

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
FEBRUARY 21, 2012**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Tuesday, February 21, 2012, in the Council Chambers, 1500 Blowing Rock Road. Mayor Pro-Tem Jamie Leigh presided. Council members present were Lynne Mason, Alan Scherlen, Andy Ball, and Rennie Brantz. Town Attorney Sam Furguele was also present. Staff members present were Town Manager Greg Young, Town Clerk Kimberly Brown, Assistant to the Town Manager Jim Byrne, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, Human Resources Director Peri Moretz, Planning Director Bill Bailey, Urban Design Specialist Brian Johnson, Senior Building Inspector Todd Miller, and Downtown Development Coordinator Pilar Fotta.

ANNOUNCEMENTS

Mayor Pro-Tem Leigh 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.

TENTATIVE AGENDA ADOPTION

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

1. Move Item 6.A. Public Hearing on CDBG Application for OASIS, Inc. To Thursday, February 23rd meeting.
2. Addition of Item 7.N. - Schedule Special Meeting - Intergovernmental Retreat.
3. Addition of Item 7.O. - Issue Regarding New State Building Code and Interim Issuance of Building Permits.
4. Addition of Item 13.C. - Discussion of List Submitted by Jones House Advisory Board.

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to adopt the agenda as presented.

VOTE: Aye - All
 Nay - None

CONSENT AGENDA ADOPTION

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

Minutes: January 10, 2012 - Special Public Hearing.
 January 17/19, 2012 - Regular Meeting.
 January 31, 2012 - Special Meeting.

Adoption of Resolution - Service Appreciation for Freida Van Allen:

RESOLUTION

WHEREAS, Freida Van Allen began her career with the Town of Boone in August 1985 as an Administrative Assistant in the Planning & Inspections Department; and

WHEREAS, in May 1989 she became the Executive Assistant/Deputy Town Clerk in Administration at Town Hall and was promoted to the position of Town Clerk in July 1993; and

WHEREAS, she has been a member in good standing of the North Carolina Association of Municipal Clerks for 23 years, served two 2-year terms as the Region IV, District 10 Director, was the Chairperson of the Finance Committee and served on the Membership Committee, Program and Education Committee, and the Site Selection Committee; and

WHEREAS, she has also been a member in good standing of the International Institute of Municipal Clerks for 21 years and received her Certified Municipal Clerk designation in 1994. She was awarded the Master Municipal Clerk designation in 2007; and

WHEREAS, she has hosted tow Clerk’s Conferences in Boone in 1985 and 1995; and

WHEREAS, Freida Van Allen has served the citizens of Boone for 27 years in an exemplary manner, has maintained a high degree of professionalism and dedication throughout her career, and has earned the admiration and high regard of those with whom she has come into contact and the affection of her fellow public servants;

NOW, THEREFORE, BE IT RESOLVED that Mayor Loretta Clawson and the members of the Boone Town Council do hereby express their sincere appreciation, as well as that of our citizens to Freida Van Allen for her distinguished service to the community;

BE IT FURTHER RESOLVED that a copy of this resolution shall be forwarded to Freida Van Allen with sincere best wishes for her retirement and many happy years ahead.

ATTEST:

Loretta Clawson, Mayor

Kimberly S. Brown, Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 171)

Adoption of Resolution - Hazard Mitigation Plan:

**RESOLUTION OF ADOPTION
HAZARD MITIGATION PLAN**

WHEREAS, the citizens and property within the **Town of Boone** are subject to the effects of natural hazards that pose threats to lives and cause damage to property, and with the knowledge and experience that certain areas of the county are particularly vulnerable to **flooding, high winds, snow and ice storms**; and

WHEREAS, the County desires to seek ways to mitigate the impact of identified hazard risks; and

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

WHEREAS, the Legislature of the State of North Carolina has in Section 1 Part 166A of the North Carolina General Statutes (adopted in Session Law 2001-214 --- Senate Bill 300 effective July 1, 2001), states therein in Item (a) (2) “For a state of disaster proclaimed pursuant to G.S. 166A-6(a) after August 1, 2002, the eligible entity shall have a hazard mitigation plan approved pursuant to the Stafford Act”; and

WHEREAS, Section 322 of the Federal Disaster Mitigation Act of 2000 states that local governments must develop an All-Hazards Mitigation Plan in order to be eligible to receive future Hazard Mitigation Grant Program Funds and other disaster-related assistance funding and that said Plan must be updated and adopted within a five year cycle; and

