

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
FEBRUARY 15, 2007**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, February 15, 2007 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, Bunk Spann and Dempsey Wilcox. Town Attorney Sam Furgiuele was also present. Staff present were Town Manager Greg Young; Town Clerk Freida Van Allen; Human Resources Director Peri Moretz; Finance Director Amy Davis; Development Services Director John Spear; Police Chief Bill Post; Public Services Director Blake Brown; Public Utilities Director Rick Miller and Fire Chief Reggie Hassler.

ANNOUNCEMENTS

Mayor Clawson invited everyone to attend a “Legends Celebration,” celebrating the success of the project and honoring African-American leaders and artists Feb. 22 at 7:00 p.m. in Plemmons Student Union’s Summit Trail Solarium.

Mayor Clawson accepted a certificate of appreciation for signing the US Mayors Climate Protection Agreement (Cool Cities) from Chris Turner of the Blue Ridge Sierra Club.

TENTATIVE AGENDA ADOPTION

Town Manager Greg Young presented two additions to closed session:

- Update on White Laurel Utility System.
- Owens Drive Water Issue.

On 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

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

Minutes: January 18, 2007 - Regular Meeting
Tax Releases: December, 2006

Taxpayer	Year	Amount	Description
PEPPER, JOHN WILLIAM	2006	\$43.07	INCORRECT FIRE DISTRICT
SHAW, LISA MARIE	2006	5.53	SOLD VEHICLE
COURTHOUSE KING LLC	2006	1373.81	PERCENTAGE COMPLETE
KING CONSTRUCTION	2006	75.85	INCORRECT DATA
HARDIN STREET PROPERTIES OF BOONE	2006	1379.36	PERCENTAGE COMPLETE
LIVINGSTON, JACKIE WAYNE LIVINGSTON, DOROTHY MAY	2006	7.96	DOUBLE BILLED
WHITTAKER, DAVID STANTO JR. WHITTAKER, KERRI BRUSH	2006	52.75	SOLD VEHICLE
MIKE AUSTIN ENTERPRISES	2006	750.00	TURN IN TAG
CAZIER, JOSEPH ABRAM	2006	9.25	ADJ DID NOT CARRY OVER
ROONEY, THOMAS MICHAEL	2006	10.62	INCORRECT

			VALUE
HAYES, LOIS HOUCK DEARMIN, BETTY HAYES	2006	5.28	TURN IN TAG
WEST JEFFERSON OFFICE EQUIPMENT	2006	42.33	INCORRECT FIRE DISTRICT
ROBERTS, AMY JACKSON	2006	13.32	TURN IN TAG
EXPERIENCES INTERNATIONAL INC.	2006	4.66	TURNED IN TAG SOLD VEHICLE
WORLEY, VINSTON GRANT	2006	29.86	LIVES IN ASHE COUNTY
BLAKE, DAVID ANDREW	2005	5.26	TURN IN TAG
GEARY, JOHN P AND JUDITH	2005	2.38	TURN IN TAG
PENDOLINO, ASHLEY MARIE	2005	3.98	SOLD VEHICLE
ALLEN, GWENDOLYN NICOLE	2005	7.00	INCORRECT BILL TEMP PLATE
TOTAL		\$3822.27	

**MSD TAX RELEASES
DECEMBER, 2006**

Taxpayer	Year	Amount	Description
COURTHOUSE KING LLC	2006	\$538.39	PERCENTAGE COMPLETE
		\$538.39	

Tax Refunds: December, 2006

Acceptance of Right-of-Way Dedication for the Howard Street Project: A general warranty deed from Ethel Simpson to the Town of Boone will be recorded permanently on file at Watauga County Register of Deeds.

Adoption of Resolution: NCDOT Maintenance of Old Highway 421.

**A RESOLUTION REQUESTING THAT NCDOT TAKE OVER THE
MAINTENANCE OF OLD US 421 FROM THE TOWN OF BOONE**

WHEREAS, the North Carolina Department of Transportation (NCDOT) has the necessary funding for the Watauga High School project, and

WHEREAS, the Town of Boone, North Carolina respectfully request that NCDOT take over the maintenance of Old US 421 from the Town of Boone in order to utilize these funds.

NOW, THEREFORE BE IT RESOLVED, that I, Loretta Clawson, Mayor and on behalf of the Boone Town Council, formally request that NCDOT take over the maintenance of Old US 421 and upon adoption of this resolution, NCDOT shall assume all maintenance responsibilities for this municipal street.

ADOPTED this the 15th day of February, 2007.

Loretta Clawson, Mayor

ATTEST:

Freida Van Allen, Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 15)

VOTE:Aye-All
Nay-None

WATERS ANNEXATION PUBLIC HEARING

Since there were no public comments, Mayor Clawson opened and closed the public hearing at 6:35 p.m.

ADOPTION OF ZONING AMENDMENTS

Case 20070023 Tree Pruning Text - The Town of Boone has initiated a zoning text amendment to incorporate ANSI 300 National Standards relating to correct tree pruning practices. Development Services Director John Spear said the Planning Commission recommended approval of the text amendment as presented. On a motion by Council member Mason, seconded by Council member Brantz, Council moved that the application is consistent with all objectives and policies for growth and development of the 2006 Boone Comprehensive Plan.

VOTE:Aye-All
Nay-None

On a motion by Council member Mason, seconded by Council member Pepin, Council moved that the Town Council finds that this application is both reasonable and in the public interest for the following reason: The text amendment addresses standards for pruning.

