

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
JANUARY 17, 2008**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, January 17, 2008, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro Tem Lynne Mason, Rennie Brantz, Janet Pepin, Liz Aycock, and Stephen Phillips. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Deputy Town Clerk Kimberly Tester, Special Assistant to the Town Manager Jim Byrne, Police Chief Bill Post, Lieutenant Mike Norris, Fire Chief Reggie Hassler, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, Human Resources Director Peri Moretz, and Development Services Director John Spear.

ANNOUNCEMENTS

Mayor Clawson called the meeting to order and welcomed all in attendance. She noted that anyone wanting to speak during the public comment session would need to sign the public comment sign-up sheet.

Council Member Pepin announced that the 5th Annual Volunteer Fest will be held on February 9th at the Boone Mall. She invited all to attend.

TENTATIVE AGENDA ADOPTION

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

1. Addition of item to Consent Agenda - Item 4.C. - Code Amendment to allow alcohol at the Daniel Boone Native Gardens.
2. Addition of item to Council Matters - Item 5.P. - Adoption of Resolution expressing opposition of the planned sale and possible closure of the Downtown Boone Post Office.
3. Addition of item to Closed Session - Consideration of Baliestrieri Settlement Proposal.
4. Request to postpone Item 5.I. until the February 21, 2008 Regular Meeting.

Council Member Pepin stated she would like to hear Case RZ20070702 prior to Case RZ20070701 under Item 5.B. Council Matters.

Upon a motion by Council Member Brantz, 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 Brantz, seconded by Council Member Aycock, Council moved to adopt the following consent agenda items:

Minutes: December 20, 2007 - Regular Meeting.

Adoption of Resolution:

**TOWN OF BOONE
RESOLUTION AUTHORIZING SALE OF PERSONAL PROPERTY
BY INTERNET AUCTION**

WHEREAS, G.S. 160A-270(c) allows the Town Council to sell personal property at electronic auction upon adoption of a resolution or order authorizing the appropriate official to dispose of the property at electronic auction;

BE IT RESOLVED, by the Boone Town Council, that the sale of the surplus property by electronic auction in accordance with the requirements of G.S. 160A-270(c) is hereby authorized and the Finance Director or her designee is authorized to give appropriate notice and conduct the sale in accordance with the applicable laws. Notice of the sale will be provided by newspaper, www.townofboone.net and www.govdeals.com. All items shall be sold for cash or other payment means approved by the Finance Director.

This resolution shall become effective upon its adoption.

ATTEST:

Loretta Clawson, Mayor

Freida Van Allen, Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 45)

Code Amendment to allow alcohol at the Daniel Boone Native Gardens:

§130.20 EXEMPTIONS.

Possession and consumption of malt beverages and/or unfortified wine shall be permitted within the Jones House Community Center **and at Daniel Boone Native Gardens**, where appropriate permits have been obtained as required by law for the possession and consumption of alcoholic beverages for the period of time permitted thereunder, **and the sponsor of the event or gathering where possession and consumption of malt beverages and/or unfortified wine is to occur has obtained appropriate liability insurance to protect against personal injury and property damage. However, nothing herein shall be interpreted to require the Town to apply for the needed permits or insurance coverage unless the Town itself is the sponsor of the event.**

VOTE: Aye - All
 Nay - None

PRESENTATION OF FY2006/2007 AUDIT

Mr. Billy Combs of Combs, Tennant & Carpenter P.C. presented the Fiscal Year 2006-2007 Audit **(copy permanently on file at Town Hall)**.

ADOPTION OF ZONING AMENDMENTS

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

Case RZ20070702 - The Boone Town Council has initiated amendments to the Unified Development Ordinance to implement the University Growth Planning recommendations prepared by a joint delegation of the Boone Town Council, ASU Trustees, and their respective administrative staff members. Mr. Spear stated that the Planning Commission, after consideration of the case at its regular meeting, recommended approval with conditions, specifically changes to interior setback requirements:

1. Increase interior setback to 14' when adjacent to the R-1 zoning district.
2. Increase interior setback to 0 when adjacent to the B-1 zoning district.

Council Member Mason inquired as to whether or not these changes constitute a substantial change to the proposal. After a brief discussion, Town Attorney Sam Furguiele stated that he feels that the change in language regarding interior setbacks adjacent to R-1 zoning districts is

not a significant change; however, he feels that the change in language regarding interior setbacks adjacent to B-1 zoning districts is a substantial change and should go before another public hearing. Upon a motion by Council Member Aycok, seconded by Council Member Mason, Council moved to direct the Development Services staff to prepare a proposed text amendment regarding interior setbacks within the U-1 District which are adjacent to the B-1 zoning district to be placed on the February 14, 2008 Quarterly Public Hearing agenda.

VOTE: Aye - All
 Nay - None

Council Member Mason gave the following statement regarding this case:

“The zoning and text amendments before us are not about the College of Education (COE) building.

-] One request is for property the University acquired.
-] The other request is about changes that were being discussed independent of the COE building.

“I regret that the Public Hearing focused around the COE building.

“Though I disagree with how the University went about acquiring this property and planning for its use; the University now owns the property at the corner of College and Howard Streets and is permitted to build on it whether it is zoned R-3 or U-1. Not rezoning the property will not prevent ASU from developing the property. Whether it is zoned U-1 or R-3, ASU will have to meet requirements in the UDO.

“Historically, we have rezoned property to U-1 that is contiguous to the University.

“The other UDO text amendments before Council stem from a conversation with the University at the Town’s last annual retreat. Following the retreat, the Town’s planning staff proposed a plan for University land use planning. This plan was presented to both the Council and the Planning Commission last summer. The University requested a joint meeting with the Town before bringing this to a Public Hearing. The Town and the University met on September 4 to discuss the proposed plan. There was general agreement on some items in the proposal and both the Town and University appointed three representatives to further work on the proposal. The text changes before us are the recommendation agreed upon by the Town and ASU in regard to University planning and related text amendments to the UDO. Unfortunately, we did not get to discuss the merits of the proposed changes at the Public Hearing. At the September 4 meeting, the Town and University also agreed to develop a joint master plan.

“The University’s purchase of this property and subsequent plans for development of this property is what I call the “Perfect Storm” and has brought to the forefront the importance of joint planning. The Town and University need to develop a joint master plan that addresses growth, infrastructure needs (water, sewer, roads, sidewalks, etc), traffic and housing. Both the Town and University are experiencing growing pains and we are at a critical crossroad where we must begin planning and working together. The Town and University have agreed to do just that. We can’t change what has already been done, but we can and must plan and work together from this point on.

“Howard Street was developed with a mix of single family and multifamily residential units as well as a church prior to the area even being zoned R-3 or to the UDO being adopted. Clearly many of these properties do not conform to the UDO. More than half of the property on the University side of Howard Street is zoned U-1 with the other side zoned R-3 or B-2. Most of the area is prime for redevelopment. (I personally would love to see more student housing closer to campus).

