] *A variance may be granted by the Board of Adjustment if it finds that strict enforcement of the ordinance regulations would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit and intent of the ordinance and the comprehensive plan will be observed, public safety and welfare secured, and substantial justice done. It may reach these conclusions if it finds that:*

[1] There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance;

[2] The hardship complained of is one suffered by the applicant rather than by neighbors or the general public;

[3] The hardship relates to the applicant's property rather than to personal circumstances;

[4] The hardship is peculiar to the applicant's property, rather than a hardship shared by the neighborhood or resulting from the existence of nonconforming situations in the vicinity;

[5] The hardship is not the result of the applicant's own actions;

[6] The variance will not substantially interfere with or injure the rights of others whose property would be affected by granting of the variance; and,

[7] The variance will neither result in the extension of a nonconforming situation in violation of Article VIII nor authorize the initiation of a nonconforming use of land.

[c] *In granting variances, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties. In its consideration of applications for a variance, the board shall not use the existence of nonconformities in the vicinity as justification for the granting of variances.*

[d] *A variance may be issued for an indefinite duration or for a specified duration only.*

[e] *The nature of the variance and any conditions attached to it shall be entered on the face of the zoning permit, or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this ordinance.*

[f] No change in permitted uses may be authorized by variance.

Section 113 ~~Action Subsequent to Decision~~ Reserved

~~[a] The decision of the board shall be reduced to writing and served upon the applicant or appellant and all other persons who make a written request for a copy. A copy of the decision shall also be placed in the office of the Development Services Department.~~

~~[b] If the variance is granted, the nature of the variance and any conditions attached thereto shall be entered on the face of any necessary zoning permit.~~

Section 114 ~~Appeal of Decision to Superior Court~~ Reserved

~~[a] A decision by the Board of Adjustment on an application for appeal or for a variance may be appealed to the Superior Court by an aggrieved party. Such appeal shall be in the nature of certiorari and must be filed within thirty (30) days of the filing of the decision in the Development Services Department or the notification required in Subsection 113 [a], whichever is later.~~

Section 143. Change in Use of Property Where a Nonconforming Situation Exists

[a] *A change in use of property (where a nonconforming situation exists) that is sufficiently substantial to require a new zoning or special use permit in accordance with Section 61 may not be made except in accordance with Subsections [b] through [d]. However, this requirement shall not apply if only a sign permit is needed.*

[b] *If the intended change in use is to a principal use that is permissible in the district where the property is located, and all of the other requirements of this ordinance applicable to that use can be complied with, permission to make the change must be obtained in the same manner as permission to make the initial use of a vacant lot. Once conformity with this ordinance is achieved, the property may not revert to its nonconforming status.*

[c] *If the intended change in use is to a principal use that is permissible in the district where the property is located, but all of the requirements of this ordinance applicable to that use cannot be reasonably complied with, the change is permissible if the entity authorized by this ordinance to issue a permit for that particular use (the administrator, Board of Adjustment, or council) issues a permit authorizing the change. This permit may be issued if the permit issuing authority finds, in addition to any other findings that may be required by this ordinance, that:*

[1] The intended change will not result in a violation of Section 141, and

[2] All of the applicable requirements of this ordinance that can reasonably be complied with will be complied with. Compliance with a requirement of this ordinance is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible. And in no case may an applicant be given permission pursuant to this subsection to construct a building or to add to an existing building if additional nonconformities would thereby be created.

~~[d] If the intended change in use is to another principal use that is also nonconforming, then the change is permissible only if the Board of Adjustment issues a special use permit authorizing the change. The Board of Adjustment may issue the permit if it finds, in addition to other findings that may be required by this ordinance, that:~~

~~[1] The use requested is one that is permissible in some zoning district with either a zoning or special use permit, and~~

~~[2] All of the conditions applicable to the permit, authorized in Subsection [c] of this section are satisfied, and~~

~~*[3] The proposed development will have less of an adverse impact on those most affected by it and will be more compatible with the surrounding neighborhood than the use in operation at the time the permit is applied for.*~~

Section 379. Initiation of Amendments

[a] *Whenever a request to amend this ordinance is initiated by the Town Council, the Planning Commission, the Board of Adjustment, the Community Appearance Commission or the Town Administration, the Town Attorney in consultation with the Development Services staff shall draft an appropriate ordinance and present that ordinance to the council so that a date for a public hearing may be set.*

[b] *Any other person may also petition the council to amend this ordinance. The petition shall be filed with the administrator and shall include, among the information deemed relevant by the administrator:*

[1] The name, address, and phone number of the applicant,

[2] A description of the land affected by the proposed amendment if a change in zoning district classification is proposed,

[3] Stamped envelopes containing the names and addresses of all those to whom notice of the public hearing must be sent as provided for in Section 380,

[4] A description of the proposed map change or a summary of the specific objective of any proposed change in the text of this ordinance.

[c] *Upon receipt of a petition as provided in Subsection [b], the administrator shall either:*

[1] Treat the proposed amendment as one initiated by the town administration and proceed in accordance with Subsection [a] if he believes that the proposed amendment has significant merit and would benefit the general public, or

[2] Forward the petition to the council with or without written comment for a determination of whether an ordinance should be drafted and a public hearing set in accordance with Subsection [d].

[d] *Upon receipt of a proposed ordinance as provided in Subsection [a], the council may establish a date for a public hearing on it. Upon receipt of a petition for an ordinance amendment as provided in Subsection [b], the council may summarily deny the petition or set a date for a public hearing on the requested amendment and order the attorney, in consultation with the administrator, to draft an appropriate ordinance.*

[e] *Upon establishment of a date for the public hearing, the administrator shall prepare an analysis of the proposed petition to determine its conformity with the comprehensive plan, ~~and based on the findings, prepare a written report and recommendation~~* ***and prepare a report analyzing the reasonableness of the request****. The report shall be available no later than seven (7) days prior to the date set for the public hearing, and shall be submitted to the Planning Commission and council. Failure of the administrator to prepare a report within the prescribed time period shall be construed as a favorable recommendation.*

Section 380. Hearing Required: Notice

[a] *No ordinance that amends* ***or repeals*** *any of the provisions of this ordinance may be adopted until a public hearing has been held on such ordinance.*

