MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
DECEMBER 15, 2005

An organizational meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, December 15, 2005. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Rennie Brantz, Janet Pepin, Bunk Spann and Dempsey Wilcox. Town Attorney Sam Furgiuele was also present. Staff present were Town Manager Greg Young; Town Clerk Freida Van Allen; Finance Director Amy Davis; Development Services Director John Spear; Assistant to the Manager Jim Byrne; Public Services Director Blake Brown; Public Utilities Director Rick Miller; Police Chief Bill Post and Fire Chief Reggie Hassler.

Chief District Court Judge Alexander Lyerly presided over the swearing-in ceremonies. Official oaths precede this page.

ANNOUNCEMENTS

Mayor Clawson presented a certificate of appreciation to Mayor Burnley for her eighteen years of service to the Town of Boone. Mayor Burnley commented that much progress has been made since 1987 and she thanked Town Manager Greg Young and his staff for all their help. Mayor Burnley also thanked Council members and citizens for allowing her to serve as their Mayor for sixteen years.
Mayor Clawson presented a plaque to Graydon Eggers for his four and a half years' service to the Town of Boone Town Council. Mr. Eggers said the experience has been interesting and that the Town government runs like a "well-oiled machine." Mr. Eggers thanked Council, the Town Manager and the Town Attorney.

Mayor Clawson took the opportunity to tell everyone that she is honored to have been elected Mayor of the Town of Boone.

TENTATIVE AGENDA ADOPTION

Town Manager Greg Young presented one addition to the agenda:

-Addition of Cable TV Franchise Audit to Closed Session.

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

VOTE: Aye-All
Nay-None

CONSENT AGENDA ADOPTION

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

Minutes: November 10, 2005, Special Meeting.
November 10, 2005 Quarterly Public Hearing.
November 15, 2005, Special Meeting.
November 17, 2005, Regular Meeting.
Tax Releases: November, 2005

TAXPAYER	YEAR	AMOUNT	DESCRIPTION

COURTHOUSE KING LLC	2005	$4550.80	DATA ENTRY ERROR
CHERRY, SOLOMON G	2005	506.40	PROPERTY NOT IN CITY LIMITS
EPPLEY, ERNEST D EPPLEY, ANITA B	2005	42.30	GAVE VEHICLE TO SON VEHICLE REG. IN FORSYTH CO.
TRIVETTE, BILLY D	2005	14.04	LIVES IN BOONE FIRE DISTRICT ON E. JUNALUSKA
HARDY, BUDDY B. JR	2005	52.67	BOAT REPOSSESSED IN 2003
SOUTHERN STATES COOP.	2005	353.01	KEY ENTRY ERROR
WILLET, CHARLES	2005	80.10	TURNED IN TAG
WALSER, JAMES L JR	2005	9.20	SOLD VEHICLE TURNED IN TAG
BUMGARNER, RAYMOND H	2005	41.05	SOLD VEHICLE TURNED IN TAG
MORGAN, ALISA A	2005	6.77	SOLD VEHICLE TURNED IN TAG
TURNER, LUKE J	2005	24.80	ADJ DID NOT CARRY OVER
PALVADO, JENNIFER J	2004	19.02	TURNED IN TAG
IVIE, KIMBERLY T	2004	3.24	LIVES IN CHEROKEE COUNTY
BROWN, PRESTON T	2004	21.16	NOT A RESIDENT OF BOONE CITY LIMITS
FORBUS, ALYCIA S	2004	10.18	TURN IN TAG
TOTAL		**$5734.74**	

MSD TAX RELEASES
NOVEMBER, 2005

TAXPAYER	YEAR	AMOUNT	DESCRIPTION
COURTHOUSE KING LLC	2005	$2389.17	DATA ENTRY ERROR
SOUTHERN STATES COOP.	2005	185.33	KEY ENTRY ERROR
TOTAL		**$2574.50**	