WHEREAS, the **Town of Boone** has performed a comprehensive review and evaluation of each section of the previously approved Hazard Mitigation Plan and has updated the said plan as required under regulations at 44 CFR Part 201 and according to guidance issued by the Federal Emergency Management Agency and the North Carolina Division of Emergency Management; and

NOW, THEREFORE, IT IS AGREED that the party of the first part hereby grants to the party of the second part the right and privilege to make this encroachment upon the following conditions, to wit:

That the party of the second part complies with all pertinent provisions of the North Carolina State Building Code, the Town of Boone Unified Development Ordinance and Town of Boone Municipal Code, and such other laws, regulations and ordinances which might apply;

That the said party of the second part binds and obligates itself, its successors and assigns, to install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said public land, nor obstruct nor interfere with the proper maintenance thereof, to reimburse the party of the first part for the costs incurred for any repairs or maintenance to its roadways, sidewalks and other structures resulting from the installation and existence of the encroaching facility of the party of the second part, and if at any time the party of the first part shall require the removal of or changes in the location of the encroaching facility, that the said party of the second part binds itself, its successors and assigns, to promptly remove or alter the said encroaching facility in order to conform to the said requirements of the party of the first part, without any cost to the party of the first part.

That the party of the second part agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and/or other warning devices, as necessary or as requested by the party of the first party Director of Public Works or his designee, for the protection of the public and in the case of encroachment into a street right of way, in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and amendments or supplements thereto. Information as to the above rules and regulations may be obtained from the party of the first part.

That to the extent permitted by law, the party of the second party shall be responsible for all liability associated with the encroachment and encroaching facility. In furtherance of such responsibility, the party of the second part agrees to indemnify and hold harmless the party of the first part from and against any claim by any third party based upon any action or omission occurring during construction and maintenance of the encroaching facility, as well as from and against any and all claims, demands, suits, causes of action, or other assertion of responsibility, however denominated, for personal injury, damage to property, losses and expenses, including court costs and attorney's fees, arising out of or in any way related to the encroachment or encroaching facility;

That where pertinent and requested by the party of the first part, the party of the second part agrees to name the party of the first part as an additional insured on its and/or its contractor's general liability insurance policies applicable to the encroachment or encroaching facility.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such encroaching facility as the party of the first part carries out its construction and maintenance operations, and the party of the second party expressly waives all claims of liability or responsibility against the party of the first part for any damage that may be caused to the encroaching facility as the result of the Town carrying out any construction and maintenance operations. The party of the second part acknowledges that with regard to canopies, awnings, signs and similar encroachments, even where same fully comply with the Town of Boone Unified Development Ordinance, when placed less than ten feet above the surface of a public sidewalk, such obstructions are at great risk of damage by the equipment of the party of the first part during snow removal and general sidewalk construction and maintenance, and the party of the second part understands that by placing the encroaching facility less than ten feet above the surface of a public sidewalk, the party of the second part is knowingly and intentionally assuming that heightened risk of damage.

That the party of the second part agrees to be bound by such other and additional conditions as the Town Council may impose in connection with the encroaching facility.

The party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; silting or pollution to the rivers, streams, lakes, reservoirs, other water impoundments; ground surfaces or other property; or pollution of the air. The party of the second part shall comply with all applicable all rules and regulations of the North Carolina Sedimentation Control Commission, the Town of Boone Unified Development Ordinance and all other applicable laws and regulations relating to pollution prevention and control. When any installation or maintenance

operation disturbs the ground surface and the existing ground cover, the party of the second part agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the satisfaction of the party of the first part. The party of the second part shall comply with all pertinent ordinances, rule, regulations and laws, and failure to do so shall be a basis for revocation of this encroachment agreement by the party of the first part.

That the party of the second part agrees to assume the actual cost of any inspection of the work considered to be necessary by the party of the first part.

That the party of the second part agrees to have available at the encroaching site, at all times during construction, a copy of this agreement showing evidence of approval by the party of the first part. The party of the first part reserves the right to stop all work unless evidence of approval can be shown.

Provided the work referred to in this agreement is being performed on a completed public street open to traffic, the party of the second part agrees to give written notice of when work will begin to the party of the first part.

That in the case of noncompliance with the terms of this agreement by the party of the second part, the party of the first part reserves the right to stop all work until the encroaching facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

That it is agreed by both parties that this agreement shall become void if actual construction of the work contemplated herein is not begun and completed within one (1) year(s) from the date of this agreement unless written waiver is secured by the party of the second part from the party of the first part.