[b] *The Town Council and Planning Commission shall meet in joint session to hold the public hearing. Public hearings on proposed ordinance amendments will be held on the second Thursday of February, May, August and November. A record of the public hearing will be prepared by staff and submitted to the Planning Commission and council as soon as practical following the public hearing. The Town Council, in the interest of advancing a legitimate public purpose may schedule a public hearing at date other than those specified above.*

[c] *The administrator shall publish a notice of the public hearing on any ordinance that amends the provisions of this ordinance once a week for two (2) successive weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten (10) days nor more than twenty five (25) days before the date fixed for the hearing. In computing this period, the date of publication shall not be counted but the date of the hearing shall be.*

[d] *With respect to ~~minor~~ map amendments, the administrator shall mail written notice of the public hearing to the record owners for tax purposes of all properties whose zoning classification is changed by the proposed amendment as well as the owners of all properties any portion of which is within one hundred fifty (150) feet of the property rezoned by the amendment.* ***Said notice shall be by first class mail at the last address listed for such owner on the county tax abstracts. This notice shall be deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing. The person mailing such notices shall certify to the Town council that fact, and such certificate shall be deemed conclusive in the absence of fraud.***

[e] *The Development Services staff shall also post notices of the public hearing ~~in the vicinity of the property rezoned by the proposed amendment and~~* ***on the site proposed for rezoning or on an adjacent public street or highway right of way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the Town shall post sufficient notices to provide reasonable notice to interested persons. In addition the Town shall*** *take any other action deemed by the Development Services staff to be useful or appropriate to give notice of the public hearing on any proposed amendment.*

[f] *The notice required or authorized by this section shall:*

[1] State the date, time, and place of the public hearing,

[2] Summarize the nature and character of the proposed change,

[3] If the proposed amendment involves a change in zoning district classification, reasonably identify the property whose classification would be affected by the amendment,

[4] State that the full text of the amendment can be obtained from the Town Clerk, and

[5] State that substantial changes in the proposed amendment may be made following the public hearing.

~~[g]~~ *~~The Development Services staff shall make every reasonable effort to comply with the notice provisions set forth in this section. However, it is the council' s intention that no failure to comply with any of the notice provisions (except those set forth in Subsection [b]) shall render any amendment invalid.~~*

Section 381. Planning Commission Consideration of Proposed Amendments

[a] *At its next regularly scheduled meeting following the public hearing, the Planning Commission shall review the proposed amendment, the record of the public hearing, and the administrator's report and shall submit a written recommendation to the council.*

[b] *Additional testimony not presented at the public hearing may be considered by the Planning Commission upon favorable vote of the majority of its members present.*

~~[c]~~ *~~The Planning Commission shall submit its recommendation to the council as soon as possible, but no later than thirty five (35) days following the date of the public hearing. Failure of the Planning Commission to submit a recommendation to the council within the prescribed time limit shall be construed as a favorable recommendation.~~* ***The Planning Commission shall advise and comment on whether the proposed amendment is consistent with the comprehensive plan and any other officially adopted plans that are applicable. The Planning Commission shall provide a written recommendation to the Town Council that***

addresses plan consistency and other matters as deemed appropriate by the Planning Commission. A comment by the Planning Commission that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Council.
If no written report is received from the Planning Commission within thirty (30) days of the public hearing on the amendment, the Council may proceed in its consideration of the amendment without the Planning Commission report. The Council is not bound by the recommendations, if any, of the Planning Commission.

[d] No member of the Planning Commission shall vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

Section 382. Council Action on Amendments

[a] *At its first regular scheduled meeting following the receipt of the recommendation from the Planning Commission, the council shall review the amendment request. The council shall consider the Planning Commission recommendation, the record of the public hearing and the recommendation of the administrator.*

[b] *Additional testimony not presented at the public hearing may be considered by the council upon favorable vote of the majority of its members present.*

[c] *The Town Council shall take action on a request within sixty (60) days after receipt of the recommendation of the Planning Commission.*

[d] Prior to adopting or rejecting any zoning amendment, the Council shall adopt a statement describing whether its action is consistent with the comprehensive plan and explaining why the Council considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.
[e] A Town Council member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

Section 384. Protest to Zoning District Changes

[a] *If a petition opposing a change in the zoning classification of any property is filed in accordance with the provisions of this section, then the proposed amendment may be adopted only by a favorable vote of three-fourths of the council membership.* ***For the purposes of this section, vacant positions on the council and members who are excused from voting shall not be considered 'members of the council' for calculation of the requisite supermajority.***

[b] *To trigger the three-fourths vote requirement, the petition must:*

[1] ~~*Be signed by the owners of twenty (20) percent or more either of (i) the lots included in a proposed change, or (ii) the lots within one hundred (100) feet of either side or the rear of the tract to be rezoned, or (iii) the lots directly opposite the tract to be rezoned and extending one hundred (100) feet from the street frontage of such opposite lots.*~~ ***Be signed by the owners of either (i) twenty percent (20%) or more of the area included in the proposed change or (ii) five percent (5%) of a 100-foot wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary the Town may rely on the county tax listing to determine the 'owners' of potentially qualifying areas.***

[2] Be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment.

[3] Be received by the Town Clerk in sufficient time to allow the town at least two normal working days before the date established for a public hearing on the proposed amendment to determine the sufficiency and accuracy of the petition.

[4] Be on a form provided by the Town Clerk and contain all the information requested on this form.

[5] A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment. Only those protest petitions that meet the qualifying standards set forth at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement.

[6] A protest petition shall not be applicable to any amendment which initially zones property added to the territorial coverage of the Town as a result of annexation or otherwise, or to an amendment to an adopted conditional district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved for the conditional district.