“I have struggled over how all of this impacts the Dedmons, innocent homeowners caught in an area that has gone under significant change over a number of years. Going from what was once primarily a single family residential area next to the University, to primarily student housing and University use. The area has changed over the years and now the predominant use is related to the University. For this reason the request to rezone is with merit. I also support the text amendments as they are reasonable, promote better University land use planning and are the first

step to the Town and University working together. I will hold the University to working with the “Town on a joint master plan and that any future purchase of property not zoned U-1 is part of a joint master plan that reflects community input.”

Council Member Pepin presented an analysis of uses in both the R-3 and U-1 zoning districts and the following statement regarding the case:

“ASU’s publicity campaign involving plans for a specific building were more in keeping with a conditional zoning request and not that of the zoning request we are legally obligated to use. ASU did not file a conditional zoning request that would bind them to a specific zoning building plan. The request for zoning tonight means we must consider all permissible uses within a U1 zoning district.

“Because of the consequences of this campaign for a specific building, I believe the public is under the impression that council has the authority to request specific modifications to a building on this site. We do not. It is also true that tonight’s request for a zoning change does not bind ASU to any proposed plans.

“In addition, I also believe that because of this publicity campaign for a specific building we are faced with a no-win situation because the public’s perception is that whether we vote to support or not support this zoning request or text changes to the UDO for U1 development we are viewed as voting to support or not support a specific building.

“I have prepared a comparison of permitted uses for the R3 zoning district and the U1 zoning district based on the UDO and would hope the rest of the council will consider the following facts in our discussions.

“The changes inherent in moving from an R3 to a U1 include:

- \$ 17 out of approximately 41 permitted uses would not change (about 41 percent)
- \$ Of the remaining 59 percent that would change, approximately 15 of these changes involve the removal of a special permit process and provide a zoning by right.
- \$ In addition there would be 5 additional uses in moving from an R3 to a U1 district. These include: Homeless Halfway Shelters, Offices with little to no client or customer traffic, Bowling alleys, skating, tennis courts, pool halls, athletic facilities etc., Movie theaters, Stadiums, coliseums >1000 people
- \$ Also there would be three losses of use that are Planned Residential Dev, Bed and Breakfast, and Tourist Homes.

I realize the above changes have in some cases specific caveats but the purpose of presenting this information based on the UDO is to focus our attention on what we are actually voting on tonight. These changes may or may not be problematic but I feel they have not been focused on sufficiently and thus it is our obligation to consider them in our deliberation this evening.”

Council Member Pepin moved to amend the text regarding the interior setback to read the following: “Increase interior setback to 17' when adjacent to all residential zoning districts.” The motion died for lack of a second. Upon a motion by Council Member Mason, seconded by Council Member Aycock, Council moved to amend the language in the text and the table of permitted uses to reflect the following change: “Increase interior setback to 14' when adjacent to the R-1 zoning district.” Council Member Pepin explained her position in that some of the R-3 zoned properties have single-family homes on the property and that, while a change from 14' to 17' is not a significant change, it would provide more buffer between uses.

VOTE: Aye - 4 (Phillips, Aycock, Mason, Brantz)
Nay - 1 (Pepin)

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council found that the application is consistent with all of the objectives and policies for growth and development of the 2006 Boone Comprehensive Plan.

VOTE: Aye - 4 (Phillips, Aycock, Mason, Brantz)
 Nay - 1 (Pepin)

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council found that the application is both reasonable and in the public interest because the proposed text:

- 1. Provides a greater level of flexibility for University growth and expansion;
- 2. Provides for a scale of University fringe development which is sensitive to the context of the surrounding community;
- 3. Provides interim strategies for mitigation of university growth impacts; and
- 4. Promotes an environment of Smart Growth in Boone.

VOTE: Aye - 4 (Phillips, Aycock, Mason, Brantz)
 Nay - 1 (Pepin)

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve the following text amendment:

D. PROPOSED TEXT

Section 200. Schedule of Land Use Intensity Regulations

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	)		)	)	R)		)	ck
n 209 [a]							on 205 [g]	on 205 [h]

Section 205. Building Setback Requirements

[g] In the U-1 district, the minimum street setback of 10 feet shall apply only when development is proposed adjacent to Town maintained streets.

[h] In the U-1 district, the minimum interior setback shall be increased to 14 feet only when development is proposed adjacent to R-1 zoned property. Additional setback provisions in Section 205 [e] do not apply in the U-1 district.

Section 207. Building Height Limitations

[b] Subject to the remaining provisions of this section, building height limitations in the various zoning districts shall be as follows:

Zone	Height Limitation (Feet)
R-1, R-1A, RR, R-2, R-4, RA	35
R-3	50 (primary) - 90 (secondary)
MH	35
O/I	67

B-1	44 (primary) – 67 (secondary)
B-2	35 (primary) – 40 (secondary)
B-3	44 (primary) – 67 (secondary)
U-1	Refer to Section 207 [h]

[h] Building heights for structures internal to the main campus shall be generally limited only by the Town’s fire fighting capability except for those structures located immediately adjacent to property in a non-University district. In this instance:

- [1] All buildings proposed within 100 feet of an R-1, R-1A, RR, R- 2, R-4, or RA zoned property shall be limited to a maximum height of 35 feet.
- [2] All buildings proposed within 50 feet of an R-3, O/I, B-1, B-2, or B-3 zoned property shall be limited to the maximum height allowed in the adjoining district. Additional height restrictions in Section 207 [d] and [e] shall not apply in the U-1 district.

Section 209. Intensity Regulations for the U-1 District

- [a] ~~In the U-1 district, all development located within one hundred (100) feet of a lot boundary line shall observe the land use intensity ratios, the minimum setback and height limitations of the B-2 district as contained in the table of land use intensity ratios.~~
- [a] University campus land will be considered as a whole for purposes of computing land use intensities. This provision does not apply to satellite tracts; however, land separated from the main campus only by a public street or thoroughfare will be deemed part of the main campus, and any land separated from the University’s State Farm property only by a public street or thoroughfare will be deemed part of the State Farm property.

Section 346. Number of Parking Spaces Required

- [a] All developments in all zoning districts ~~other than the U-1 district~~ shall provide a sufficient number of parking spaces to accommodate the number of vehicles that ordinarily are likely to be attracted to the development in question.
- [e] Table of Parking Requirements.

	Parking Requirement
10	per classroom in elementary schools, 5 spaces per classroom in secondary schools.
20	1 space per 100 square feet of gross floor area.
30	1 space per 150 square feet of gross floor area.
40	See Section 346 [f]
50	ry four seats in the portion of the church building to be used for services, plus spaces for any residential use as determined in accordance with the parking requirements set forth for residential uses, plus 1 space for every 200 square feet of gross floor area designed to be used neither for services nor residential purposes.
5,400	1 space per 300 square feet of gross floor area.