The party of the first part expressly reserves the unrestricted right to require the party of the second part to change the location of the encroaching facility described herein at no expense to the party of the first part.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed as of the day and year first above written.

Approval of Beckham Settlement.

Approval of Contract - Subsurface Investigation for Transmission Line Route along US Highway 421. **(Copy of Contract permanently on file in the February 2012 Town Council Packet.)**

VOTE: Aye - All
 Nay - None

PUBLIC COMMENT

Ellen Gwin spoke in favor of higher decibel levels for the proposed noise ordinance. She stated that the Council should be willing to compromise on the decibel levels.

Mike McKee presented a petition to the Council that contained over 1,100 signatures of persons who wish to see higher decibel levels in the proposed ordinance.

Skip Sinanian stated that lower decibel levels will result in bands playing and party noise in the residential neighborhoods. He suggested the noise ordinance be divided into sections for residential areas and business areas. Mr. Sinanian suggested possible opportunities for grants to help businesses install additional sound-proofing and insulation to mitigate noise.

Justin Davis, representing the Boone Independent Restaurant Association, stated that the changes to the decibel levels will prohibit restaurants from providing outdoor seating. He stated that he does not support changes to the noise ordinance.

PRESENTATION OF P&I MONTHLY REPORT AND ON-GOING DISCUSSION OF UDO TABLE OF PERMITTED USES

Planning Director Bill Bailey presented the P & I Monthly report (**permanently on file in the February 2012 Town Council Packet.**) He stated that the changes to the Table of Permitted Uses will be a topic of discussion at the Annual Planning Retreat. He asked that the Council schedule a special joint meeting with the Planning Commission to receive an update on the progress of the changes to the Permitted Use Table. Upon a motion by Council Member Ball, seconded by Council Member Brantz, Council moved to schedule a special meeting on Wednesday, March 14, 2012, at 6:00 p.m. in the Council Chambers with the Planning Commission to hear an update on the Table of Permitted Uses.

VOTE: Aye - All
 Nay - None

DISCUSSION OF PROPOSED NEW ROAD - NEW ROAD FROM BODENHEIMER DRIVE TO NC HIGHWAY 105

Brandon Greer, an official with the local NC Department of Transportation office, explained that this is a state-funded project for up to \$250,000 for the preliminary engineering design for an access road from the southside of ASU property from Bodenheimer Drive to NC Highway 105. Susan McCracken, Director of External Affairs and Community Relations at ASU, stated that the university feels the project is necessary due to an increase in the number of students on that side of the campus. She also indicated that the university anticipates the conversion of the old Broyhill Inn and Conference Center into student housing. She stated that after speaking with residents of the Homespun Hills neighborhood, the main concerns voiced about the proposed project were the increase in traffic and the speed limit for the road. Dr. McCracken also noted that residents would like to see a traffic light along Highway 105 in that area. Council Member Ball asked if a Traffic Impact Analysis has been performed in this area. Mr. Greer stated that there had not been an analysis for this area. Council Member Mason voiced her desire to see that all alternatives have been considered and studied. Town Manger Greg Young reminded Council that a resolution had been presented at the January meeting in regard to this matter. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to amend the agenda to consider this matter and the resolution at the Thursday, February 23rd meeting.

VOTE: Aye - All
 Nay - None

PRESENTATION OF DRAFT NOISE ORDINANCE

Town Attorney Sam Furguele presented the draft Noise Ordinance and explained that the portions of text in yellow are edits to the adopted ordinance which were previously suggested but not adopted by Council. He noted that the portions of text highlighted in green are new edits as directed by the Council. Brief discussion ensued about trying a newly adopted ordinance for a trial period of four months. During the time period, Council directed the Police Department to keep a record of the calls received in regard to complaints about noise. Council Member Scherlen stated that he supports decibel levels of 75 dB during weekdays and 85 dB on the weekends. He urged the Council to approve these levels in order to support the economy, culture, and safety of downtown, as well as for protection of the neighborhoods. Council Members Mason and Leigh both agreed that they could not support decibel levels that high. They agreed that the Council needs to consider appropriate levels which accommodate music and allow business to thrive but that will also protect residential neighborhoods. Council Member Ball stated that the decibel levels should work for both groups and that he will not support levels less than 70dB during week nights and less than 80dB on weekends. Council Member Brantz suggested a compromise of 60dB during the week and 70dB on the weekends. Furthermore, he suggested that fines not be imposed during the trial period. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve a change to Section 93.05(e) to be “complaint-driven.”