Section 386. Special Provisions for Conditional Districts

[a] *Property may be placed in a conditional district (bearing the designation CD) only in response to a petition by the owners of all property to be included. No state owned property may be placed in a conditional district without approval by the Council of State.*

[b] *Any proposal for a conditional district zoning approval must be accompanied by a site specific development plan and supporting documentation that specifies the actual use or uses intended for the property and any rules, regulations and conditions that, in addition to all predetermined ordinance requirements, will govern the development and use of the property. Refer to Appendix A for additional information.*

[c] *Conditional zoning district decisions are a legislative process subject to judicial review using the same procedures and standard of review established for general district zoning decisions. Requests for conditional zoning district approvals shall be processed and considered in the same procedure as set forth in Section 380 for zoning amendments and the voting shall be the same as required in zoning matters. Conditional zoning district decisions shall be made in consideration of relevant adopted land use plans such as the Comprehensive Plan, Thoroughfare Plan, Alternative Transportation Plan and similar adopted land use policy.*

[d] ~~*In approving a petition for the reclassification of property to a conditional zoning district, the applicant, Planning Commission or staff may recommend, and the Town Council request, that reasonable and appropriate conditions be attached to approval of the petition. Any such conditions should relate to the relationship of the proposed use to surrounding property and proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, street and right-of-way improvements, water and sewer improvements, storm drainage, provision of adequate open space, the timing of development and other matters that the town may find appropriate or the petitioner may propose. The petitioner shall have a reasonable opportunity to consider and respond to any such conditions prior to final action by the Town Council*~~ ***Specific conditions applicable to this district may be proposed by the petitioner or the town or its agencies, but only those conditions mutually approved by the town and the petitioner may be incorporated into the zoning regulations or permit requirements. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to town ordinances and the comprehensive plan or other***

plan and those that address the impacts reasonably expected to be generated by the development or use of the site.

A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a conditional district.

[e] *Changes to an approved petition or to conditions attached to the approved petition shall be treated the same as amendments to these regulations or to the zoning map and shall be processed as a new application. No proposal to amend or change any conditional zoning district shall be considered within twelve (12) months of the date of the original approval of the petition or within twelve (12) months of hearing any previous proposal to amend or change the petition.*

[f] *If a petition for conditional zoning is approved, a copy of the approval and all conditions relative to the approval, including site specific development plan(s), shall be kept on file in the Development Services office. A copy of the approval will also be recorded in the office of the Watauga County Register of Deeds.*

[g] *Should, by the end of the applicable vesting period, the property fail to develop in accordance with the terms and conditions of the conditional district approval, no subsequent use of the property shall be permitted without a new petition for zoning amendment being filed.*

[h] *Should a petition for a conditional zoning district be denied, then no new petition for making similar use the same property shall be considered within (12) months of the date of the original denial.*

VOTE: Aye - All
Nay - None

RZ2005-18 - The Town of Boone Tree Board has proposed a zoning text amendment to Section 36 of the Unified Development Ordinance to add (2) alternate members in order to ensure a quorum is available for scheduled meetings. Mr. Spear noted that the Planning Commission had recommended that the text be changed so that the two alternates are recommended by the Community Appearance Commission but appointed by the Town Council. Upon a motion by Council member Clawson, seconded by Council member Spann, the following text amendment was approved as amended:

Section 36 – Appointment and Terms of Tree Board Members

Proposed Text: Section 36[a]
There shall be a Tree Board consisting of four (4) regular members ***and two (2) alternates. The four (4) regular members,*** ~~*All members*~~ *appointed by the Community Appearance Commission chairman, shall be members of the Community Appearance Commission.* ***The two (2) alternate members, recommended by the Community Appearance Commission and appointed by the Town Council, shall reside within the planning jurisdiction of the town.*** ~~*One (1) of the four (4) members shall be the chairman of the Community Appearance Commission.*~~ *To the extent qualified persons can be found, all members shall have special training or experience in arboriculture, horticulture, architecture, or landscape architecture.*

VOTE: Aye - All
Nay - None

RZ2005-19 - The Town of Boone Tree Board has proposed a zoning text amendment to Section 369 of the Unified Development Ordinance to allow adequate time for area landscape contractors to obtain licensing due to the limited number of licensed landscape contractors in this area. Mr. Spear noted that the Planning Commission had recommended approval of this request. Upon a motion by Council member Wilcox, seconded by Council member Mason, Council moved to approve the following text amendment:

PROPOSED TEXT AMENDMENT
Article XX – Landscape Standards

Section 369 – Compliance and Maintenance

Proposed Text – Section 369[a]

[a] Certificate of Compliance
Landscaping must be installed according to the approved site plan and inspected prior to receiving a certificate of compliance. All plant material shall meet or exceed size and shape relationships specified in the latest edition of the American Standard for Nursery Stock published by the American Association of Nurserymen. ~~*and be*~~ ***Beginning January 1, 2008, installation of plant material must be*** *installed by a landscape contractor licensed to practice in the State of North Carolina. All sizes specified refer to size at time of planting. Vegetation shall be planted to ensure the best chance of survival and to reduce the potential expense of replacing damaged plant material.*

VOTE: Aye - All
Nay - None

TRANSPORTATION COMMITTEE RECOMMENDATIONS

Public Works Director Blake Brown informed the Council of the Transportation Committee's recommendations. At their November 8th meeting, the committee voted to recommend that Oak Street from Pine Street to Clement Street, as well as from Clement Street to Horn in the West Drive permanently remain a one-way street with consideration for pedestrian-friendly improvements, such as curb & guttering, sidewalks, and bike lanes. He stated the committee feels that safety concerns, rather than convenience, should be the priority. Rebecca Kaenzig of 573 Oak Street stated she is in agreement with the Transportation Committee's recommendations. Phillip Underwood of 413 Oak Street stated that making Oak Street a one-way street has improved safety issues, as well as helped to preserve the R-1, Single-family character of the neighborhood. Council member Wilcox asked about the time-frame for sidewalk improvements to Oak Street. Mr. Brown stated that work could commence by springtime and possibly be finished by the end of summer 2006. Mr. Brown stated there would have to be some storm drainage improvements to the street. He quoted an estimate for curb and guttering for Oak Street from Pine Street to Clement as $52,439 and from Clement to Horn in the West Drive as $42,974. Upon a motion by Council member Mason, seconded by Council member Spann, Council moved to accept the recommendation of the Transportation Committee, stating that the Town has an obligation to maintain the livability, viability, and safety of its neighborhoods.