[f] New development in the U-1 district shall include consideration of the need for additional parking to accommodate the new development, as well as strategies to mitigate parking and traffic impacts on the campus and the larger community. Depending upon the location and intensity of a particular development, the Town may require a Traffic Impact Analysis (TIA). This analysis shall include identification of specific strategies, improvements, or Transportation Demand Management measures necessary for the University to effectively mitigate identified impacts on the campus and larger community.

Section 358. The Purpose and Intent

[d] The following provisions shall apply to the U-1 zoning district:

[1] New development in the U-1 district shall provide street trees along town maintained streets in accordance with Section 366 and consistent with the University’s treatment of streets on or adjacent to the main campus.

[2] New development in the U-1 district shall provide a ten (10) foot Type “A” Standard Buffer adjacent to all non-university property in accordance with Section 362 (b)(1) and Section 363.

VOTE: Aye - 4 (Phillips, Aycock, Mason, Brantz)
Nay - 1 (Pepin)

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to direct the Town Manager to coordinate a series of joint meetings with officials from the Town of Boone and Appalachian State University to work on the creation of a joint master plan to begin in February 2008.

VOTE: Aye - All
Nay - None

Case RZ20070701 - Appalachian State University has filed a petition to change the zoning classification of property located east of College Street between Howard Street and Hamby Alley. The University is requesting U-1 (University District) zoning. The property is currently zoned R-3 (Multi-family Residential). Mr. Spear stated that the Planning Commission, after consideration of the case at its regular meeting, recommended approval of the request. Council Member Pepin questioned what would prohibit such uses as coliseums, bowling alleys, etc. on this property. Mr. Spear stated that the size of the property would not be conducive to these types of uses. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council found that the application is consistent with all of the objectives and policies for growth and development contained in the 2006 Boone Comprehensive Plan.

VOTE: Aye - 4 (Phillips, Aycock, Mason, Brantz)
Nay - 1 (Pepin)

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council found that the application is both reasonable and in the public interest because it is consistent with the current surrounding uses.

VOTE: Aye - 4 (Phillips, Aycock, Mason, Brantz)
Nay - 1 (Pepin)

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve the Zoning Map Amendment application.

VOTE: Aye - 4 (Phillips, Aycock, Mason, Brantz)
Nay - 1 (Pepin)

AFFORDABLE HOUSING TASK FORCE APPOINTMENT

Development Services Director John Spear noted that there is a vacancy on the Affordable Housing Task Force for a Planning Commission representative. He stated that Commission Member Caroline Poteat is interested in serving on the Task Force. Upon a motion by Council Member Aycock, seconded by Council Member Phillips, Council moved to appoint Carolina Poteat to serve on the Affordable Housing Task Force as the Planning Commission representative.

VOTE: Aye - All
 Nay - None

BOARD OF ADJUSTMENT NOMINATIONS

Development Services Director John Spear noted that there is an ETJ Alternate position available on the Board of Adjustment. He directed the Council's attention to two applications received from William Aceto and Donald Clark for the vacancy. Upon a motion by Council Member Mason, seconded by Council Member Pepin, Council moved to forward William Aceto and Donald Clark as two nominations to the Watauga County Board of Commissioners since the Board of Commissioners has requested two nominations be forwarded for each vacancy.

VOTE: Aye - All
 Nay - None

CABLE TV ADVISORY COMMITTEE NOMINATIONS

Town Manager Greg Young explained that there is still a vacancy on the Cable TV Advisory Committee due to the resignation of Andrew Mason. Council did not produce any nominations at this time.

GREENWAY COMMITTEE APPOINTMENTS

Pubic Services Director Blake Brown stated that three applications have been received for appointment to the Greenway, Parks & Gardens Committee. The applications are from Joan Hearn, Harvard Ayers, and Stephen Poulos. Upon a motion by Council Member Brantz, seconded by Council Member Aycock, Council moved to appoint Joan Hearn, Harvard Ayers, and Stephen Poulos to serve on the Greenway, Parks & Gardens Committee.

VOTE: Aye - All
 Nay - None

PRESENTATION OF HORN PROPERTY REPORT

Mr. Larry Greene, of Green Architecture, presented a report on the condition of the structures at the Horn in the West property. A copy of the report is **permanently on file at Town Hall**. The report indicated problems with faulty and exposed electrical wiring, structural failures in walls, roofs, and foundations, and many problems in which the structures do not meet ADA (Americans with Disabilities Act) requirements. It was the consensus of the Council to salvage as many materials as possible for use in future renovations and that as much effort as possible should be made to preserve the historical structures on the property. Council directed Jim Byrne to use the remaining balance of \$220,000 earmarked by Council for repairs to the property to begin addressing the most pressing needs including repairs to the electrical system and the roof and trusses on the Powderhorn Theatre building as well as to address the back stage wall in the Amphitheatre stage area which is a major safety concern.

ACCEPTANCE OF GRANT - CWMTF STORM WATER MINI-GRANT

Special Assistant to the Manager Jim Byrne requested permission to proceed with a CWMTF Storm Water Mini-Grant and approval of a local match of \$12,000 from the Town of Boone. Upon a motion by Council Member Pepin, seconded by Council Member Brantz, Council moved to approve the CWMTF Storm Water Mini-Grant and \$12,000 in matching funds.

VOTE: Aye - All
 Nay - None

JONES HOUSE CENTENNIAL CELEBRATION UPDATE

Jones House Director Cherry Johnson introduced Whitney Kimball-Coe to present an update on the Jones House Centennial Celebration. Ms. Kimball-Coe presented a power-point presentation (**copy permanently on file at Town Hall**) to the Council. The Council Members expressed their appreciation for Ms. Kimball-Coe’s hard work on this project.

SCHEDULING OF ANNUAL RETREAT

Mayor Clawson noted two days in February available to hold the annual Council Retreat: Friday, February 22nd or Friday, February 29th at the Chetola Resort in Blowing Rock from 8:30 a.m. until 5:00 p.m. Council Member Aycock noted that she would be unavailable on February 22nd, and Council Member Brantz stated he would be unavailable on February 29th. Due to these conflicts, Council directed the Deputy Clerk to inquire as to the availability of a conference room on Friday, February 15, 2008.

SCHEDULING OF SPECIAL MEETING - WATER USE COMMITTEE

Public Utilities Director Rick Miller stated that Water Sub-Committee has expressed interest in scheduling a meeting of the Water Use Committee to discuss proposed changes to the Water and Sewer Use Ordinance Article VII, Water Conservation Regulations. Upon a motion by Council Member Pepin, seconded by Council Member Mason, Council moved to set a special meeting on Monday, February 4, 2008, at 5:00 p.m. in the Council Chambers.