VOTE:Aye-All
Nay-None

On a motion by Council member Mason, seconded by Council member Pepin, Council moved that the following text amendment be approved:

TREE PRUNING

Section 132 [a][1]:

1] Schedule of Civil Penalties:

Civil penalties for a violation of this Ordinance, other than for repeat violators, shall be as follows

- 1. Illegal Signs - \$100 per sign per day.*
- 2. Violation of Occupancy rules - \$200.00 per violation per day.*
- 3. Grading in a designated floodway - \$500.00 per day.*
- 4. Improperly pruning, removing or killing a protected tree or shrub - \$100.00 per inch in diameter for each tree and \$50.00 for each shrub, plus \$100.00 per day for each day from the deadline for corrective action for replacement plantings (ordered pursuant to Section 370©(5)) until corrective action is taken.*
- 5. Removal of a required buffer - \$500.00, plus \$100.00 per day until corrected.*
- 6. Violation of Part II, Soil Erosion and Sediment Control of Article XVI Grading, Soil Erosion and Sediment Control - \$1,000.00, plus \$100 per day until corrected.*
- 7. Illegal subdivision - \$1,000.00, plus \$100.00 per day until corrected.*
- 8. All other violations - \$100.00 per day.*

Section 369. Compliance and Maintenance

[c] Compliance of Maintenance

The owners of the property and their agents, heirs, or assigns shall be responsible for the installation, preservation, and maintenance of all planting and physical features required under this article. The disturbance of any landscaped area or vegetation installed pursuant to the Article shall constitute a violation of the site plan or subdivision plan. Any vegetation that is dead, substandard, unhealthy, of poor structural quality, or missing, shall be removed and replaced in conformance with the standards of this ordinance and to the approved site plan or subdivision plan.

- [1] Should significant amounts of landscaping or physical elements used to meet Article XX requirements be lost due to an unusual weather occurrence or natural catastrophe, the owner of the property shall submit a plan detailing his/her intent in replacing lost material. Replacement planting may occur within a phased basis as approved by the Administrator. The owner shall have one year or one growing season, whichever is sooner, to replace or replant.*

[d] Prohibited Pruning

All plant materials required by Article XX shall be allowed to reach their mature size and shall be maintained at their mature size. Any trimming or pruning must be conducted in strict accordance with the current edition of “Tree, Shrub, and other Woody Plant Maintenance – Standard Practices” of the American National Standard for Tree Care Operations (ANSI 300). Required plantings shall not be cut or excessively pruned or otherwise damaged so that their natural form is impaired. Improper pruning includes the removal of the central leader, removal of more than twenty five (25) percent of the foliage within an annual growing season, removal of (twenty five) 25 percent of the foliage of a branch or limb when it is cut back to a lateral branch, and cutting a branch back to a lateral not large enough to assume apical dominance.

- [1] A violation of this subsection shall subject the violator to a civil penalty as set forth in Section 132 of any improperly pruned, damaged, or excessively trimmed tree. In addition to this civil penalty, if more than fifty (50) percent of the crown of a tree is removed within a continuous five-year period, the owner of the property, where a violation has occurred, shall replace each improperly pruned, damaged, or excessively trimmed tree with the appropriate replacement rate in accordance with Section 370 [b]. Any replacement tree shall be planted in a planting area of at least two hundred fifty (250) square feet of contiguous growing area for each and shall have a minimum dimension of seven (7) feet. If the property whereon the violation has occurred fails to contain sufficient land area to replant the required replacement trees and replacement trees cannot be planted on adjoining public street right-of-ways, then in lieu of such replacement trees, a fee equal to one hundred dollars (\$100) per caliper inch of 2 ½” replacement trees shall be paid to the Town. The Town’s Administrator may require crown restoration and/or crown reduction in accordance with the current edition of “Tree, Shrub, and other Woody Plant Maintenance – Standard Practices” of the American National Standard for Tree Care Operations (ANSI 300) for any improperly pruned, damaged, or excessively trimmed tree. All such corrective pruning shall be done under the supervision of a Certified Horticulturist, Arborist or Forester, Landscape Architect, North Carolina Landscape Contractor, or North Carolina Certified Plant Professional and approved by the Administrator.*

VOTE:Aye-All

Nay-None

Case 20070025 Sign Definition Text - The Town of Boone has initiated a zoning text amendment to clarify the current sign definition. Development Services Director John Spear said the Planning Commission recommended approval of the text amendment with two minor changes. Town Attorney Sam Furguele also suggested one minor change. On a motion by Council member Mason, seconded by Council member Spann, Council moved to amend the proposed text as recommended by the Planning Commission and Town Attorney.

VOTE:Aye-All

Nay-None

On a motion by Council member Mason, seconded by Council member Pepin, Council moved that the application is consistent with all objectives and policies for growth and development of the 2006 Boone Comprehensive Plan.

VOTE:Aye-All
Nay-None

On a motion by Council member Mason, seconded by Council member Pepin, Council moved that the Town Council finds that this application is both reasonable and in the public interest for the following reason: The text amendment is supported by the Comprehensive Plan Section 2.3.1(d).

VOTE:Aye-All
Nay-None

On a motion by Council member Mason, seconded by Council member Pepin, Council moved that the following text amendment be approved:

Signs

Section 322. Definitions

Sign: Any object, device, display, structure, or part thereof, situated outdoors, which is used solely to advertise, identify, display, direct, or visually attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including but not limited to words, letters, figures, designs, symbols, fixtures, streamers, balloons, pennants, air driven devices, colors, illuminated or projected images. Signs do not include the flag or emblem of any nation, organization of nations, state, city, or any fraternal, religious or civic organizations; works of art which in no way identify a product; or scoreboards located on athletic fields.