VOTE: Aye - All
Nay - None

AWARDING OF BID - SCBA'S FOR FIRE DEPARTMENT

Fire Chief Reggie Hassler presented a request for an approval of bid award for SCBA equipment to be purchased with funds provided by the Fire Act Grant. Mr. Hassler presented the following bid minutes into record:

BIDS: SCBA'S Fire Act Grant

DATE: November 17th, 2005

TIME: 10:00 a.m.

The Town of Boone opened bids for SCBA's under the Fire Grant Act on Thursday, November 17th, 2005 at 10:00 a.m. Town personnel present were Jimmy Isaacs, Reggie Hassler, and Becky Love.

Vendors contacted for bids: Interspiro, represented by Larry Holder; Kair, Inc., represented by Paul Simmons; and Axis Fire Equipment.

There were no bidders present. Jimmy Isaacs checked with all personnel to confirm that no bids had been delivered prior to 10:00 a.m.

There were two bids received by mail. A bid from Interspiro was opened. No bid bond was present and the bid amount was $205,588.00. A bid from Kair, Inc. was opened. The bid was submitted with a bid bond in the form of a cashiers check for $7,200.00. The total of Kair's was $142,798.00.

Jimmy Isaacs recommended that Kair's bid be examined more closely to be certain that all bid requirements were met. If all requirements had been met, he recommended that Kair's bid be submitted to Council for approval at its regularly scheduled meeting on November 17, 2005.

Reggie Hassler agreed that Kair, Inc.'s bid be submitted to Council.

The meeting adjourned at 10:15 a.m.

Prepared by: Becky Love

Mr. Hassler stated after further review, he recommends the acceptance of the bid of $142,794.00 from Kair, Inc. for 34 SCBA air packs and two R.I.T. packs. Upon a motion by Council member Eggers, seconded by Council member Clawson, Council moved to accept the bid from Kair, Inc. in the amount of $142,794.00.

VOTE: Aye - All
Nay - None

ADOPTION OF CODE AMENDMENT - SECTION 75.06 BOOTING RESPONSE TIME

Town Attorney Sam Furgiuele stated the draft text reflects requested changes made at the October meeting by Mr. Jon Tate, owner of We Wheel Lock. He pointed out that this draft reflects a ten-minute response time. Council member Wilcox stated this draft had been presented to the DBDA and had received approval for recommendation by that agency. Council members Mason and Spann agreed that, with the number of complaints received concerning this business, the town needs to monitor the situation closely. Upon a motion by Council member Spann, seconded by Council member Wilcox, Council moved to adopt the following revised text:

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 that person has provided conspicuously displayed contact information for telephone contact by the owner or operator of the vehicle with a person who has the ability to remove the parking control device or method, and the person to be contacted has the capacity to respond within a time period no greater than ten minutes and in every instance actually makes a reasonable effort to respond within a ten minute period. However, should the Town of Boone Town Manager receive five or more unrelated and credible complaints within any three month period of the failure of the person authorizing, directing, contracting for, implementing or applying parking control devices or other methods to vehicles in the Town of Boone to respond within ten minutes to telephone contact by the owners or operators of vehicles which have been booted or immobilized, it shall be presumptively concluded that the person authorizing, directing, contracting for, implementing or applying a parking control device or method to a vehicle in any parking lot or space in the Town of Boone does <u>not</u> have the capacity to respond within ten minutes and thereafter, a duly licensed** person must be 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 must have the means and ability to remove the parking control device or method upon payment of the posted charges. No person may implement or apply a parking control device or method to a vehicle, and no person may demand or accept payment for the non-application or removal of any parking control device or method to or from a vehicle unless that person has obtained a privilege license from the Town of Boone, in accordance with Chapter 114 of this Code, defined therein as "parking lot attendant," and has on display on his or her person the picture identification issued by the Town of Boone upon the payment of such tax.

VOTE: Aye - All
Nay - None

Mayor Burnley declared a 10- minute break at 8:10 p.m. Council reconvened at 8:22 p.m.

REQUEST FOR TIME EXTENSION - WHITE LAUREL CONDEMNATION ORDER

Town Attorney Sam Furgiuele briefly explained the history of this situation including the damage suffered by the structures as a result of two storms and the ensuing condemnation procedures affecting the properties. Mr. Furgiuele asked that this matter be discussed in Closed Session due to some legal issues that need to be addressed. Upon a motion by Council member Eggers, seconded by Council member Clawson, Council moved to consider this item during Closed Session.

VOTE: Aye - All
Nay - None

ADOPTION OF AGREEMENT - BOUNDARY LINE WITH AMP, INC.

Town Attorney Sam Furgiuele stated this agreement is the result of a dispute between the Town of Boone and AMP, Inc. over a boundary line between two properties. He explained that after discussion, the Council has recommended a division of a third tract of land adjoining both properties. Upon a motion by Council member Wilcox, seconded by Council member Eggers, Council moved to adopt the following agreement:

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

BOUNDARY LINE AGREEMENT

This Agreement, entered into this ___ day of _____, 2005, by A.M.P. Enterprises, Inc., a North Carolina business corporation, (hereinafter referred to as "AMP") and the Town of Boone, (hereinafter "The Town"), and such other persons and entities as may be designated herein, known and referred to collectively as "the parties."

W I T N E S S E T H

THAT WHEREAS, the undersigned are parties to certain matters and issues regarding the location of a boundary line dividing their respective properties; and

WHEREAS, each of the parties having advanced documents and information which afford that party a legal and factual basis for a claim to the approximately 0.088 acre disputed tract, the Town claiming the property as the result of a deed recorded in Deed Book 142, Page 690 of the Watauga County Registry, and its predecessors, and AMP claiming the property as the result of a deed recorded in Book of Records 301, Page 473 of the Watauga County Registry, and its predecessors; and

WHEREAS, each of the parties has a good faith belief that it is the owner of the whole of the disputed tract, but likewise recognizes that absent agreement, the only way to finally resolve this dispute is through a civil action to quiet title; and

WHEREAS, each of the parties wishes to avoid the costs and uncertainties of litigation in resolving the location of the boundary line between them; and

WHEREAS, the parties have reached an agreement to designate a boundary line between them; and

WHEREAS, the parties have agreed that it is in their mutual interests to confirm the promises between them in writing;

FOR AND IN CONSIDERATION of the mutual promises contained herein, which consideration is acknowledged by all of the undersigned as adequate and fair, the undersigned, for themselves, their heirs, executors, administrators, assigns, agents, employees, officers, managers, and successors, agree as follows:

1. Concurrently with the execution of this Agreement, the Town shall execute a quitclaim deed to AMP transferring any and all interest which it might have in a 0.048 acre tract, designated and delineated on a survey by Appalachian Professional Land Surveyors & Consultants, PA, Job No. 05348, completed November 19, 2001 and revised on April 11, 2002 and October 14, 2005, by Donald H. McNeil, Registered Professional Land Surveyor L-2809. Said quitclaim deed is attached hereto as Exhibit "A" and incorporated by reference herein.