VOTE: Aye - All
 Nay - None

MONTHLY WATER STATUS REPORT

Public Utilities Director Rick Miller presented the following status report:

As requested by town Council, staff and I have complied the following information concerning water use for the month of December. The Water Treatment Plant recorded a maximum daily demand of 2.043 million gallons on Wednesday, December 5, 2007, and the average daily demand was 1.744 million gallons for the entire month. The total amount of water treated was 54.091 million gallons. This is a .68 percent increase over the total amount of water treated in November 2006.

Attached you will find a chart that depicts a comparison of the maximum daily demands for the month of December since 1995. Included is an average trend line that illustrates the extent the maximum daily demand has increased during the last thirteen years.

Originally the Boone Town Council appropriated for 25,000 gallons per day usage for allocation to customers over a five year period. In November, the Water Use Committee met and after careful review of predicted vs actual water usage numbers, recommended to Council that the allocation amount be increased to 50,000 gallons per day until 2012.

Since the last Town Council meeting, the Public Utilities Department approved 11 projects that subtracted 14,827 gallons per day from the 2008 allotment. The total water allotment remaining for the year 2008 has broken the sixty percent threshold. All future water service requests in excess of 500 gallons per day will be forwarded to Town Council as required in Ordinance 05-01.

As you can see in the attached “Approved Water Connections” chart, the Public Utilities Department now has 19,888 gallons per day remaining for allotment in 2008 and 41,900 gallons remaining for 2009.

			2008			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						50000
			Mega Builders	11/15/2007	14400	35600
			Anne Henning	11/15/2007	795	34805
			Katrina Callio	11/15/2007	90	34715
Brad Moretz	1/2/2008	916				33799

Park Street Subdivision	1/2/2008	810				32989
Bob Buyce	1/2/2008	2043				30946
James Bates	1/2/2008	270				30676
Beth Postlewait	1/2/2008	270				30406
John Winkler	1/2/2008	252				30154
Pat Carroll	1/2/2008	936				29218
WWWC LLC	1/2/2008	2682				26536
Carroll Companies	1/2/2008	2730				23806
WWWC LLC	1/2/2008	936				22870
WWWC LLC	1/2/2008	2982				19888
			2009			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						50000
			Leanord Soloman	11/15/2007	8100	41900

APPROVAL OF AUDIT CONTRACT - COMBS, TENNANT & CARPENTER, P.C.

Finance Director Amy Davis stated that approval is needed for the contract for audit services with Combs, Tennant & Carpenter, P.C. for the Fiscal Year 2008-2009 annual audit and which includes an agreement for audit services for a three-year term Ms. Davis stated that the contract with the previous firm was a five-year agreement. She noted that this will be the second three-year term contract with Combs, Tennant & Carpenter, P.C. Upon a motion by Council Member Aycock, seconded by Council Member Brantz, Council moved to approve the following contract:

**CONTRACT TO AUDIT ACCOUNTS
of Town of Boone, NC**

On this 27th day of November, 2007, COMBS, TENNANT AND CARPENTER, P.C., PO BOX 1098, BOONE, NC 28607, hereinafter referred to as the Auditor, and TOWN COUNCIL of TOWN OF BOONE, NC, hereinafter referred to as the Governmental Unit, agree as follows:

The Auditor shall audit all statements and disclosures required by generally accepted accounting principles and additional required legal statements and disclosures of all funds and/or divisions of the Governmental Unit for the period beginning July 1, 2007 and ending June 30, 2008. The non-major combining and individual funds statements and schedules shall be subjected to the auditing procedures applied in the audit of the basic financial statements and an opinion will be rendered in relation to (as applicable) the governmental activities, the business-type activities, the aggregate discretely presented component units, each major governmental and enterprise fund, and the aggregate remaining fund information (nonmajor government and enterprise funds, the internal service fund type, and the fiduciary fund types).

At a minimum, the Auditor shall conduct his/her audit and render his/her report in accordance with generally accepted auditing standards. The Auditor shall perform the audit in accordance with Government Auditing Standards, if required by the State Single Audit Implementation Act, as codified in G.S. 159-34. If required by OMB Circular A-133 and the State Single Audit Implementation Act, the auditor shall perform a Single Audit.

This contract contemplates an unqualified opinion being rendered. If financial statements are not prepared in accordance with generally accepted accounting principles (GAAP), or the or the statements fail to include all disclosures required by GAAP, explain that departure from GAAP in the space below:

This contract contemplates an unqualified opinion being rendered. The audit shall include such tests of the accounting records and such other auditing procedures as are considered by the Auditor to be necessary in the circumstances. *Any limitations or restrictions in scope which would lead to a qualification should be fully explained in an attachment to this contract.* The audit will have no scope limitations except:

If this audit engagement is subject to the standards for audit as defined in Government Auditing Standards, issued by the Comptroller General of the United States, then the Auditor warrants by accepting this engagement that he has met the requirements for a peer review and continuing education as specified in Government Auditing Standards. The Auditor agrees to provide a copy of their most recent peer review report to the Governmental Unit and the Secretary of the Local Government Commission prior to the execution of the audit contract. (See Item 20.)

It is agreed that time is of the essence in this contract. All audits are to be performed and the report of audit submitted by OCTOBER 31, 2008.

It is agreed that generally accepted auditing standards include a review of the Governmental Unit's system of internal control and accounting as same relates to accountability of funds and adherence to budget and law requirements applicable thereto; that the Auditor will make a written report, which may or may not be a part of the written report of audit, to the Governing Board setting forth his findings, together with his recommendations for improvement. That written report must include all matters defined as "significant deficiencies and material weaknesses" in AU 325 of the AICPA Professional Standards. The Auditor shall file a copy of that report with the Secretary of the Local Government Commission.

All local government and public authority contracts for annual or special audits, bookkeeping, or other assistance necessary to prepare the Unit's records for audit, financial statement preparation, any finance-related investigations, or any other audit-related work in the State of North Carolina require the approval of the Secretary of the Local Government Commission. Invoices for services rendered under these contracts shall not be paid by the Governmental Unit until the invoice has been approved by the Secretary of the Local Government Commission. (This also includes any progress billings.) [G.S. 159-34 and 115C-447] All invoices should be submitted in triplicate to the Secretary of the Local Government Commission. The original and one copy will be returned to the Auditor. Approval is not required on contracts and invoices for system improvements and similar services of a non-auditing nature.

In consideration of the satisfactory performance of the provisions of this agreement, the Governmental Unit shall pay to the Auditor, upon approval by the Secretary of the Local Government Commission, the following fee which includes any cost the Auditor may incur from work paper or peer reviews or any other quality assurance program required by third parties (Federal and State grantor and oversight agencies or other organizations) as required under the Federal and State Single Audit Acts:

Year-end bookkeeping assistance - [For audits subject to Government Auditing Standards, this is limited to bookkeeping services permitted by revised Independence Standards]
N/A

Audit - 28,200

Preparation of the financial statements - 7,300

After completing his audit, the Auditor shall submit to the Governing Board a written report of audit. This report shall include, at least, Management's Discussion, Analysis, the financial statements of the governmental unit and all of its component units and notes thereto prepared in accordance with generally accepted accounting principles, combining and supplementary information requested by the client or required for full disclosure under the law, and the Auditor's opinion on the material presented. The Auditor shall furnish the required number of copies of the report of audit to the Governing Board as soon as practical after the close of the accounting period.