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved that the decibel level of 85dB for Friday and Saturday 10:00 a.m. to 10:00 p.m. be set for Sunday also from 10:00 a.m. until 8:00 p.m.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to adopt the following changes to the decibel levels in Tables 1 and 2:

TABLE 1
FROM 2:00 O’CLOCK A.M. SUNDAYS THROUGH 10:00 O’CLOCK A.M. FRIDAYS

DAY & TIME	DECIBEL LIMIT
SUNDAYS 2:00 A.M. -7:00 A.M.	60dB
SUNDAYS THROUGH THURSDAYS 7:00A.M.-11:00 P.M.	70dB
SUNDAYS THROUGH FRIDAY MORNINGS 11:00 P.M.-7:00 A.M.	60dB
FRIDAY MORNINGS 7:00 A.M.-10:00 P.M.	70dB

TABLE 2
FROM 10:00 O’CLOCK A.M. FRIDAYS THROUGH 2:00 O’CLOCK A.M. SUNDAYS

FRIDAYS AND SATURDAYS 10 A.M. - 10 P.M.	85dB
FRIDAYS AND SATURDAYS 10 P.M.- 12:00 A.M.	70dB
SATURDAYS AND SUNDAYS 12:00 A.M..-2:00 A.M.	70dB

VOTE: Aye - 3 (Leigh, Mason, Brantz)
 Nay - 2 (Scherlen, Ball)

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to adopt the following noise ordinance with the approved changes with an effective date of March 1, 2012 for a trial period ending June 30, 2012, with no fines imposed during the duration of this trial period in the business zoning districts, and to direct the Police Department to keep a record of all phone calls, warnings, and citations in regard to noise complaints to be distributed to the Council monthly via email:

CHAPTER 93: NOISE CONTROL

Section

- 93.01 Statement of policy; Interpretations.**
- 93.02 Types of Noises Prohibited and Types of Noises Not Prohibited, Enforcement, Penalties.**
- 93.03 Vicarious responsibility.**
- 93.04 Responsibility of all persons present.**

93.05 Limits on live, recorded or amplified music originating from commercial establishments and live music venues in the Town's B-1, B-2, B-3, and U-1 zoning districts.

§ 93.01 STATEMENT OF POLICY; INTERPRETATIONS.

(A) Statement of Policy:

It is the policy of the Town of Boone to maintain a peaceful community at all times, -while recognizing that certain noises are generated by the expected and acceptable economic and recreational activity of a vibrant community. The goal of the Town is to encourage such activity while ensuring that time periods during which many of the residents are customarily at rest or have an expectation of peaceful enjoyment of their residences are not disturbed by unacceptable levels of noise. It shall be unlawful for any person, firm, corporation or other entity to make, allow, or cause to be made any excessive, unreasonable or unusually loud noise, as described herein, or to cause any noise for the primary purpose of annoying or disturbing another person.

(B) Interpretations:

(1) When the word "reasonable" is used herein, it shall be evaluated with reference to the normal expectations for sound during normal waking hours versus the normal expectations for sound during normal sleeping hours, with a higher level of sound acceptable during the day and a lower level of sound acceptable during the night. It shall also be evaluated with reference to the location involved, with a higher level of noise expected and tolerated if generated within a business or university district within the Town and a lower level of noise expected and tolerated if generated within a residential district within the Town.

(2) For purposes of this chapter, a "reasonable person" is one who is moderate, fair and sensible. Although enforcement of this chapter shall often be the result of a complaint received by the Town, in each instance where a complaint is received and the standard of "reasonableness" invoked, a Boone police officer answering the complaint shall separately determine, based upon his or her investigation and in light of the circumstances of the situation, whether the noise in question is at an "unreasonable" level.

(3) For purposes of this chapter, "a person's temporary or usual place of abode or place of employment" shall not include locations on the campus of Appalachian State University and located in the U-1 zoning district, as they relate to noises which originate from areas on campus located in the U-1 zoning district.

(4) For purposes of this chapter, whether a sound is "audible within a person's temporary or usual place of abode" shall be determined with one or more windows of the complaining party open, assuming weather conditions during which it is reasonable and customary for one or more windows to be open.

§ 93.02 TYPES OF NOISES PROHIBITED AND TYPES OF NOISES NOT PROHIBITED, ENFORCEMENT, PENALTIES.

The following acts and noises are the types of loud and disturbing acts and noises which are prohibited and the types of loud and disturbing acts and noises which generally do not violate the prohibitions of this chapter. The enumerations of subsections (B) and (C) shall not be deemed to be exclusive, but are listed as examples of the types of noises prohibited, by category.