2. AMP shall execute a quitclaim deed to the Town transferring any and all interest which might have in a 0.040 acre tract, designated and delineated on a survey by Appalachian Professional Land Surveyors & Consultants, PA, Job No. 05348, completed November 19, 2001 and revised on April 11, 2002 and October 14, 2005, by Donald H. McNeil, Registered Professional Land Surveyor L-2809. Said quitclaim deed is attached hereto as Exhibit "B" and incorporated by reference herein.

3. Each party shall bear its own costs and expenses.

4. The parties enter this agreement of their own free will and volition, after consultation with their respective legal counsel, and they each confirm that no coercion, force, pressure, or undue influence has been used in the execution of this agreement, either by the other parties hereto, or by any other person.

5. The parties hereby submit to the jurisdiction of the courts of the State of North Carolina in any future action brought by either of them to enforce the provisions of this agreement, which shall be interpreted pursuant to the laws of North Carolina. The parties stipulate and agree that venue of any action relating to this agreement shall be in Watauga County, North Carolina.

6. Each party shall execute any documents provided for herein or which are necessary to carry out the terms and intent of this agreement.

7. Each promise herein is given as consideration for all other promises, and every provision of the agreement is material to this agreement. Every provision shall be binding not only upon each of the parties, but also upon their respective officers and board members, shareholders, heirs, executors, administrators, and assigns.

8. The parties agree that the remedies at law for any breach of this agreement will be inadequate unless the provisions thereof shall be enforceable by specific performance and accordingly, either party should be entitled to specifically enforce this agreement.

9. The terms described herein constitute the entire agreement between the parties.

This ____ day of _____, 2005.

IN WITNESS WHEREOF, the parties have executed this 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

CONSIDERATION OF TWO AMENDMENTS - UNIFIED DEVELOPMENT ORDINANCE

Town Attorney Sam Furgiuele presented two possible UDO amendments and explanations for consideration by the Council:

1. *Section 338(a) (1)(I) of the UDO states, in part, that "[a] community event that does not meet the above criteria may receive approval from the Boone Town Council to display community event signs subject to the Community Event Sign Regulations." However, in Section 322 of the UDO, on page 18-3, there is a definition of community signs that reads as follows: "An annual temporary sign, other than a commercial sign, posted to direct patrons to community events for public agencies, schools, churches, civic-fraternal organizations or similar non-commercial organizations."*

Mr. Furgiuele suggested that if the Council wants to include such events as "trade shows" or other commercial interests, the easiest way to do so would be to amend this definition. He further advised that if the text is revised such an event should "have a general benefit to the community." Mr. Furgiuele asked for direction from the Council as to this matter. Upon a motion by Council member Mason, seconded by Council member Clawson, Council moved to direct the Development Services Department staff and the Town Attorney to address the commercial sign ordinance as it relates to commercial organizations.

VOTE: Aye - All
Nay - None

2. *Section 358(c) of the UDO specifies that the landscaping standards "shall apply to all commercially developed land excluding single family residences located with in the Town of Boone zoning jurisdiction." Because the UDO, in essence, determines applicabiltiy of the Article based upon the current use of the property, rather than the potential use of the property, this leads to the possible scenario whereby a property owner has a tract of wooded property zoned for business, but which is currently used for a single-family residence. The property owner can rightfully cut down all the trees, and then subsequently commercially develop the property. Unless the UDO is amended to deal with* ***potential****, as well as actual use, by looking at the actual zoning district and what might happen to the property instead of simply using the current use as the trigger , I believe this is a very real scenario. This issue could easily be solved if the UDO were amended to apply the tree portions of the landscape standards to commercial and multi-family zoning districts, and commercial uses in single-family residential zones (which can exist if grandfathered). You can also make the tree ordinance applicable to not only commercial but also residential uses and districts.*

It was the consensus of the Council to allow the Town Attorney further study of this matter.

AWARDING OR REJECTION OF BIDS - HILL STREET & WHITENER DRIVE SEWER PROJECT

Public Utilities Director Rick Miller reminded the Council that the sewer main replacement for the Hill Street and Whitener Drive area was included in a five-year wastewater capital improvement plan adopted by the Council in February 2003. He stated that the estimated cost for the project is $196,509.00 without engineering, permitting, and asphalt costs. He further stated that $24,650.00 has thus far been spent for engineering design costs, leaving $171,859.00 for the remainder of the proposed project. He informed the Council of the recommendation from the engineer to award the replacement of the Hill Street and Hayes Street portion of the sewer main at this time at a cost of $201,641.25 and would require an additional $29,782.25 for project completion. Mr. Miller recommended that H & M Constructors, a Division of M. B. Haynes Corporation, be awarded the bid for replacement of the Hill Street and Hayes Street sewer main portion of the project in the amount of $201,641.25. He indicated that if the Council agrees to approve this project, he will prepare a budget amendment in the amount of $29,782.25 for the additional costs to be considered at the December meeting. Council member Mason asked why the Hill Street and Hayes Street areas are a priority. Mr. Miller stated that there are more residences and an apartment complex in those areas. He further recommended that the completion of the Whitener Drive sewer main replacement be addressed at the Council retreat in February 2006. Upon a motion by Council member Wilcox, seconded by Council member Mason, Council moved to approve the project as recommended by the engineer, WK Dickson Co., for the Hill Street and Hayes Street portion of the project at a total cost of $201,641.25.