The Auditor shall file with the Local Government Commission two copies of the report of audit, including one copy of the federal Data Collection Form, if a federal single audit is conducted. In addition, if the North Carolina Office of the State Auditor designates certain programs to be audited as major programs, a one page turnaround document and a representation letter addressed to the State Auditor shall be submitted to the Local Government Commission. Two copies of the report of audit should be submitted if the audit is performed only under the provisions of the State Single Audit Implementation Act of a financial audit is required to be performed in accordance with Government Auditing Standards. Three copies of the audit should be submitted for Councils of Governments. Two copies of the audit should be submitted for tax levying Municipalities. Otherwise, one copy shall be submitted. Copies of the report shall be filed with the Local Government Commission when (or prior to) submitting the invoice for the services rendered. All copies of the report submitted **must be bound**. The report of audit, as filed with the Secretary of the Local Government Commission, becomes a matter of public record for inspection and review in the offices of the Secretary of the Local Government Commission by any interested parties. Any subsequent revisions to these reports must be sent to the Secretary of the Local Government Commission. These audited financial statements are used in the preparation of Official Statements for debt offerings (the auditor's opinion is not included), by municipal bond rating services, to fulfill secondary market disclosure requirements of the Securities and Exchange Commission, and other lawful purposes of the government, without subsequent consent of the auditor.

Should circumstances disclosed by the audit call for a more detailed investigation by the Auditor than necessary under ordinary circumstances, the Auditor shall inform the Governing Board in writing of the need for such additional investigation and the additional compensation required therefore. Upon approval by the Secretary of the Local Government Commission, this agreement may be varied or changed to include the increased time and/or compensation as may be agreed upon by the Governing Board and the Auditor.

If an approved contract needs to be varied or changed for any reason, the change must be reduced to writing, signed by both parties, preaudited if necessary, and submitted to the Secretary of the Local Government Commission for approval. No change shall be effective unless approved by the Secretary of the Local Government Commission, the Governing Board, and the Auditor.

Whenever the Auditor uses an engagement letter with the client, Item 15 may be completed by referencing the engagement letter and attaching a copy of the engagement letter to the contract to incorporate the engagement letter into the contract. In case of conflict between the terms of the engagement letter and the terms of this contract, the terms of this contract will control. Engagement letter terms are deemed to be void unless the conflicting terms of this contract are specifically deleted in Item 21 of this contract. Engagement letters containing indemnification clauses will not be approved by the Local Government Commission.

There are no special provisions except: SEE ATTACHED ENGAGEMENT LETTER.

A separate contract should not be made for each division to be audited or report to be submitted. A separate contract must be executed for each component unit which is a local government and for which a separate audit report is issued.

The contract should be executed and submitted in triplicate to the Secretary of the Local Government Commission. The mailing address is 325 North Salisbury Street, Raleigh, North Carolina 27603-1385. The physical address is 4505 Fair Meadow Lane, Suite 102, Raleigh, North Carolina 27607-6449.

Upon approval, the original contract will be returned to the Governmental Unit, a copy will be forwarded to the Auditor, and a copy retained by the Secretary of the Local Government Commission. The audit should not be started before the contract is approved.

There are no other agreements between the parties hereto and no other agreements relative hereto that shall be enforceable unless entered into in accordance with the procedure set out herein and approved by the Secretary of the Local Government Commission.

If this audit engagement is not subject to Government Auditing Standards, then Item 5 shall be listed as a deleted provision in Item 21. An explanation must be given for deleting this provision.

All of the above paragraphs are understood and shall apply to this agreement, except the following numbered paragraphs shall be deleted: (See item 14).

COMBS, TENNANT & CARPENTER, PC.

TOWN OF BOONE

By_____

By_____

(Please type or print name)

(Please type or print name)

(Signature of authorized audit firm representative)

(Signature of Mayor)

Date_____

Date_____

VOTE: Aye - All
 Nay - None

ADOPTION OF BUDGET AMENDMENTS

Upon a motion by Council Member Phillips, seconded by Council Member Aycock, Council moved to approve the following budget amendments:

DESCRIPTION	ACCOUNT #	TO:	FROM:
Maintenance & Repair - Vehicles(Police)	010-500-300-525301	\$946.00	
Maintenance & Repair - Vehicles(Police)	010-500-300-525301	\$6109.00	
Miscellaneous Revenue	010-000-000-489900		(\$7,055.00)

VOTE: Aye - All
 Nay - None

ADOPTION OF RESOLUTION - DOWNTOWN BOONE POST OFFICE

Council Member Brantz read aloud the proposed resolution. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to adopt the following resolution:

**RESOLUTION
EXPRESSING THE OPPOSITION OF THE BOONE TOWN COUNCIL
TO THE PLANNED SALE AND POSSIBLE CLOSURE OF
THE DOWNTOWN BOONE POST OFFICE**

WHEREAS, the Boone Town Council has been informed that the United States Postal Service has placed, or intends to place, the Downtown Boone Post Office Building, located at 689 West King Street, Boone, North Carolina, (hereafter, “the downtown post office”) for sale; and

WHEREAS, the Boone Town Council has been advised that the transfer of ownership of the downtown post office may result in the discontinuation of the postal functions currently served by the downtown post office; and

WHEREAS, the Boone Town Council has been advised that the transfer of ownership of the downtown post office may also result in the removal of certain murals from the downtown post office which have cultural and historic significance to the Town of Boone, the region, and the nation at large; and

WHEREAS, the Boone Town Council recognizes the importance to the Town of Boone of the downtown post office; and

WHEREAS, the Boone Town Council has committed itself to the idea of a walkable and sustainable community in the Town of Boone, and the discontinuance of the downtown post office as a retail postal facility and location for customers to maintain post office boxes threatens the walkability and sustainability of the Town of Boone, insofar as a large portion of the business, professional and residential community in Boone is located within walking distance from the downtown post office, and many of the current customers of the downtown post office access the facility by foot, while the “main” post office is distant from the downtown and is primarily accessible by motor vehicle; and

WHEREAS, the downtown post office is one of only two buildings in the Town of Boone listed in the National Register of Historic Places, and it contains art work and architectural features which are significant to the cultural heritage and history of the Appalachian and Boone regions, and the nation as a whole; and

WHEREAS, the real property upon which the downtown post office is constructed is located in or near the geographic center of the downtown area of the Town of Boone and along the main corridor through the Town of Boone, and is therefore seen in great numbers by not only the residents of Boone, but also by the many visitors to the Town of Boone; and