VOTE:Aye-All
Nay-None

Case 20070026 Libraries, Museums and Art Galleries - The Town of Boone has initiated text amendments designed to encourage libraries, museums, art galleries and similar historic and/or cultural land uses. Development Services Director John Spear said the Planning Commission recommended approval of the text amendment with one minor change. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to amend the proposed text amendment as recommended by the Planning Commission.

VOTE:Aye-All
Nay-None

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

VOTE:Aye-All
Nay-None

On a motion by Council member Mason, seconded by Council member Brantz, Council moved that the Town Council finds that this application is both reasonable and in the public interest for the following reason: The text amendment complies with Section 2.1.1 of the Comprehensive Plan.

VOTE:Aye-All
Nay-None

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

Uses Description	R - 1	R - 1 A	R R	R - 2	R - 3	R - 4	R - A	M H	O / I	B- 1	B- 2	B- 3	U - 1	M - 1
5.300 Libraries, museums, art galleries, cultural centers, and similar uses (including associated educational and instructional activities)	S	S		S	S	S	S		Z	Z	Z	Z	Z	

VOTE:Aye-All
Nay-None

Case 20070027 Bed and Breakfast Establishments - The Town of Boone has initiated text amendments designed to encourage bed and breakfast land uses to promote a balanced tourism trade. Development Services Director John Spear said the Planning Commission recommended approval of the text amendment with four minor changes. Council member Pepin suggested consistency in the language and suggested using the term “bed and breakfast” throughout the text amendment instead of “dwelling” or “establishment”. Town Attorney Sam Furgiuele suggested leaving the word “dwelling” in the text amendment and defining the hours of business and defining “full-time” at a later date. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to accept the text amendment as proposed by the Planning Commission.

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

VOTE:Aye-All
Nay-None

On a motion by Council member Mason, seconded by Council member Brantz, Council moved that the Town Council finds that this application is both reasonable and in the public interest for the following reason: The text amendment is supported by Section 2.1.1c) and 2.3.3.f) of the Comprehensive Plan.

VOTE:Aye-All
Nay-None

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

Bed and Breakfast: A private residence with one to three guest rooms (enclosed within one structure) where overnight accommodations and a morning meal are provided daily or weekly for compensation.

Section 165:

Uses Description	R- 1	R- 1A	R R	R - 2	R- 3	R- 4	R- A	M H	O / I	B- 1	B- 2	B- 3	U- 1	M - 1
1.550 Bed and Breakfast Establishments	S	S		Z	Z	Z	Z							

Section 196. Bed and Breakfast Establishments

[a] *The following regulations are for Land Use 1.550 Bed and Breakfast Establishments.*

[1] *A maximum of fifty percent (50%) of the gross floor area of the dwelling unit may be used for the Bed and Breakfast establishment. Only the floor areas of the bedroom and bathroom areas used by the Bed and Breakfast guests shall be considered in floor area calculations.*

[2] *The residence used for Bed and Breakfast establishments shall be occupied by the owner or managing agent during the time the Bed and Breakfast is open for business.*

[3] *No display of goods, products, services, or other advertising shall be visible from outside the building.*

[4] *Signage shall be limited to a single on premise sign, not to exceed four square feet.*

[5] *No activities other than lodging, a morning meal, and an afternoon and/or evening refreshment shall be provided.*

[6] *Activities shall be provided for overnight guests only.*

[7] *A maximum of one non-resident of the dwelling may be employed on a full-time basis.*

[8] *Exterior lighting shall be residential in nature and shall not be directed towards adjacent properties.*

[9] *Parking*

[a] *Off street parking shall be provided at one space per guest room in addition to the parking requirements as set forth in Section 346 [e] for use 1.110.*

[b] *Parking shall be on the same lot on which the Bed and Breakfast establishment is located.*

[10] *The length of stay of guests shall not exceed 14 days.*

[11] *Bed and Breakfast establishments shall comply with N.C. Building Code requirements.*

VOTE: Aye-All

Nay-None

Case 20070033 Special-Use Permits - The Town of Boone has initiated text amendments to the “Table of Permitted Uses” to ensure that special use permits are required only where project approval needs special care in the control of location, design and methods of operation in order to ensure the protection of public health, safety and welfare. Development Services Director John Spear said the Planning Commission recommended approval of the text amendment with two minor changes. Council member Mason requested that use 5.130 (“colleges and universities”) designation be removed in the B-1 and B-2 districts as discussed earlier at the Planning Retreat. Ms. Mason said the university always retains the option to apply for project approvals through the Conditional zoning process. Town Attorney Sam Furguele said removing the designation is a permissible modification to the text amendment. Council member Wilcox questioned why Appalachian State University should “jump through more hoops” than any other development. Council member Mason also felt that the special-use designation should remain in the R-1 and R-1A districts with use 6.220 (“publicly owned outdoor recreational facilities”) in order to allow neighborhoods a public comment opportunity. Council member Wilcox said he did not want decisions about town-owned parks to be made by the Board of Adjustment. Council member Wilcox then commented that there are many implications of the use changes that are proposed within the text amendment. Council member Wilcox felt that, even though staff met the UDO requirements regarding public notice, the public was not fully aware of the changes being proposed by this text amendment. After a lengthy discussion, on a motion by Council member Pepin, seconded by Council member Spann, Council moved to accept the text amendment as proposed by the Planning Commission.

VOTE: Aye-All
Nay-None

On a motion by Council member Mason, seconded by Council member Pepin, Council moved to amend the text amendment to retain the special-use designation in the R-1, R-1A, R-R, R-2, R-3, R-4 and R-A districts for use number 6.220 (“publicly owned outdoor recreational facilities”).