VOTE: Aye - All
Nay - None

ADOPTION OF DESIGN CONTRACT - HOBBS, UPCHURCH FOR OLD BRISTOL ROAD SEWER PROJECT

Public Utilities Director Rick Miller explained that the Old Bristol Road sewer replacement project is also included in the Town's capital improvement plan. He noted that this contract is for Hobbs, Upchurch and Associates to design, permit, and reevaluate the estimated costs and inspection of the project. He pointed out that there are problems with the sewer system in this area and citizens of the area would like to see improvements. Upon a motion by Council member Clawson, seconded by Council member Eggers, Council moved to adopt the following contract:

Hobbs, Upchurch and Associates, P.A. (ENGINEER) appreciates the opportunity to submit this proposal for engineering services to the Town of Boone (OWNER) for the design revisions, permitting, and construction administration of the proposed Old Bristol Road Sanitary Sewer Main Upgrade. Our Scope of Services is presented herein.

Scope of Engineering Services

Listed below is the Scope of Services divided into 4 (four) categories to be provided for the execution of this project:

I. ***Review Design and Specifications****:*

Hobbs, Upchurch & Associates will review for currency the plan and profile drawings and specifications for installation of the gravity sewer main upgrade. The plans shall be complete, meeting all the requirements for permitting, bidding, and construction. The specifications and instructions shall also provide for the contractor to include demolition, abandonment, and/or protection of existing facilities as requested by the OWNER.

HUA shall field verify existing infrastructure including previously installed waterlines and known locations of existing sewer lines to ensure compliance with regulations and constructability of the project. Any additional alignment and topographical surveys will also be provided as required. Survey activities will identify the need and prepare fee simple maps for the acquisition of temporary and permanent easements as required by the project

Upon OWNER approval, HUA shall provide design plans and specifications suitable for permitting, bidding, and construction. This item shall be bid contingent upon funding availability.

II. ***Permitting:***

Hobbs, Upchurch & Associates will provide all coordination with permitting agencies associated with the project. The coordination will involve the submittal and obtaining of approval for all permit applications to all permitting agencies; including NC DENR Division of Water Quality (DWQ) and Division of Land Resources (DLR), as well as the NC Department of Transportation and the Town of Boone Street Maintenance Department. Coordination will continue through the bidding, construction, and final approval of the project.

1. ***Coordination and Administration:***

Hobbs, Upchurch & Associates will provide contract coordination including preparation of bid documents, issuance of addenda as necessary, and assistance with the evaluation and award of bids to contractors and subcontractors.

2. ***Inspection and Certification:***

Hobbs, Upchurch & Associates will provide construction administration and inspection services as required to ensure quality construction and prepare as-built drawings as required for certification by the permitting agencies and to insure construction as required by the plans and specifications. HUA will hold a preconstruction meeting when the Notice of Award has been prepared and approved by the Town to ensure that the Contractor, Owner and engineer are all

in agreement about what is expected from the subject project. HUA shall monitor timely performance of CONTRACTORS, notify the CONTRACTOR in writing if subject project construction deadlines are not met and impose liquidated damages on the CONTRACTOR if construction completion deadline is not met.
HUA shall review and grant approval of all shop drawings prior to the commencement of construction. HUA shall review and verify all quantities submitted in partial payment applications and provide to the OWNER Certified Pay Estimates by the 5th of each month. HUA shall coordinate all field modifications through the HUA onsite Field Engineer, which shall be verified through the HUA Project Engineer. If subsequent field modifications should result in a change order then HUA will issue change orders as required with OWNER approval.

III. ***PROPOSED FEE***

In consideration for the ENGINEER's services, the OWNER (Town of Boone) agrees to pay the ENGINEER a Lump Sum Fee of $52,000. The Fee was established using the Man Day Estimate for services to be provided that is attached to this letter.

IV. ***ADDITIONAL SERVICES***

Any work not specifically listed will be performed on a basis to be negotiated prior to the accomplishment of the work or in accordance with the attached Hourly Rate Schedule.

V. ***SCHEDULE***

The ENGINEER shall complete the design within a reasonable time period, not to exceed sixty (60) days following the execution of this agreement, based on the date of acceptance by the OWNER.

Vi. ***STANDARD TERMS AND CONDITIONS***

In the event the ENGINEER has not performed according to the terms of the Agreement, for any reason, including but not limited to substantial and unjustified delays in work without approval of the OWNER, the ENGINEER is found incapable of performing the class of work specified, or other breach of the terms of the agreement, the OWNER may in its sole discretion declare the ENGINEER in default of the terms of this Agreement. Upon declaration by the OWNER of default of the ENGINEER, the OWNER shall furnish written notice of such default at the last known address which the ENGINEER has provided to the OWNER. If the ENGINEER has not satisfied such default within ten (10) days from the date of the default, the OWNER shall consider the Agreement terminated and in such termination agree to pay the ENGINEER for work performed, with the OWNER reserving unto itself any and all rights to damages or other relief allowable by law. The failure of the OWNER at any time to require performance by the ENGINEER of any provision hereof shall in no way affect the right of the OWNER hereafter to enforce same.

Payment shall be made on the basis of monthly invoices submitted to the OWNER by the ENGINEER as the project progresses. All invoices are due and payable upon receipt in accordance with the aforementioned "Payment Schedule." Owner shall pay each invoice in full within 30 days of the date of the invoice. Invoices are subject to review prior to payment by OWNER to ENGINEER.

VOTE: Aye - All
Nay - None

MONTHLY WATER USE STATUS REPORT

Public Utilities Director Rick Miller presented the following status report:

As requested by Town Council, staff and I have compiled the following information concerning water use for the month of October. The Water Treatment Plant recorded a maximum daily demand of 2.026 million gallons on Sunday, October 16, 2005, and the average daily demand was 1.776 million gallons for the entire month.

As adopted in Ordinance 05-01, the Town of Boone Council has appropriated for 25,000 gallons per day usage for year 2004 and 25,000 gallons per day usage for year 2005 to be combined for a total of 50,000 gallons per day for allocation to customers. The total water allotment remaining for the year 2005 has now broken the sixty percent threshold. All future water service requests in excess of 500 gallons per day usage will be forwarded to Town Council as required in Ordinance 05-01. Since the last Town Council Meeting the Utilities Department approved one project that subtracted from our allotment.