WHEREAS many citizens of the Town of Boone believe that the downtown post office and the real property upon which it is located are of great importance to the aesthetics of the Town of Boone, the ambience of downtown Boone, and the economic vitality of the surrounding commercial district of the Town of Boone; and

WHEREAS, a change in use of the downtown post office and the construction of additional structures on the real property on which it is located have the capacity to negatively impact the aesthetics, ambience and economic vitality of the downtown area of the Town of Boone; and

WHEREAS, should the United States Postal Service follow through with the sale of the downtown post office, the Town Council believes that it is imperative that the building and property be retained in the public domain; and

WHEREAS, the United States Postal Service has invited comments concerning its plan to “dispose” of the downtown post office to be submitted prior to January 28, 2008;

NOW, THEREFORE, BE IT RESOLVED that the Boone Town Council opposes the sale of the downtown post office, and further and independently opposes the discontinuance of the use of the downtown post office as a retail postal facility and location for customers to maintain post office boxes; and

BE IT FURTHER RESOLVED that the Boone Town Council urges the United States Postal Service, if it nevertheless proceeds with a sale of the downtown post office, to leave the building, its murals and all architectural features intact and to direct the sale to the Town of Boone or another public entity that will be able to maintain, preserve, protect and supervise the use of the downtown post office while allowing it to remain in the public domain; and

BE IT FURTHER RESOLVED that, should the United States Postal Service proceed with the sale of the downtown post office, the staff of the Town of Boone explore the feasibility of a purchase of the downtown post office by the Town of Boone or such other entity as may maintain, preserve, protect and supervise the downtown post office while allowing it to remain in the public domain, and if determined feasible, undertake to itself purchase, or facilitate the purchase of the downtown post office by an entity that will maintain, preserve, protect and supervise the use of the downtown post office while allowing it to remain in the public domain; and

BE IT FURTHER RESOLVED that the Boone Town Council directs the Town Clerk to forward this resolution to the Realty Asset Management, United States Postal Service, 160 Inverness Drive West, Suite 400, Englewood, CO 80112-5005, to the Attention of Gloria

Charlson, by letter, facsimile to (651) 406-5816, and/or email at gloria.m.charlson@usps.gov , in time for it to be received on or before January 28, 2008; and

BE IT FURTHER RESOLVED that the Boone Town Council directs the Town Clerk to forward a copy of this resolution to the elected representatives of the citizens of the Town of Boone in Congress and the North Carolina General Assembly, as well as the Regional Office of the United States Post Office in Greensboro, North Carolina, and to such other agencies and departments as may have influence over the decision to dispose of the downtown post office; and

BE IT FURTHER RESOLVED that the Town Manager shall direct the Town's lobbyist to lobby, to the extent feasible and useful, for the preservation of the downtown post office.

Adopted this the 17th day of January, 2008.

ATTEST:

Loretta Clawson, Mayor

Freida Van Allen, Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGES 46-47)

VOTE: Aye - All
 Nay - None

Mayor Clawson declared a break at 8:17 p.m. Council reconvened at 8:27 p.m.

REQUESTED APPEARANCE - MR. ADAM UPCHURCH

Town Attorney Sam Furguele opened a public hearing at 8:30 p.m. to hear sworn testimony from Adam Upchurch, David Richmond of McGill & Associates, John Davenport of Davenport Engineering, Public Utilities Director Rick Miller, Development Services Director John Spear, Public Works Director Blake Brown, and Fire Chief Reginald Hassler regarding a request for water and sewer service to property located off Park Street. Mr. Upchurch stated that the request is for water and sewer service for a project entitled: Cedar Ridge. He offered a copy of a traffic impact analysis as evident (**copy permanently on file at Town Hall**). Mr. Upchurch stated that the property is owned by Cathy Kosterman and is currently under contract. David Richmond, an engineer with McGill & Associates, stated the project will consist of 55 units, most of which will be three-bedroom units. He noted that modifications were made to the preliminary drawings to place the parking areas closer to the buildings in order to increase the amount of open space. In response to questions posed by members of the Council, Mr. Richmond indicated that these units will be marketed primarily for retirees and working professionals at a starting price of approximately \$330,000, but the units will not specifically be marketed for student housing. He stated that the developer would be willing to annex the property so that the entire amount will be in the town limits. Furthermore, Mr. Richmond indicated that the developer has plans to improve Park Street and does not plan to expand development to the remainder of the property. Mr. Upchurch stated that the anticipated time frame for development is to be completed by late 2009. John Davenport of Davenport Engineering stated that he does not have any concerns specifically for the impact of traffic on the neighborhood. He agreed that there are sections of Park Street that are narrow and will need to be widened. Mr. Davenport stated that the developer is planning to paint a centerline along Park Street to encourage drivers to stay on the correct side of the road. He stated that the increase for Park Street to be 386 trips-per-day. Mr. Upchurch indicated that the distance from the site to the downtown area to be .3 miles. In regard to a question concerning sidewalk improvements, Mr. Upchurch stated that sidewalk designs have not been developed yet but that the project will be pedestrian-friendly. He further explained that he plans to incorporate as many aspects of Smart Growth regulations as possible into the development. Mr. Upchurch stated that he did not want to build into the wooded area adjacent to the Junaluska neighborhood because of the large number of trees there. He explained that although the majority of the development will be situated in the field area on the property where the elevation is higher, placement will allow for less land-clearing activities. Development Services Director John Spear stated that based on the map contained in the development plan, the property is in the viewshed overlay district. He explained that the portion of the property within the town limits is

zoned R-4 and is designated primary growth area. Mr. Spear indicated that the portion of the property within the ETJ is zoned R-A and is designated as rural growth area. Council Member Mason questioned the current comprehensive plan policies regarding water and sewer expansion in the rural growth area. Mr. Spear indicated that the current comprehensive plan prohibits expansion of water and sewer service in the rural growth area. In regard to questions concerning the availability of water and sewer services, Public Utilities Director Rick Miller stated that the property is not currently served by an existing line and that the water line on Park Street is currently a 2-inch line. He explained that the line along Park Street would need to be upgraded to an 8-inch line but that the line extending to King Street is currently a 6-inch line. Furthermore, Mr. Miller stated that a pump station and a 1000-gallon storage tank would be necessary to serve the property. Council Member Mason inquired if the property could be served by the Gladys Street storage tank. Mr. Miller stated that currently Ordinance 05-01 does not allow for the extension of lines. Mr. Upchurch stated that the property owner, Cathy Kosterman, is agreeable to granting an easement so that lines can be run to the Junaluska tank. In regard to sewer access, Mr. Miller indicated that a connection is possible to the Park Street line if easements are obtained from the current adjacent property owners or that connection can be made to the public sewer along Park Street which would not require an easement. Fire Chief Reggie Hassler stated that no problems have been incurred in serving the Park Street neighborhood. He stated that once development plans are submitted, they are reviewed by his department. Chief Hassler stated the most common concern for emergency service access to developments are for turn-around space for fire trucks in cul-de-sacs. Public Works Director Blake Brown stated that current rights-of-way will need to be verified for plans to widen Park Street. In regard to sidewalks along Park Street, he offered that the installation of sidewalks could be a possible cost-share project between the Town and the developer or can be a condition of approval for the project. With no further public testimony, Mr. Furguele closed the public hearing at 9:30 p.m. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to table this case until the next regular meeting on February 21, 2008.