VOTE:Aye-4 (Brantz, Mason, Pepin, Spann)
Nay-1 (Wilcox)

On a motion by Council member Mason, seconded by Council member Spann, Council moved that the application is consistent with all objectives and policies for growth and development of the 2006 Boone Comprehensive Plan.

VOTE:Aye-All
Nay-none

On a motion by Council member Mason, seconded by Council member Pepin, Council moved that the Town Council finds that this application is both reasonable and in the public interest for the following reason: The text amendment is supported by Section 2.11(e) of the Comprehensive Plan.

VOTE: Aye-All
Nay-None

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

Section 165. Table of Permissible Uses

[illegible]

2.220 Storage or display of goods outside fully enclosed building allowed													ZS		Z
2.300 Convenience stores												S	Z		
2.400 Large Scale Retail													S		
2.0 SALES AND RENTAL OF GOODS, MERCHANDISE AND EQUIPMENT															
2.100 Commercial Retail															

Uses Description	R-1	R-1A	R R	R-2	R-3	R-4	R-A	MH	O / I	B-1	B-2	B-3	U-1	M-1
3.0 OFFICE, CLERICAL, RESEARCH AND SERVICES NOT PRIMARILY RELATED TO GOODS OR MERCHANDISE														
3.100 All operations conducted entirely within fully enclosed building														
3.110 Operations designed to attract and serve customers and clients on the premises, such as the offices of attorneys, physicians, other professions, insurance and stock brokers, travel agents, government office buildings, etc.					ZS				Z	Z	Z	Z	Z	Z
3.120 Operations designed to attract little or no customer or client traffic other than employees of the entity operating the principal use					Z				Z	Z	Z	Z	Z	Z
3.130 Office or clinics of physicians or dentists with not more than 10,000 square feet of gross floor area					Z				Z	Z	Z	Z	Z	
3.200 Operations conducted within or outside fully enclosed building														
3.210 Operations designed to attract and serve customers or clients on the premises									ZS	ZS	ZS	ZS		
3.220 Operations designed to attract little or no customer or client traffic other than the employees of the entity operating the principal use									ZS	ZS	ZS	ZS	Z	Z S
3.230 Banks with drive-in windows									Z	Z	Z	Z		

5.310	Located within a building designed and previously occupied as a residence or within a building having a gross floor area not exceeding 3,500 square feet	S	S	S	S	S	S	S			S	S	S		
5.320	Located within any permissible structure	S	S	S	S	S	S	S		S	Z	Z	Z	Z	Z
5.400	Social, fraternal clubs and lodges, union halls, and similar uses					ZS		ZS			ZS	ZS	ZS	Z	
6.0	RECREATION, AMUSEMENT, ENTERTAINMENT														
6.100	Activity conducted entirely within building or substantial structure														
6.110	Bowling alleys, skating rinks, indoor tennis and squash courts, billiard and pool halls, indoor athletic and exercise facilities and similar uses										Z	ZS	Z	Z	
6.120	Movie theaters										Z	S	Z	Z	
6.130	Coliseums, stadiums, and all other facilities listed in the 6.100 classification designed to seat or accommodate simultaneously more than 1,000 people									S	S	S	S	Z	
6.140	Indoor shooting range												S		S
6.200	Activity conducted primarily outside enclosed buildings or structures														
6.210	Privately owned outdoor recreational facilities such as golf and country clubs, swimming or tennis clubs, etc., not constructed pursuant to a permit authorizing the construction of some residential development	S	S	S	S	S	S	Z	S	S	S	S	S	Z	S

[illegible]

10.210 All storage within completely enclosed structures													Z		Z
10.220 Storage inside or outside completely enclosed structures													S		Z
10.300 Parking of vehicles or storage of equipment outside enclosed structures where vehicles or equipment are owned and used by the person making use of the lot															
10.310 Parking or storage is more than a minor and incidental part of the overall use			S		S	S				S	S	S	Z	Z	Z
10.320 Parking or storage is a minor and incidental part of the overall use	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
10.400 Parking of vehicles or storage of equipment outside enclosed structures where: (i) vehicles or equipment are owned and used by the person making use of lot, and (ii) parking or storage is more than a minor and incidental part of the overall use made of the lot										S	S	S	Z	Z	Z
11.0 SCRAP MATERIALS SALVAGE YARDS, JUNKYARDS, AUTOMOBILE GRAVEYARDS															S
Uses Description	R-1	R-1A	R R	R-2	R-3	R-4	R-A	M H	O / I	B-1	B-2	B-3	U-1	M-1	
12.0 SERVICES AND ENTERPRISES RELATED TO ANIMALS															
12.100 Veterinarian							S		Z			Z	Z		
12.200 Kennel							S					S		Z	
13.0 EMERGENCY SERVICE OPERATIONS	S	S	S	S	S	S	S	S	Z	Z	Z	Z	Z	Z	
14.0 AGRICULTURAL, SILVICULTURAL, MINING, QUARRYING OPERATIONS															
14.100 Agricultural operations, farming															
14.110 Excluding livestock	Z	Z	Z	Z			Z					S		Z	
14.120 Including livestock							Z								
14.200 Mining or quarrying operations, including on-site sales of products							S							S	

Development Services Director John Spear said this annexation ordinance is for the Waters property located off George Wilson Road. The 1.315-acre tract is already zoned B-3 and will be annexed effective June 30, 2007. On a motion by Council member Brantz, seconded by Council member Spann, Council moved to adopt the following annexation ordinance:

Ordinance #07-02

**AN ORDINANCE TO EXTEND THE CORPORATE LIMITS
OF THE TOWN OF BOONE, NORTH CAROLINA**

WHEREAS, the Town Council has been petitioned under G.S. 160A-58.1 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. on February 15, 2007 after due notice by Watauga Democrat on February 2, 2007; and