As you can see in the attached chart, the Public Utilities Department has 553 gallons per day remaining for allotment in 2005. Also, be reminded that Council chose to allocate 16,441 gallons from 2006 leaving a balance of 8,559 gallons remaining for that year. All calculations are based on 60% of the North Carolina Discharge Rate Schedule.

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

			Approved Water Connections			
			2005			
Staff Approved	**Date**	**Projected Usage**	**Council Approved**	**Date**	**Projected Usage**	**Remaining Gallons**
						50000
Cookout Grill	Jan-05	1500				50000
			Tom Adams	Feb-05	270	49730
Doug Hanks	Feb-05	600				49130
John Roberts	Feb-05	360				48770
David Styron	Feb-05	270				48500
			WMC Wellness Center	Mar-05	17250	31250
			Dan Minton	Mar-05	7200	24050
			David Blust	Mar-05	165	23885
David Blust	Mar-05	360				23525
Eddie Greene	Mar-05	270				23255
David Nicklaw	Mar-05	270				22985
			Hunter Nichols	Apr-05	360	22625
			VIA LLC/Ed Street Co.	Apr-05	5000	17625
			Watauga County Detention	Apr-05	3728	13897
Baxters Sport Bar	Apr-05	330				13567
Watauga Courthouse	Apr-05	1214				12353
			John Cook	May-05	5000	7353
			Hester Office Bldg	May-05	450	6903
			Americas Home Place	May-05	60	6843
Molecular Toxicology	Jun-05	60				6783
Dana Willet	Jun-05	450				6333
Watauga Arts Council	Jun-05	23				6310
			Glenwilde	Jun-05	900	5410

			James West	Jun-05	1440	3970
			Cathy Kosterman	Jun-05	1110	2860
			Blue Ridge Electric	Jun-05	30	2830
William Jackson	Jun-05	90				2740
Family One Inc	Jun-05	394				2346
Dana Willet	Jul-05	150				2196
Watauga Insurance	Jul-05	15				2181
Boone Dermatology	Jul-05	330				1851
			David Thompson	Jul-05	600	1251
Advance Auto	Aug-05	496				755
WMC Outpaitent	Oct-05	73				682
Fulton Lovin	Oct-05	60				622
			Michelle Hollars	Oct-05	24	598
Appalachian Auto Glass	Oct-05	45				553
			Approved Water Connections			
			2006			
Staff Approved	**Date**	**Projected Usage**	**Council Approved**	**Date**	**Projected Usage**	**Remaining Gallons**
						25000
		4165	John Cook	May-05	8038	16962
			CataCorner Investments	Jul-05	7296	9666
			CAT Tractor	Oct-05	1107	8559

ADOPTION OF BUDGET AMENDMENTS

Upon a motion by Council member Clawson, seconded by Council member Mason, Council adopted the following budget amendments:

DESCRIPTION	**ACCOUNT #**	**TO:**	**FROM:**
Legal Advertising-Governing Body	010-400-000-529100	$1,000.	
Fund Balance Appropriated	010-000-000-499900		$1,000.
Maintenance & Repair-Equipment-WWTP	030-700-805-525201	31,800.	
Fund Balance Appropriated	030-000-000-499900		31,800.

VOTE: Aye – All
Nay – None

REQUESTED APPEARANCE - MR. ZACHARY WHITE

Mr. Zachary White appeared before the Town Council to request a transfer of ownership of Boone Taxi Company from Elijah Ferrari to himself. Upon a motion by Council member Wilcox, seconded by Council member Clawson, Council moved to grant the request.

VOTE: Aye - All
Nay - None

REQUESTED APPEARANCE – MS. WENDY PATOPRSTY

Ms. Wendy Patoprsty appeared before the Town Council to request support for the New River Phase II Ecosystem Enhancement Project. She explained that, as a result of noticing the condition of streambanks along the Greenway Trail, she would like to pursue funding opportunities for streamback enhancement to slope and re-vegetate the banks. She explained that, if she were granted permission from the Council to proceed, she would begin consulting the engineers and starting the bid process in January 2006 and hopefully begin the project mid-summer of 2006. She requested in-kind support from the Town. Upon a motion by Council member Spann, seconded by Council member Clawson, Council moved to grant Ms. Patroprsty permission to proceed with this project.

VOTE: Aye – Aye
Nay – None

REQUESTED APPEARANCE – MR. ALLEN MOSELEY

Ms. Andrea Capua appeared before the Town Council to request a driveway easement for property located at the corner of West Queen Street and Gladys Street. Ms. Capua indicated she is the attorney representing the Boyettes, the buyers of the property. She explained that a small parcel of land, approximately 1,831.98 square feet, had been conveyed to the Town by Bobby and Wanda Huff, for the purpose of constructing a water tower. She noted, however, that the tower was never constructed and that the Town still owns the parcel. Ms. Capua explained that her clients would like to request an easement to construct a driveway across this parcel for access to their adjacent parcel of land. She explained that the steep terrain along the remainder of the property adjoining West King Street prohibits construction of a driveway in that area. Upon a motion by Council member Eggers, seconded by Council member Clawson, Council moved to negotiate an easement agreement between the Town of Boone and the Boyettes to be presented to the Council at the December meeting and that all expenses relating to this easement will be incurred by the petitioner.

VOTE: Aye – All
Nay – None

REQUESTED APPEARANCE - MR. RALPH LEONARD

Mr. Ralph Leonard appeared before the Town Council to request the transfer of his 2005 water allocation to 2006. Town Attorney Sam Furgiuele opened the public hearing at 9:26 p.m. to hear sworn testimony from Ralph Leonard and Public Utilities Director Rick Miller. Mr. Leonard explained that his one-year time period for the water allocation he was granted is due to expire and requested to have his allocation taken from the 2006 allocation. He stated that the water allocation is for a nine-lot subdivision but that the project is not proceeding as planned. Mr. Leonard agreed to pay the availability fees in the amount of $27,000. He explained that the subdivision plat has been approved and recorded but that no development permits have been issued for the project. Council member Eggers stated he feels it is unfair for the applicant to pay the availability fee and then lose the money and right to the water allocation. Council member Wilcox agreed that this is a very different project from an apartment complex or commercial development. Public Utilities Director Rick Miller suggested tabling the case until the Water Study Committee could meet to discuss the situation. With no other testimony offered, Mr. Furgiuele closed the public hearing at 9:49 p.m. Upon a motion by Council member Wilcox, seconded by Council member Eggers, Council moved to table this case until the regular meeting in December.