VOTE: Aye - All
 Nay - None

Council Member Mason suggested that the Council further examine the issue of extending water into the secondary pressure zone at the next Water Use Committee meeting.

REQUESTED APPEARANCE - OSCORP INVESTMENT GROUP

Town Attorney Sam Furguele opened a public hearing at 9:39 p.m. to hear sworn testimony from Rob Slack, Public Utilities Director Rick Miller, and Public Works Director Blake Brown regarding a request for water and sewer service to property located between West King Street and Poplar Grove Road. Mr. Slack stated he is a real estate broker and is authorized to speak on behalf of the property owner, Mr. Oscar Longa. He began by describing the project as beginning with phase one consisting of thirty units: 15 two-bedroom, 2 ½ bath, 1400-square-foot units and 15 one-bedroom, 700-square-foot loft/studio units. He indicated that the second phase would include mixed-use office and retail space including a 100-seat restaurant. Council Member Brantz noted that the number of units described by Mr. Slack differed from the number presented on the application. Public Utilities Director Rick Miller stated that, after calculating the usage based on the number of units indicated by Mr. Slack, the total amount of usage would be 10,975 gallons per day. He also noted that a sewer main on the property would need to be relocated. Mr. Slack stated that access to the development would be off Poplar Grove Road and that each unit would have a garage and one parking space. He noted that the property owner plans to meet with representatives from Watauga County to discuss plans for shared parking with a possible parking garage in the future. In regard to the time schedule, Mr. Slack projected breaking ground by spring of this year. Council Member Aycock inquired about plans for Kraut Creek which runs through the property. Mr. Slack stated that the developer has discussed the project with the Kraut Creek Committee and would like to use the surrounding creek banks as part of greenspace area for the development. Council Member Brantz questioned Public Works Director Blake Brown about access to the development from Poplar Grove Road. Mr. Brown noted that Poplar Grove Road is maintained by the NC Department of Transportation(NCDOT) and that driveway connection permits must be obtained through the NCDOT. With no further testimony to be offered, Mr. Furguele closed the public hearing at 9:54 p.m. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve the

allocation of 6,750 gallons from the 2008 year allotment and 4,225 gallons from the 2009 allotment.

VOTE: Aye - All
 Nay - None

REQUESTED APPEARANCE – MR. SAM CALHOUN/HIGH COUNTRY PRESS

Mr. Sam Calhoun, Associate Editor for the High Country Press, appeared before the Council to present information regarding Daniel Boone Days Family Festival which will be a two-day family festival celebrating Boone’s namesake, meant to attract locals and visitors to the area with events that will appeal to all ages and tastes. Members of the Council expressed their excitement and eagerness to support this wonderful event. Mr. Calhoun stated he will appear before the Council at a later day to present updates on the event.

REQUESTED APPEARANCE - MS. JENNIFER GREENE/WATAUGA COUNTY HEALTH DEPARTMENT

Ms. Jennifer Greene of the Watauga County Health Department appeared before Council to request Council’s endorsement of the Fit Community Grant. She explained that partnering with the Town of Boone to promote walkability and pedestrian safety will greatly enhance the grant application. Ms. Greene noted that no financial obligation is needed from the Town. Upon a motion by Council Member Aycock, seconded by Council Member Phillips, Council moved to officially endorse the Fit Community Grant application being submitted by the Watauga County Health Department.

VOTE: Aye - All
 Nay - None

REQUESTED APPEARANCE - TRACY MYHALYK

Ms. Tracy Myhalyk appeared before the Council to request matching funds for the High County Food to Soil Program. She explained that the program will compost food waste and compostable paper products and recycle steel and aluminum cans from local restaurants and coffee shops in the downtown district. She stated that the amount of the grant will be \$30,000 and that she will need a 50% cash match. At this time, Ms. Myhalyk requested an official letter of support for the grant application. She indicated that she would request funding for the cash match at a later date. Council Member Pepin asked if Ms. Myhalyk has permission from Watauga County to locate her program on their property at the landfill. Ms. Myhalyk stated that she is awaiting a letter of support from county officials which agrees to allow her to set up her program at that location. Upon a motion by Council Member Mason, seconded by Council Member Pepin, Council moved to approve an official letter of support for the program contingent on the receipt of a letter or agreement from Watauga County supporting the program and allowing use of property at the landfill site to locate the program.

VOTE: Aye - All
 Nay - None

REQUESTED APPEARANCE - HOSPITALITY HOUSE OF BOONE

Ms. Kay Borkowski, Chair of the Hospitality House Board of Directors, appeared before the Council to request a text amendment allowing short-term emergency shelter housing, long-term transitional housing, and permanent housing for the homeless as permitted uses in the M-1 zoning district. She explained that Watauga County has deeded a 1.96-acre tract adjacent to the Hunger and Health Coalition location to the Hospitality House of Boone in order to construct a new homeless shelter facility. Upon a motion by Council Member Aycock, seconded by Council Member Brantz, Council moved to recuse Council Member Mason from deliberation of this request since she serves as the executive director of the Hospitality House.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Brantz, seconded by Council Member Aycock, Council moved to direct the Development Services Department staff to prepare a text amendment which would allow short-term emergency shelter housing, long-term transitional housing, and permanent housing for homeless persons as permitted uses in the M-1 zoning district for placement on the February 14, 2008 Quarterly Public Hearing agenda.

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

Upon a motion by Council Member Aycock, seconded by Council Member Pepin, Council moved to reseal Council Member Mason.

VOTE: Aye - All
 Nay - None

PUBLIC COMMENT

Mr. Lee Ball appeared before the Town Council to present information on Focus the Nation, an educational program on global warming solutions which will encompass several events during the week of January 28th culminating with a round-table discussion entitled *Climate Change Solutions* on Thursday, January 31, 2008, at 7:15 p.m. at the ASU Student Union. Mr. Ball stated that an invitation has been extended to all local elected officials to attend this event.

CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to enter Closed Session at 10:38 p.m. pursuant to NCGS 143-318.11a)3)5) in order to discuss the following matters:

- ASU Agreements.
 - Status of Light Litigation.
 - Update on Howard Street Project Property Purchases.
- \$ Property Acquisition - Water.
- \$ Legal Advice:
- Cancellation of fire truck purchase.
 - Preserve at Winkler's Creek.
 - Water withdrawal.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Brantz, seconded by Council Member Pepin, Council moved to exit Closed Session at 12:42 a.m.