WHEREAS, the Town Council finds that the area described therein meets the standards of G.S. 160A-58.1(b), to wit:

- a. The nearest point on the proposed satellite corporate limits is not more than three (3) miles from the corporate limits of the Town;
- b. No point on the proposed satellite corporate limits is closer to another municipality than to the Town;
- c. The area described is so situated that the Town will be able to provide the same services within the proposed satellite corporate limits that it provide within the primary corporate limits;
- d. No subdivision, as defined in G.S. 160A-376, will be fragmented by this proposed annexation;
- e. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, does not exceed ten percent (10%) of the area within the primary corporate limits of the Town, and

WHEREAS, the Town Council further finds that the petition has been signed by all owners of real property in the area who are required by law to sign; and

WHEREAS, the Town Council further finds that the petition is otherwise valid, and that the public health, safety and welfare of the Town and of the area proposed for annexation will be best served by annexing the area described;

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

Section 1. By virtue of the authority granted by G.S. 160A-58.2, the following described non-contiguous territory is hereby annexed and made part of the Town of Boone, as of June 30, 2006.

A 1.315 acre parcel lying and being in the Brushy Fork Township of the east side of the George Wilson Road; bounded by Perry Greene, Sr. on the north, Albert and Clifford Waters on the north, east and south, the George Wilson Road on the west; being all the lands as described in Book of Records 019 at Page 361; north being relative to Grid per Plat Book 17 at Page 307 and more fully described as follows:

Beginning on a 2" pipe found on the east side of the George Wilson Road, this pipe located N17-49-47W 2429.93' from NCG Monument "Lyons", thence from

the BEGINNING and with the Waters line S89-30-22W 29.89' to a point in the center of the George Wilson Road, thence up and with the center of same N04-44-56E 148.9' to a point, thence leaving said road and with the Greene line N89-19-55E passing a 5/8" rebar found at 209.82', this rebar located N66-10-14E 2.88' from a ½" iron pipe found, then 145.13' for a total of 385.10' to a ½" rebar placed, thence S04-55-13W 150.14' to a 2" iron pipe found, thence S89-30-22W 354.65' to the point and place of beginning.....containing 1.315 acres by coordinate geometry as surveyed and shown on plat no. 06022-2 dated May 26, 2006 by Hencle J. Matheson PLS L-2561.

Section 2. Upon and after June 30, 2007, the above described territory and its citizen 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 the 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 herein in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the County Board of Elections as required by G.S. 163-288.1.

ATTEST: Mayor

Town Clerk
(ORDINANCE TO BE TYPED IN BOOK 3, PAGES 317-318)

VOTE: Aye-All
Nay-None

BOARD OF ADJUSTMENT NOMINATIONS

Nominations were not received at this time. Mayor Clawson asked that this item be placed on the March agenda.

ADOPTION OF RESOLUTION DECLARING THE INTENT TO CLOSE A 60' ABANDONED RIGHT-OF-WAY

Public Services Director Blake Brown explained this is the first step in the street closing process. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to adopt the following resolution:

RESOLUTION OF INTENT

A Resolution Declaring the Intention of the Town Council to Consider the Closing of an abandoned 60' Right-of-Way off Hunting Lane

Whereas, G.S. 160A-299 authorizes the Town Council to close public streets and alleys; and

Whereas, the Town Council considers it advisable to conduct a public hearing for the purpose of giving consideration to the closing of an abandoned 60' Right-of-Way off Hunting Lane;

Now, Therefore, Be It Resolved by the Town Council that:

1. A meeting will be held at 6:30 p.m. on the 15th day of March, 2007 in the Council Chambers to consider a resolution closing an abandoned 60' Right-of-Way off Hunting Hills Lane.

- 2. The Town Clerk is hereby directed to publish this Resolution of Intent once a week for four successive weeks in the Watauga Democrat, or other newspaper of general circulation in the area.
- 3. The Town Clerk is further directed to transmit by registered or certified mail each owner of property abutting upon that portion of said street a copy of this Resolution of Intent.
- 4. The Town Clerk is further directed to cause adequate notices of this Resolution of Intent and the scheduled public hearing to be posted as required by G.S. 160A-299.

Upon a motion duly made by Council member Mason, and duly seconded by Council member Brantz, the above resolution was duly adopted by the Town Council at the meeting held on February 15, 2007, in the Town Council Chambers.

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 16)

VOTE: Aye-All
Nay-None

MONTHLY WATER USE REPORT

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

			Approved Water Connections			
			2007			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						25000
			Watauga County	Nov-06	4800	20200
			2006 Balance Carry Over	Jan-07	6788	26988
Park Street Subdivision	Jan-07	850				26138
Steven Airey	Jan-07	195				25943
Boone Mall	Jan-07	439				25504
			Approved Water Connections			
			2008			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						25000
			Watauga County	Nov-06	4800	20200

APPROVAL OF BUDGET AMENDMENTS

Finance Director Amy Davis presented the following budget amendments:

DESCRIPTION ACCOUNT # TO: FROM:

Lease Payment-Parking (Brown Building)	010-408-000-531101	\$10,000.	
Appropriated Fund Balance	010-000-000-499900		\$10,000.
Office Supplies - Jones House	010-409-000-516100	500.	
Office Equipment - Jones House	010-409-000-516200	800.	
Contracted Services/Cleaning-Jones House	010-409-000-577004	600.	
Appropriated Fund Balance	010-000-000-499900		1,900.
Boone Housing Authority	010-411-000-549101	4,814.	
FEMA Reimbursement	010-000-000-448030		4,814.
Howard Street Project	010-411-000-549124	19,975.	
Appropriated Fund Balance	010-000-000-499900		19,975.
Crime Prevention-Police Department	010-500-300-513103	100.	
Contributions & Donations	010-000-000-482200		100.