Tax Refunds: November, 2005

Taxpayer	Year	Amount	Description
CHERRY, SOLOMON G	2000	$332.64	NOT IN TOB CITY LIMITS
CHERRY, SOLOMON G	2001	288.20	NOT IN TOB CITY LIMITS
CHERRY, SOLOMON G	2002	493.74	NOT IN TOB CITY LIMITS
CHERRY, SOLOMON G	2003	493.74	NOT IN TOB CITY LIMITS
CHERRY, SOLOMON G	2004	506.40	NOT IN TOB CITY LIMITS
BLAIR, JANICE C	2004	51.24	SOLD VEHICLE TURNED IN TAG
HOWARD, ROBERT FITZGERALD	2004	11.92	SOLD VEHICLE TURNED IN TAG
CERNY, JAROSLAV	2005	9.73	SOLD VEHICLE
TOTAL		**$2187.61**	

Annual Certification of Firemen: **(EXHIBIT A)**

Local Government Participation Form for Scattered Site Housing Program. The Town agreed to participate in the Watauga County Fiscal Year 2006 Scattered Site Housing Program.

VOTE: Aye-All
Nay-None

ELECTION OF MAYOR PRO-TEMPORE

Mayor Clawson requested nominations for the position. On a motion by Council member Pepin, seconded by Council member Brantz, Council moved to nominate Lynne Mason. There being no further nominations Council member Mason was elected Mayor Pro-Tempore by acclamation.

VOTE: Aye-All
Nay-None

COUNCIL LIAISON APPOINTMENTS

Mayor Clawson presented the following Council liaison appointments:

2005-2007 COUNCIL ASSIGNMENTS AND LIAISONS

Loretta Clawson	Region D Council of Governments*; Greenway Committee; High Country Council of Government RPO; Community Council
Rennie Brantz	Watauga County Solid Waste Committee*; Recycling; Fire Department; Vehicle Committee; Jones House*;
Dempsey Wilcox	Personnel; Finance; Purchasing; Public Records; Transportation Committee; TDA Board* ; DBDA
Janet Pepin	Water and Sewer; Utility Mapping; E911; Vehicle Committee; Cablevision Committee;
Lynne Mason	Planning & Inspections; Parks & Recreation*; Greenway Committee; Community Council; Affordable Housing Task Force
Bunk Spann	AppalCART*; Police Department; Transportation Committee; Greenway Committee; Community Council

* Requires a Councilmember to serve on respective board/commission.

Effective: December 15, 2005

ADOPTION OF RESOLUTION - FIXING DATE OF PUBLIC HEARING ON SHOEMAKE ANNEXATION

Development Services Director John Spear said this is the second step in the contiguous annexation request of Benjamin and Nora Shoemake. Mr. Spear stated that the .09-acre tract is located off VFW Drive. On a motion by Council member Wilcox, seconded by Council member Mason, Council moved to adopt the following resolution:

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEATION PURSUANT TO G.S. 160A-31 (Shoemake Annexation)

WHEREAS, a petition requesting annexation of the area described herein has been received; and

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

WHEREAS, certification by the Town Clerk as to the sufficiency of the petition has been made;

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

Section 1. A public hearing on the question of annexation of the area described herein will be held at Council Chambers at 6:30 on January 19, 2006.

Section 2. The area proposed for annexation is described as follows:

Being a 0.48 acre tract of land; said tract being located in New River Township, Watauga County, North Carolina; being located between two roads shown on the plat of the Walter Bumgarner Subdivision but not named; being Lots 2 and 3;of the aforesaid subdivision and being more particularly described as:

Beginning on a computed point in the line of Lot 3 and a twenty foot street right of way; said point being located South 06 degrees 56 minutes 30 seconds West – 953.44 feet from Boone City Limits Monument 33; and running thence from the beginning with the line of the 20 foot right of way South 72 degrees 51 minutes 28 seconds East – 53.29 feet to an iron rod; running thence with the line of Lot 5 South 12 degrees 01 minutes 46 seconds West – 82.76 feet to an iron rod; running thence with the line of the 30 foot right of way around the Hartley Cemetery North 60 degrees 59 minutes 57 seconds West – 2.52 feet to a computed point, North 73 degrees 34 minutes 43 seconds West – 31.62 feet to a computed point, South 87 degrees 52 minutes 57 seconds West – 11.73 feet to a computed point (said point being located North 06 degrees 46 minutes 30 seconds East – 42.09 feet from Boone City Limits Monument 34), South 87 degrees 52 minutes 57 seconds West – 17.06 feet to a computed point, South 41degrees 37 minutes 18 seconds West – 18.50 feet to an iron rod, South 41 degrees 37 minutes 18 seconds West – 21.73 feet to an iron rod; running thence with the edge of a 44 foot right of way North 89 degrees 58 minters 14 seconds West – 78.47 feet to an iron rod; running thence with the edge of a 30 foot right of way North 01 degrees 58 minutes 14 seconds West – 160.34 feet to an iron rod; running thence with the edge of the 20 foot right of way South 72 degrees 51 minutes 28 seconds – 103.05 feet to an iron rod and South 72 degrees 51 minutes 28 seconds East – 41.71 feet to the point of beginning, containing 0.48 acres as surveyed by O. Wayne Green, P.L.S. #L-2885 in job number 200544.

Section 3. Notice of the public hearing shall be published in the Watauga Democrat, a newspaper having general circulation in the Town of Boone, at least ten (10) days prior to the date of the public hearing.

_____
Mayor

ATTEST:

_____
Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 306)

VOTE: Aye-All
Nay-None

BOARD OF ADJUSTMENT APPOINTMENT

Development Services Director John Spear pointed out that Jerry Kirksey resigned his regular position on the Board of Adjustment. Dr. Bruce Jackson, Dan Collins and Ron Darbo, alternate members, have agreed to serve out the unexpired terms, if appointed. Council member Spann nominated Dr. Bruce Jackson to the regular position. Council member Mason seconded. Dr. Jackson's new term will expire June 30, 2007.

VOTE: Aye-All
Nay-None

Nominations for the alternate in-town position will be accepted at the January, 2006 meeting.

PRESENTATION OF COST ESTIMATES - SIDEWALK & LIGHTING FOR HOWARD STREET DESIGN

Town Manager Greg Young presented cost estimates and style design for sidewalks and lighting for the Howard Street project. Town Manager Young said that once these issues are decided the final design for the project will be completed in 2006. Town Manager Young stated that Brian Tripp of WK Dickson recommends the prairie lighting and double brick sidewalk. Council member Pepin asked if brick or concrete pavers would be used. Council member Wilcox perceived that concrete would be stamped to look like brick. Council member Wilcox relayed that the DBDA hopes that a single brick band will be used on Howard Street since it will be easier to do the same pattern on King Street. Council member Spann said he prefers the single brick banding. Council member Pepin agreed and said she likes the prairie lighting too. On a motion by Council member Wilcox, seconded by Council member Pepin, Council moved to use the prairie lighting and single-brick banding on the final Howard Street design.

VOTE: Aye-All
Nay-None

ADOPTION OF RIGHT-OF-WAY EASEMENT - WARREN & RUBY BOYETTE

Town Attorney Sam Furguiele said this is the easement that was proposed at the November Council meeting. Town Attorney Furgiuele stated that the Boyettes had the instrument prepared and will pay for recording the document. Town Attorney Furgiuele said the easement protects the interests of the Town. On a motion by Council member Mason, seconded by Council member Spann, Council moved to grant the following right-of-way easement:

STATE OF NORTH CAROLINA

RIGHT OF WAY/EASEMENT

COUNTY OF WATAUGA

This Right of Way/Easement made this 5th day of December, 2005, by and between the **Town of Boone**, herein referred to as "Grantor", of Watauga County, North Carolina; and **Warren G. Boyette and Ruby B. Boyette**, herein referred to as the "Boyettes; and "Grantees," of Watauga County, North Carolina.