(A) Noises Intended to Disturb Prohibited. The creation of noise for the primary purpose of disturbing another person, such purpose gleaned from the circumstances surrounding the generation of the noise, is prohibited;

(1) **Enforcement.** This subsection shall be enforced only following the receipt of a complaint, which may be oral or written.

(2) **Penalties.** Violation of this subsection shall subject the offender to a civil penalty in the amount of \$100.00 for the first offense; no prior warning is required. A second violation of any provision of this chapter in any rolling twelve month period shall subject the offender to a civil penalty in the amount of \$200.00, and each subsequent violation in any rolling twelve

month period shall result in the assessment of a \$500.00 civil penalty. A person committing more than two violations of this section during any rolling twelve month period shall also be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, in accordance with N.C. Gen. Stat. § 14-4, in addition to the civil penalties imposed.

- (3) **Written Notice of Violation of this Section, Time for Payment, and Action by Town for Non-Payment.** A violator shall be issued a written notice of the violation stating the amount of the civil penalty. Any civil penalty must be paid within thirty days after the receipt of said notice. If the violator does not pay the penalty within thirty days, the Town may recover such penalty and all subsequently accruing penalties in a civil action. In the event that it is necessary for the Town to institute a civil action to collect one or more civil penalties, the violator shall be responsible for all costs, including attorney's fees, incurred by the Town.

(B) Noises Prohibited at All Times.

- (1) The following noises and activities are prohibited at all times, except to the extent that such noises are authorized in the Town's B-1, B-2, B-3 and U-1 zoning districts pursuant to Section 93.05, *infra*, or to the extent they are otherwise excepted from the scope of this chapter:

(a) **Horns, signaling devices, sirens, etc.** The sounding of any horn or signal device on any automobile, motorcycle, bus, or other vehicle, except as a danger signal, so as to create an unreasonably loud or harsh sound; or the sounding of such device repeatedly or for an unreasonable period of time; or the use of any siren upon any vehicle, other than a *bona fide* police, fire or other emergency vehicle or equipment.

(b) **Television Sets, Radios, musical instruments, or amplification and playing devices, etc.** The outdoor use, operation, or playing of any television set, radio, musical instrument or sound amplifying device, or other machine or device for the production or reproduction of sound, including but not limited to devices designed for playing music and other material from records, compact discs, MP3's and the like, in a manner or at a volume which would or does annoy or disturb a person of reasonable sensibilities within his or her temporary or usual place of abode or place of employment.

(c) **Yelling, shouting, etc.** The frequent, constant, or continual yelling or shouting, in a manner or at a volume which would or does annoy or disturb a person of reasonable sensibilities within his or her temporary or usual place of abode or place of employment.

(d) **Animals.** The frequent, constant, or continual noise from any animal, such as the continual; frequent, chronic and intermittent; or uncontrolled barking of a dog outside, at a volume level or for a period of time which would or does annoy or disturb a person of reasonable sensibilities within his or her temporary or usual place of abode or place of employment.

(e) **Vehicles.** The use of any motorized vehicle so out of repair, or so loaded, altered or operated as to create grating, grinding, rattling or other noise which would or does annoy or disturb a person of reasonable sensibilities within his or her temporary or usual place of abode or place of employment, or the operation of a motorized vehicle with a defective, altered, or missing muffler.

(f) **Loading, unloading, opening boxes.** The creation of an unusual and unreasonable level of noise in connection with loading or unloading any vehicle, the opening and destruction of boxes, bales, crates, and other containers, or the prolonged deposit of solid waste materials or recyclables into containers or receptacles, at a noise level which would or does annoy or disturb a person of reasonable sensibilities within his or her temporary or usual place of abode or place of employment.

(g) **Alarms.** Car, home and similar types of alarms which are activated and not discontinued promptly after the person in control of the alarm is advised or discovers that the alarm has been activated, unless the alarm is allowed to continue because said person believes that a crime is being committed.

(h) **Compression release engine brakes or air brakes (aka “Jake Brakes”).** The noise caused by the release or use of compression release engine brakes, sometimes referred to as air brakes or “Jake Brakes.”

(2) **Enforcement.** The provisions of this subsection may be enforced either as the result of the receipt of a complaint or as the result of the observations of any police officer.