On a motion by Council member Brantz, seconded by Council member Mason, Council moved to adopt the budget amendments.

VOTE:Aye-All
Nay-None

Mayor Clawson declared a break at 7:55 p.m. Council reconvened at 8:06 p.m.

REQUESTED APPEARANCE - SHARON BLAIR TOLBERT

Ms. Sharon Blair Tolbert appeared before Council to request a waiver of availability fees. Ms. Tolbert reminded Council that she is restoring the old Blair farm house off Deerfield Road and at the present time she is not sure how many bedrooms will be in the newly remodeled home. Availability fees are based upon the number of bedrooms. Public Utilities Director Rick Miller explained that the Water and Sewer Code does not allow him to grant waivers of availability fees unless it is a hardship case. Mr. Miller also explained that the Blair farm house had a previous water tap but it was disconnected in the early 1980's. Since availability fees were not implemented until 1987, the Blair farm house has never paid any availability fees. Ms. Tolbert reiterated that she could not predict at this time how many bedrooms would be in the house, but that she needed an outdoor faucet for construction purposes only. Public Utilities Director Miller said since Ms. Tolbert is requesting a construction tap, no further action is needed at this time.

REQUESTED APPEARANCE - ROCKY NELSON

Watauga County Manager Rocky Nelson gave an update on the progress of the new Watauga High School and indicated that he hopes students will occupy the building by August, 2010. Mr. Nelson appeared before Council to request the Town consider waiving all fees associated with the new high school project. Those fees include, but are not limited to, building permits, zoning permits, map amendment, availability and annexation fees. Mr. Nelson offered that the building and property will serve a variety of public purposes and that the County is planning a connector to the Town's Greenway Trail. Council member Brantz asked for an estimate of the fees. Public Utilities Director Rick Miller estimated availability fees over \$76,000. Development Services Director John Spear estimated his fees will be over \$50,000. Town Attorney Sam Furguele cited a NC Court of Appeals Case, Watauga County Board of Education vs. Town of Boone which prohibits the Town from funding schools, since funding is a County function. Also, Town Attorney Furguele said there are no provisions in any of our ordinances that allow Council to waive fees, with the exception of a hardship case. Town Attorney Furguele said Council could

always contribute funds toward expansion of the greenway. No further action was taken on this matter.

REQUESTED APPEARANCE - PETER VANDENBERG

Mr. Peter Vandenberg appeared before Council to request approval of a special events permit for the 1st annual ASU Alumni 5K run. Mr. Vandenberg said the run will be held on Saturday, April 21, 2007 at 8:30 a.m. and is expected to last no more than an hour. Mr. Vandenberg said the race will start and finish at Raley Hall and will travel through the ASU campus. Mr. Vandenberg requested a waiver of the \$250 application fee since ASU police will handle traffic control for the most part. Council member Pepin questioned what resources would be needed from the Town. Police Chief Bill Post agreed that ASU police would handle most of the traffic control. On a motion by Council member Mason, seconded by Council member Spann, Council moved to grant approval of the special events permit and to waive the \$250 application fee.

VOTE:Aye-All

Nay-None

REQUESTED APPEARANCE - LAUREL RIDGE HOUSING LLC

Town Attorney Sam Furguele opened a public hearing at 8:39 p.m. to hear sworn testimony from Tom Honeycutt, Roger Wright and Public Utilities Director Rick Miller concerning a request for water and sewer service to property located at the northwest corner of Poplar Grove Road and Highway 105. Town Attorney Furguele reminded Council this matter was tabled at the last meeting. Council member Mason questioned the number of buildings proposed. Mr. Honeycutt said he plans to construct six buildings with a total of 84 apartment units. Council member Brantz asked what other amenities are being planned. Mr. Honeycutt said a walking trail, playground and community building will be included on the property. Council member Mason questioned how many levels are planned for the buildings. Mr. Honeycutt said it would be a 2-3 split with some building having 12 apartments and some buildings having 16 units. Mr. Honeycutt then showed a conceptual drawing of the project. Council member Wilcox asked if the units could be seen from Highway 105. Mr. Honeycutt said the entire property is located within the viewshed. Council member Mason asked if the property is served by water and sewer. Public Utilities Director Rick Miller said yes, the lower portion of the property adjacent to Highway 105. Council member Mason then asked if the lower portion of the property is served by a primary or secondary pressure zone. Mr. Miller said the lower portion of the property is in the primary pressure zone, but the remaining portion is served by the secondary pressure zone. Council member Mason felt the Town should look at consolidation of the secondary pressure zones town-wide and asked Mr. Miller if he agreed. Public Utilities Director Miller agreed with that statement. Mr. Roger Wright testified that the apartments being planned are considered affordable, half-price housing and that he is the largest provider of Section 8 housing in northwest North Carolina. Council member Mason asked what the rent would be. Mr. Honeycutt said rent would be \$450 for a 1-bedroom apartment and \$600 for a 3-bedroom apartment. Council member Mason asked how tenants would be qualified for a lease. Mr. Honeycutt said 50% of the units will be rented at 50% of the medium family income for Watauga County and the remaining units will be rented at 60% of the medium family income. There being no further testimony the public hearing closed at 9:08 p.m. Council member Spann said since the majority of this project is located within the secondary pressure zone, Ordinance #05-01 prohibits the Town from allowing connections; however, he felt the town should explore an alternative to move forward with this project. Council member Mason agreed that she would like to see this type of project built within the Town, but stated that unfortunately the property is very steep and is located in the secondary pressure zone. Council member Pepin agreed. After a lengthy discussion, Council member Wilcox suggested having another Water Committee meeting to finally address the secondary pressure zone consolidation issue. Council agreed. On a motion by Council member Wilcox, seconded by Council member Pepin, Council moved to table this matter.