VOTE: Aye - All
Nay - None

REQUESTED APPEARANCE - MR. JAY ADAMS

Mr. Jay Adams appeared before the Town Council to request water and sewer service to property located off Highway 105. Town Attorney Sam Furgiuele opened the public hearing at 9:50 p.m. to hear sworn testimony from Jay Adams, Public Utilities Director Rick Miller, and Development Services Director John Spear. Mr. Adams explained his plan to develop condominiums similar to those in the Echota development on 21 acres of land located across Highway 105 from New River Building Supply. He stated the project would contain at least five acres of greenspace for a common area and landscape screening along Poplar Grove Road. He informed the Council that this project is not in either the town limits or ETJ and would need 27,000 gallons of water per day. Council member Wilcox stated that with the current water situation the Town has elected not to give any water to projects outside the town limits. He asked if Mr. Adams had considered asking for sewer service only. Mr. Adams stated he could apply for sewer service and drill wells for water use until the water situation changes. Town Manager Greg Young asked if the applicant would be responsible for maintaining a pump station since it is the Town's practice to maintain pump stations for larger areas with more than one development. Mr. Adams stated the development would maintain the pump station if that is the desire of the Town. Public Utilities Director Rick Miller confirmed the amount of water needed as 27,000 gpd and stated that the project is located in the primary pressure zone. Development Services Director John Spear informed Council that the project area is located in the growth strategy map, a large portion being in the designated urban growth area and a smaller portion in the rural growth area. He further confirmed the current moratorium on projects larger than 24 units. With no other testimony offered, Mr. Furgiuele closed the public hearing at 10:13 p.m. Council member Mason stated she would have a difficult time granting this request since the property is located outside the town limits and is not comfortable constantly extending water service into areas without a development plan. Council member Clawson agreed, stating she could not see approving the request when it does not meet the criteria in the Water and Sewer Use Ordinance. Upon a motion by Council member Mason, seconded by Council member Clawson, Council moved to deny the request for water and sewer service.

VOTE: Aye - All
Nay - None

REQUESTED APPEARANCE – MR. ROBERT DUNNIGAN

Mr. Robert Dunnigan appeared before the Town Council to request water and sewer service to property located off Quail Drive. Town Attorney Sam Furgiuele opened the public hearing at 10:15 p.m. to hear sworn testimony from Robert Dunnigan, Public Utilities Director Rick Miller and Development Services Director John Spear. Mr. Dunnigan stated the residence currently has four bedrooms, and he has plans to add two bedrooms and a bathroom in the basement of the house. He explained that he has an offer to purchase the property contingent on approval of a Special Use Permit. Development Services Director John Spear confirmed the property is located in the R-3, Multi-family zoning district. With no other testimony, Mr. Furgiuele closed the public hearing at 10:22 p.m. Upon a motion by Council member Mason, seconded by Council member Spann, Council moved to grant the request for 510 gallons per day of water.

VOTE: Aye - All
Nay - None

REQUESTED APPEARANCE – MR. SCOTT PORTER

Mr. Scott Porter appeared before the Town Council to request reallocation of 3,600 gallons-per-day (gpd) of water service to property adjacent to Hampton Estates. Town Attorney Sam Furgiuele opened the public hearing at 10:24 p.m. to hear sworn testimony from Scott Porter, Public Utilities Director Rick Miller, and Development Services Director John Spear. Mr. Porter began by stating that he had the opportunity to acquire additional property adjacent to his previously approved subdivision. He stated that he would like to re-arrange the housing to include housing on this newly acquired piece of property. Public Utilities Director Rick Miller stated his calculations are based on the developer's intention of constructing six single-family

homes on this lot instead of six duplexes in the original subdivision area. Mr. Miller indicated that the calculated usage for the six duplexes is 3,600 gpd. And that the calculated usage for six single-family homes is 1,620 gpd., thereby resulting in credit of 1,980 gpd to be placed in the 2006 water allocation. Development Services Director John Spear stated his office would have to investigate to determine if this change constitutes a minor modification which can be approved in-house or a major modification which would have to be approved by the Board of Adjustment. Mr. Porter stated the newly acquired property is located in the ETJ. Town Attorney Sam Furgiuele advised that the applicant would be required to petition for annexation. With no other testimony, Mr. Furgiuele closed the public hearing at 10:31 p.m. Upon a motion by Council member Wilcox, seconded by Council member Spann, Council moved to grant the request for re-allocation of water contingent on an petition for annexation by the applicant and no change in the amount of water allocation.

VOTE: Aye – All
Nay – None

CLOSED SESSION

Upon a motion by Council member Wilcox, seconded by Council member Mason, Council moved to enter Closed Session at 9:40 p.m. pursuant to NCGS 143-318.11a)3)5) in order to discuss the following matters:

- ASU Violations
- Ulery Violations.
- Swindell Litigation.
- Property Acquisition.
- Norman Cheek Violation.
- White Laurel Condemnation Order - Request for Time Extension.

VOTE: Aye - All
Nay - None

Upon a motion by council member Mason, seconded by Council member Spann, Council moved to exit Closed Session at 11:51 p.m.

VOTE: Aye - All
Nay - None

ACTION FOLLOWING CLOSED SESSION

Upon a motion by Council member Wilcox, seconded by Council member Clawson, Council moved to dismiss the Swindell Litigation due to the property's being sold.

VOTE: Aye - All
Nay - None

Upon a motion by Council member Mason, seconded by Council member Clawson, Council moved to grant a 60-day extension per request from the attorneys representing the White Laurel residents.

VOTE: Aye - All
Nay - None

ADJOURNMENT

On a motion by Council member Spann, seconded by Council member Wilcox, Council moved to adjourn the meeting at 11:53 p.m.

VOTE: Aye - All
Nay - None

Deputy Town Clerk

Mayor