VOTE: Aye - All
Nay - None

POSSIBLE ACTION FOLLOWING CLOSED SESSION

Upon a motion by Council Member Mason, seconded by Council Member Pepin, Council moved to schedule the annual Town Council retreat on Friday, February 15, 2008, from 8:30 a.m. to 5:00 p.m. in the Embers Conference Room at Chetola Resort.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Aycock, Council moved to rescind the awarding of bid and contract to HME, Inc. for a new squad vehicle for the Boone Fire Department.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Aycock, seconded by Council Member Pepin, Council moved to approve the bid in the amount of \$329,552 from VT Specialized Vehicles, Inc./Hackney and to approve the following contract:

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

CONTRACT

THIS CONTRACT, made and entered into this the 18th day of January, 2008, by and between the TOWN OF BOONE, NORTH CAROLINA (HEREINAFTER REFERRED TO AS "BOONE") AND VT Specialized Vehicles, Incorporated. (hereinafter referred to as "Hackney").

WITNESSETH:

WHEREAS, Boone has advertised for bids for one Rescue Truck; and

WHEREAS, HACKNEY has submitted a bid to the Town; and

WHEREAS, HACKNEY has agreed to sell and Boone has agreed to buy a Rescue Truck.

NOW, THEREFORE, in consideration of the mutual premises contained herein, as well as other good and valuable consideration flowing between parties, it is mutually agreed as follows:

5. HACKNEY shall deliver to Boone a Rescue Truck in accordance with the Specifications attached hereto as Exhibit 1 pp 1-80, the Modifications thereof attached hereto as Exhibit

6. The terms and specifications attached hereto as Exhibit 1, the modifications thereof attached hereto as Exhibit 2 and the Bid Proposal thereof attached hereto as Exhibit 3 are incorporated herein by reference. In the event any conflict exists between the contract and any provisions either of said attachments, this contract shall supercede the conflicting term of the attachments.
7. Boone shall pay HACKNEY the sum of \$329,552.00 for said Rescue Truck. This payment shall be made within 10 days after HACKNEY delivers and Boone accepts Rescue Truck.
8. HACKNEY covenants and agrees that unless noted otherwise, HACKNEY is the lawful owner of the above-described property; that it is free from all liens and encumbrances; that HACKNEY has the right to sell the above-described property; and that HACKNEY will indemnify Boone from all damages arising from claims by third parties to ownership of any of said property, and will warrant and defend these covenants against the lawful claims and demands of all parties.
9. HACKNEY shall deliver the completed Rescue Truck and such documentation as necessary to obtain title.

Upon a motion by Council Member Mason, seconded by Council Member Pepin, Council moved to direct the Town Attorney to seek forfeiture of the bid bond for HME, Inc.

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to accept the following settlement agreement:

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NUMBER 06 CyS 720

TOWN OF BOONE,)
Plaintiff,)
)
vs.)
)
LEOPALDO BALIESTRIERI, and)
MULBERRY STREET TRATTORIA,)
LLC,)
Defendants.)

THE PARTIES TO the above-captioned case having participated in a court-ordered mediation on October 9, 2007 and January 11, 2008, the Honorable Michael E. Helms, Superior Court Judge, Retired, certified mediator, having conducted the mediation; and Plaintiff having participated in said mediation in person through the person of Greg Young, Town Manager of the Town of Boone, represented by Samuel F. Furguele, Jr. Attorney at Law, and Defendants having participated in said mediation by telephone, represented by Charles E. Clement, Attorney at Law; and the Parties having reached a full and complete settlement of all matters involved in, arising from or otherwise connected to this action and the events giving rise to this action; and the Parties wishing to memorialize their understanding through this instrument; the Parties agree and contract as follows:

1. Defendants shall execute and deliver to Plaintiff, by non-warranty deed, a portion of the real property owned by Balestrieri Development, LLC, a Florida Limited Liability Company, (hereinafter “Balestrieri Development”) located on Howard Street in Boone, North Carolina, as described in Exhibit “A,” attached hereto. By executing this

Agreement, Defendants represent that Balestrieri Development is the owner of said property, and that they, or one of them, is a member-manager of Balestrieri Development, and has the full authority to execute such deed on behalf of Balestrieri Development, or can arrange for the proper and timely execution of the deed by a member-manager of Balestrieri Development. Neither Defendants nor Balestrieri Development will transfer any interest in the property described in Exhibit "A" (hereinafter, "the property") which will in any way interfere with the interest to be transferred hereunder to Plaintiff.

2. After Defendants deliver the aforesaid executed deed in compliance with paragraph 1, Plaintiff shall dismiss with prejudice its action against Defendants and thus withdraw its assessment of a fine against Defendants.
3. Upon Defendants' request, Plaintiff shall execute an acknowledgment, in form acceptable to the United States Internal Revenue Service, of the donation by Balestrieri Development of the property. For this purpose, Defendants shall have the sole responsibility to determine the value of the property to be transferred and shall be solely responsible, if an appraisal is required for such purposes, for the arrangements, costs, and other requirements of such appraisal.
4. In consideration of Defendants' transfer, or of the arranging by Defendants of a transfer by Balestrieri Development of the real property, Balestrieri Development or Defendants, their employees, agents or assignees, shall be entitled, for a five-year period commencing with their written notice to Plaintiff, directed to the Town Manager, to the free use of parking space owned by Plaintiff on Queen Street, between Water Street and Depot Street, and as close as possible to Water Street, if a parking space in such location is available, or if no such space is available in that location, a free parking space for the same period, five years, in the Plaintiff's municipal parking lot located on the North side of Queen Street between Water Street and Depot Street.
5. In consideration of Defendants' transfer, or of the arranging by Defendants of a transfer by Balestrieri Development, of the property, following its receipt and registration of the deed to the property, Plaintiff shall direct a letter of thanks to Defendants for the donation of the property.
6. Plaintiff shall be responsible for one-half the cost of mediation. Defendants shall be responsible for one-half of the cost of mediation. Each party is responsible for its own costs, including attorney's fees.

Agreed upon:

Greg Young, Town Manager
Town of Boone, Plaintiff

Samuel F. Furgiuele, Jr.
Attorney for Plaintiff
PO Box 386
Boone, NC 28607

Leopaldo Balestrieri, Defendant

Leopaldo Balestrieri, Member-
Manager, Mulberry Street
Trattoria, LLC, Defendant

Charles Clement
Attorney for Defendant
756 West King Street
Boone, NC 28607

Witnessed by:

Michael E. Helms

Certified Mediator

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to authorize Mayor Clawson to forward a letter of the Town of Boone’s position on the state-proposed changes to water withdrawal rules.

VOTE: Aye - All
 Nay - None

ADJOURNMENT

On a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to adjourn the meeting at 12:46 a.m.

VOTE: Aye - All
 Nay - None

Deputy Town Clerk

Mayor