VOTE:Aye-All

Nay-None

Council then scheduled a Water Committee meeting for Thursday, March 8, 2007 at 5:00 p.m. in the Council Chambers.

REQUESTED APPEARANCE - JAMUS FLP NO.3

Town Attorney Sam Furguele opened a public hearing at 9:20 p.m. to hear sworn testimony from Ashok Patel and Public Utilities Director Rick Miller concerning a request for water and sewer service to property located off Highway 105, adjacent to Peabody's Wine and Beer. Mr. Ashok Patel said he plans to construct a 101-unit hotel on the property adjacent to Peabody's. Mr. Patel said he hopes to franchise either a Courtyard by Marriott or a new prototype Holiday Inn with a completion date of fall, 2010. Mr. Patel said the building will be a full-service hotel with a restaurant and pool. Mr. Patel presented occupancy tax rate charts and conceptual drawings of both hotels (**report permanently on file w/February Council packet**). Mr. Patel said the first step is to secure the water allocation, the second step is to request conditional use B-3 zoning, and the final step is to secure a franchise. Council member Mason asked Mr. Patel if he has discussed this proposal with the residents of Wintergreen Drive. Mr. Patel said there are five residences on Wintergreen Drive and that he owns two of them. Mr. Patel said the remaining residents' are concerned about the impact on Wintergreen Drive and about the visibility of the hotel from their homes. Mr. Patel said he will work to satisfy the neighborhood concerns. Council member Pepin questioned the time limit on the water rights. Public Utilities Director Rick Miller said the water rights are for one year and must be extended unless a development permit is secured. There being no further testimony, the public hearing closed at 9:44 p.m. Council member Spann felt that Mr. Patel is willing to work with the neighborhood to make this project feasible. On a motion by Council member Brantz, seconded by Council member Spann, Council moved to grant 4,209 gallons from the 2007 water allocation and 4,209 gallons from the 2008 water allocation.

VOTE: Aye-All

Nay-None

REQUESTED APPEARANCE - FLOYD GARRISON

Town Attorney Sam Furguele opened a public hearing at 9:47 p.m. to hear sworn testimony from Floyd Garrison, Development Services Director John Spear and Public Utilities Director Rick Miller concerning a request for water and sewer service to the Elk Motel, located off Highway 321. Mr. Garrison said the Elk Motel is basically apartments that are rented for \$350 a month to people that cannot afford a higher rent. Mr. Garrison said he does not need water service, but that his septic system is failing. Mr. Garrison presented a letter from the Appalachian Regional Health Department (**permanently on file w/February Council packet**) presenting three options for the failing system. Those options are:

1. Reduce the number of apartments rented until the failure stops.
2. Connect to the Town of Boone's system, or
3. Apply to the NC Division of Water Quality for a discharge permit into the Middle Fork of the New River.

Council member Mason asked Mr. Garrison if he was willing to pay all costs associated with installation of the sewer line. Mr. Garrison said there was no way he could pay for that cost. Council member Mason then asked the estimated cost of the project. Public Utilities Director Rick Miller said the pipe alone would cost more than \$120,000. Council member Mason then asked if the property is located in the ETJ and in what growth area. Development Services Director John Spear said the property is located in the ETJ in a rural-growth area. Council member Brantz asked if the Town has ever installed lines on a cost-share basis. Public Utilities Director Miller said yes, but only for properties located within the corporate limits. Council member Mason asked what the policy is for extending water and sewer lines outside of town. Public Utilities Director Miller read Section 6-6 of the Water and Sewer Code. It reads:

Section 6-6. Extensions Outside of Town.

- A. *The Town has no responsibility to provide water and sewer service to property located outside the corporate limits. However, upon request by a property owner, or municipal or county government, the Town may extend its water lines and/or sewer lines and/or water and/or sewer services beyond the Town limits. As described herein, the Town may impose such conditions as it may deem appropriate on any such extension(s). Nothing in*

this section, however, shall create any right to, or property interest in, water and/or sewer service, and absent express written authorization and formal action by the Town Council, the Town shall not bind itself to provide such service(s).