BACKGROUND STATEMENT

WHEREAS, Grantor is the owner of real property being more particularly described at Deed Book 167 at Page 509 of the Watauga County Register of Deeds Office; and

WHEREAS, the Boyettes are the owners of a portion of Lots 87, 88, 89, and 90 of Block A of the Charles Osborne Subdivision and being more particularly described at Record Book _____ at Page _____, of the Watauga County Register of Deeds Office; and

WHEREAS, the Boyettes, for the purpose of ingress, egress and regress, desire to use an existing Road which connects Queen Street to Grantees' property by crossing Grantor's property; and

WHEREAS, Grantor, by and through the approval of the Town Council at its November 17, 2005 meeting, has agreed to convey this Right of Way/Easement in order to clearly establish the Boyette's right to use said road over Grantor's property and to provide clear access exclusively to the Boyette property described above for the purposes of ingress, egress and regress by Grantees, their invitees, and licensees; and

NOW THEREFORE, for and in consideration of the sum of $10.00 and other valuable consideration, the receipt of which is hereby acknowledged, Grantor hereby grants and conveys a perpetual non-exclusive Right of Way/Easement for ingress, egress, and regress to provide access exclusively to the Boyette property described above for the purposes if ingress, egress and regress by Grantees, their invitees, and licensees, over the existing road located on Grantor's property as described in deed recorded in Deed Book 167 at Page 509 of the Watauga County Register of Deeds Office, and within the actual dimensions of the existing road, to the adjoining property. It is further understood and agreed that by their acceptance of this Right of Way/Easement, the Grantees, their successors, heirs and assigns herein agree to bear any and all costs which are reasonable and necessary for the purpose of maintaining said road, to the extent of their use. Any contrary use by Grantees, their heirs and assigns, of said Right of Way/Easement shall cause a forfeiture of the easement.

As a condition of this easement, it is understood and agreed upon between the Grantor and Grantee that the Grantor shall at all times have the right to use said permanent Easement. Grantee shall not use the permanent Easement in any way which may be inconsistent with the rights of Grantor, and without limitation, shall not erect a shed, building, structure or other permanent obstruction within the permanent Easement, shall not plant trees within the permanent Easement, will not place fill within the permanent Easement except after prior written consent from the Grantor; and shall make no other use which may be inconsistent with the Grantor's placement of utility lines across the easement.

Grantor reserves the right to clear the permanent easement described above and the right, but not the obligation, to keep the permanent easement clear at all times, and the right to remove from the permanent easement all brush, trees and other obstructions of any kind.

This grant of easement/right of way shall be binding upon Grantors, their heirs, successors and assigns, and shall be binding upon the successors, heirs and assigns of the Boyettes, and shall be an easement appurtenant to the respective properties described herein, running with the land.

Town of Boone

By:

Mayor

Attest:

Clerk, Town of Boone

VOTE: Aye-All
Nay-None

ADOPTION OF ORDINANCE AMENDMENT - ORDINANCE 05-01

Town Attorney Sam Furgiuele presented the ordinance amendment which defines the different types of development. Town Attorney Furgiuele said these amendments are proposed as a result of the request from Ralph Leonard to transfer his water rights. Council member Pepin asked if everyone understood the differences between a major and a minor subdivision. Town Attorney Furgiuele said those definitions are located in the UDO. Council member Wilcox felt the Town should not assign water rights to platted subdivisions; rather we should grant water based upon building permits. Council member Wilcox felt the proposed ordinance amendment artificially and improperly assigns water to every lot which may or may not be developed. Mayor Clawson said she is concerned that a developer will expend funds for infrastructure in a subdivision to subsequently discover there is no water to serve the lots. Council members Mason and Spann agreed. After some discussion, Council decided to vote on each amendment separately.