- B. Any owner of property outside the corporate limits who seeks an extension of the Town's water and/or sewer system, or seeks to connect water and/or sewer service lines to existing water and/or sewer lines, whether the existing lines are inside or outside the corporate limits, to serve property outside the corporate limits may make an application for such extension to the Town. The owner shall provide all information the Town deems necessary to determine whether the requested extension(s) is feasible and in the Town's best interest.*
- C. Absent express written authorization and formal action by the Town Council based upon a finding of exigent circumstances or for other reasons determined by the Town Council as in the best interest of the Town, the responsibility for and the entire cost of extending a water or sewer line from an existing line, shall be borne by the person or entity requesting the extension. In addition, the entire cost of extending lines to and within new subdivision or developments outside the Town shall be borne by the subdivider or developer, and shall be paid before the service will be initiated by the Town.*
- D. Without the action of the Town Council, the Town of Boone Public Utilities Department may, but is not required to, extend water and/or sewer services within the Town's Extra Territorial Jurisdiction (ETJ) when the following conditions are met:*
 - 1. The property for which service is applied, is adjacent to an existing easement for water and/or sewer lines, or such easement can be provided at no expense to the Town;*
 - 2. The property is adjacent to water and/or sewer lines, as relevant, existing on October 1, 1994.*
 - 1. A property owner wishing to connect to the Town's sewer system concurrently connects into the Town's water system if water service is available within two hundred feet of the nearest boundary of the property.*
 - 2. The property owner files a petition for voluntary annexation of the property into the Town.*
- E. Except for those applications authorized by subsection D, supra, no extension of Town water and/or sewer services outside the Town limits is authorized, absent express written authorization and formal action by the Town Council. Any conditions required by the Town shall be stated in the ordinance authorizing the extension of water and/or sewer services.*
 - 1. Extensions outside the Town limits, but within the Town's ETJ, in addition to those authorized in subsection D, supra, will be granted only if the property owner files a petition for voluntary annexation of the property into the Town and complies with such other conditions as the Town Council may impose, taking into consideration the best interests of the Town. However, the Town Council may waive the requirement of a petition for annexation if:*
 - a. The Town needs an easement from the property owner in order to extend its water and/or sewer lines, and the owner voluntarily provides the Town with the requested easement(s); or*
 - b. If the property owner is not required under North Carolina General Statutes to pay ad valorem taxes.*
 - c. The property owner is an owner of a portion, but not an entire subdivision, does not control the persons or entities which own the remainder of the subdivision, and does not have the authority, individually, to petition for annexation of the entire subdivision.*

2. *Extensions outside the Town limits and the Town's ETJ may be granted subject to such conditions as the Town Council may deem appropriate and in the best interests of the Town. An applicant for such service must provide such information to the Town Council as the Council may request or may require in order to make a determination as to what conditions may be appropriate with respect to the application, and the failure of the applicant to provide such information shall be deemed a withdrawal of the application. Conditions imposed by the Town Council may include, but are not limited to, one or more of the following:*
- a. Compliance by the applicant with all other relevant sections of the Town's Water and Sewer Use Ordinance;*
 - b. The conveyance of temporary construction and permanent maintenance easements by the applicant to the Town.*
 - c. The completed voluntary annexation and designation of zoning district for the property in question, for which the Town Council may authorize concurrent annexation and zoning designation procedures to be undertaken, prior to any commitment of Town water and/or sewer service.*
 - d. The connection of the property to both Town water and sewer services;*
 - e. Compliance by the property owner or his or her transferees, assignees, lessees, or other persons with interests in the property in question with the provisions of the Town's Unified Development Ordinance as to any new construction or construction undertaken within the previous year, consistent with the requirements of such zoning district as the Town Council may deem appropriate;*
 - f. The filing of a petition for annexation by the owner of the property.*

Council member Mason then asked Mr. Garrison if he would be willing to annex his property. Mr. Garrison said yes, that he would do anything to save those rooms. There being no further testimony, the public hearing closed at 10:14 p.m. After little discussion, on a motion by Council member Pepin, seconded by Council member Mason, Council moved to deny the water and sewer request at this time.

VOTE: Aye-4 (Brantz, Mason, Pepin, Wilcox)
Nay-1 (Spann)

REQUESTED APPEARANCE - CHERRY JOHNSON

Ms. Cherry Johnson, Jones House Director, appeared before Council to request permission to apply for a grant from the NC Arts Council for construction of permanent fencing around the two large maple trees in the front yard of the Jones House. Ms. Johnson said, if the grant is awarded, the Town would provide a 50% match of funds received and that those funds could be allocated in the 2007/08 budget. After some discussion, on a motion by Council member Wilcox, seconded by Council member Mason, Council moved to grant permission for the Jones House to apply for a grant, in the Town of Boone's name, to the NC Arts Council.

VOTE: Aye-4 (Brantz, Mason, Spann, Wilcox)
Nay-1 (Pepin)

REQUESTED APPEARANCE - TUESDAE RICE

Downtown Boone Development Association Director Tusedae Rice appeared before Council to update members on the acquisition of property for the DBDA's public art project. Ms. Rice said the DBDA is inquiring about leasing the property in front of the Appalachian Regional Health Department (King Street) as a gateway into town. Ms. Rice said the DBDA will be requesting

funding for greenspace in the future. Council member Pepin asked if the DBDA is wanting a cash match or in kind services with the art project. Ms. Rice said she will need both. No further action was taken on this request.

PUBLIC COMMENT

Mr. Roger Wright appeared, stating he hopes the Town will approve the Laurel Ridge Housing project. Mr. Wright also spoke about the booting and towing issue and the need for a LP gas tank for the new Thai restaurant located at Wilcox Emporium.

CLOSED SESSION

On a motion by Council member Wilcox, seconded by Council member Brantz, Council moved to enter Closed Session at 10:38 p.m., pursuant to NCGS 143-318.11a)3)5) in order to hear the legal options regarding new problems with booting and towing, the Andrew Shatley sign violations, status reports on White Laurel and Owens Drive, and property acquisitions for Howard Street and water intake.

VOTE:Aye-All
Nay-None

On a motion by Council member Spann, seconded by Council member Pepin, Council moved to exit Closed Session at 12:50 a.m.

VOTE:Aye-All
Nay-None

ACTION FOLLOWING CLOSED SESSION

On a motion by Council member Mason, seconded by Council member Wilcox, Council moved to accept the settlement offer of \$1,250. from Andrew Shatley dispersed over four payments.

VOTE:Aye-All
Nay-None

ADJOURNMENT

On a motion by Council member Spann, seconded by Council member Wilcox, Council moved to adjourn at 12:54 a.m.

VOTE:Aye-All
Nay-None

Town Clerk

Mayor