On a motion by Council member Mason, seconded by Council member Spann, Council moved to adopt the following ordinance amendment:

5. Any applicant granted the right to connect to the Town's water distribution system, without regard to the calendar year to which the applicant's predicted water usage is

attributed, must obtain all needed development permits within one year of the approval by the Town Council or Public Utilities Department of the water application, or said approval will expire and the allocated water usage shall return into the overall water census for redistribution. Upon subsequent action by the Boone Town Council, the approval of a water application may be extended for a second year from the date of the initial approval, whether by the Town Council or staff of the Public Utilities Department, upon payment by the applicant of a non-refundable availability fee in the amount of the normal availability fee established by the Town of Boone Water and Sewer Code for use(s) of the type proposed. Previously approved requests which have not been connected shall likewise expire within one year of enactment of this ordinance. However, they, too, may be extended for a second year upon payment by the approved applicant of a non-refundable availability fee in the amount of the normal availability fee established by the Town of Boone Water and Sewer Code for use(s) of the type proposed. **Without regard to the foregoing, should any applicant whose development project requires a special use permit or zoning permit allow the special use permit or zoning permit to expire, the applicant's water rights will also immediately expire. Likewise, should rights which are vested pursuant to a conditional zoning district approval expire, the applicant's water rights for the site specific development plan upon which the zoning district was approved will also expire.**

VOTE: Aye-All
Nay-None

On a motion by Council member Mason, seconded by Council member Wilcox, Council moved to adopt the following ordinance amendment:

6. **For purposes of this Ordinance, the term "development permits," as referred to in paragraph 5 above, shall mean the following:**

a. In the case of applicants for water service for a minor subdivision, the minor subdivision plat approval and recording of the approved plat with the Watauga County Register of Deeds, and any associated zoning and grading compliance certificates;

b. In the case of applicants for water service for a major subdivision, a special use permit, and associated zoning and grading compliance certificates;

c. In the case of commercial development projects, all permits required for the physical development of the land, plus those permits necessary for the building. These may include some or all of the following: special use permits, zoning permits and building permits.

VOTE: Aye-All
Nay-None

On a motion by Council member Mason, seconded by Council member Spann, Council moved to adopt the following ordinance amendment:

7. Whenever the Town Council approves an application for water service to either a proposed minor or major residential subdivision, the Director of Public Utilities shall subtract an amount of water from the available water calculations which reflects the projected amount of water which will be consumed when all residences in the proposed subdivision are fully constructed.

VOTE: Aye-3 (Mason, Pepin, Spann)
Nay-2 (Brantz, Wilcox)

MONTHLY WATER USE STATUS REPORT

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

As requested by Town Council, staff and I have compiled the following information concerning water use for the month of November. The Water Treatment Plant recorded a maximum daily demand of 2.215 million gallons on Wednesday, November 16, 2005, and the average daily demand was 1.743 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. At the last Town Council Meeting one project was approved that subtracted from our allotment, plus one previously approved applicant contacted the Utilities Department and relinquished their water allotment.

As you can see in the attached chart, the Public Utilities Department has 303 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

			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

REQUESTED APPEARANCE - RALPH LEONARD

Town Attorney Sam Furgiuele reminded Council that this request was tabled at the last meeting. Since Ordinance 05-01 was amended to define subdivisions, Town Attorney Furgiuele said this request no longer needs Town Council approval.

CLOSED SESSION

On a motion by Council member Wilcox, seconded by Council member Spann, Council moved to enter Closed Session at 7:50 p.m., pursuant to NCGS 143-318.11a)3) in order to discuss the ASU and Norman Cheek violations and the Cable TV Franchise Audit.

VOTE: Aye-All
Nay-None

On a motion by Council member Mason, seconded by Council member Pepin, Council moved to exit Closed Session at 8:09 p.m.

VOTE: Aye-All
Nay-None

ACTION FOLLOWING CLOSED SESSION

On a motion by Council member Wilcox, seconded by Council member Spann, Council moved to accept the settlement offer from Norman Cheek in the amount of $1,125.

VOTE: Aye-All
Nay-None

ADJOURNMENT

On a motion by Council member Wilcox, seconded by Council member Spann, Council moved to adjourn at 8:11 p.m.

VOTE: Aye-All
Nay-None

_____ _____

Town Clerk Mayor