(3) **Penalties for Violation of § 93.02(B), except 93.02(B)(7).** Violation of a provision of § 93.02(B), except 93.02(B)(7), shall subject the offender to a written warning, the issuance of which shall be recorded and maintained by the Boone Police Department. A second violation of any provision of this chapter in any rolling twelve month period shall subject the offender to a civil penalty in the amount of \$100.00, a third violation to a civil penalty in the amount of \$200.00, and each subsequent violation in any rolling twelve month period shall result in the assessment of a \$500.00 civil penalty. A person committing more than three violations of this section during any rolling twelve month period shall also be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, in accordance with N.C. Gen. Stat. § 14-4, in addition to the civil penalties imposed.

(4) **Penalties for Violation of § 93.02(B)(7).** Violation of § 93.02(B)(7) shall subject the offender to a civil penalty in the amount of \$100.00 for the first offense; no prior warning is required. A second violation in any rolling twelve month period shall subject the offender to a civil penalty in the amount of \$200.00, and each subsequent violation in any rolling twelve month period shall result in the assessment of a \$500.00 civil penalty. A person committing more than two violations of this section during any rolling twelve month period shall also be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, in accordance with N.C. Gen. Stat. § 14-4, in addition to the civil penalties imposed.

(5) **Written Notice of Warning or Violation, Time for Payment, and Action by Town for Non-Payment.** A violator shall be issued a written warning or notice of the violation stating the amount of the civil penalty. Any civil penalty must be paid within thirty days after the receipt of said notice. If the violator does not pay the penalty within thirty days, the Town may recover such penalty and all subsequently accruing penalties in a civil action. In the event that it is necessary for the Town to institute a civil action to collect one or more civil penalties, the violator shall be responsible for all costs, including attorney's fees, incurred by the Town.

(C) **Noises and Activities Prohibited Between 10:00 p.m. and 6:00 a.m.**

(1) In addition to the noises prohibited pursuant to § 93.02(A) and § 93.02(B), the following noises and activities are prohibited between 10:00 p.m. and 6:00 a.m., except to the extent that such noises are expressly permitted in

the Town's B-1, B-2, B-3, and U-1 zoning districts pursuant to Section 93.05, *infra*, or to the extent otherwise excepted from the scope of this chapter.

- (a) **Outdoor use of Television Sets, Radios, Music Amplification and Playing Devices, etc.** The outdoor use, operation, or playing of any television set, radio, musical instrument, phonograph, sound amplifying device or other machine or device for the production or reproduction of sound.
- (b) **Indoor Use of Musical Instruments, Sound Amplification, etc.** The indoor use, operation or playing of a musical instrument or sound amplifying device at such volume or in such manner as to be audible within another person's temporary or usual place of abode; provided, if the place of abode is within an apartment building or other multi-family housing structure, the sounds covered by this section originate within the same apartment building, and the owners and/or tenants of all apartments within the apartment building are members of a property owner's association, renter's association, or like organization, which has adopted rules governing noise within the apartment building, such rules will govern such sounds within the apartment building; provided further that such rules do not supersede or excuse any requirements of this chapter relative to noises originating from within the apartment building, but heard elsewhere. For this exemption to apply, said duly adopted rules must be on file with the Boone Police Department.
- (c) **Yelling, Shouting, etc.** Yelling, shouting, whistling, or singing outdoors at a volume which is audible within another person's temporary or usual place of abode.
- (d) **Parties.** Noise from parties or gatherings of people, including but not limited to the noise from many voices speaking at once, drunken conversation, yelling, shouting, singing, music, breaking glass, or fireworks, which is audible within another person's temporary or usual place of abode. For purposes of this paragraph, a "party" is considered any gathering of people, whether at a fixed location or otherwise, for social interaction.
- (e) **Fireworks.** The use of fireworks, except on the fourth of July, which produce sound audible within another person's temporary or usual place of abode.
- (f) **Vehicles.** The prolonged idling or running of a motor vehicle for a period of time exceeding what is reasonably needed to "warm" a vehicle's engine before use, which is audible within another person's temporary or usual place of abode.
- (g) **Loading or unloading commercial vehicles; the deposit or disturbance of solid waste materials and recyclables.** The noise in connection with loading or unloading of any commercial vehicle, the deposit of solid waste materials or recyclables into containers or receptacles, or the disturbance of solid waste materials or recyclables already in containers or receptacles, at a sound level audible within another person's temporary or usual place of abode.
- (h) **Construction activity.** Construction activity audible within another person's temporary or usual place of abode, unless conducted by a governmental entity or its contractor and specifically authorized by the Boone Town Council following general notice to the public and a public hearing. For purposes of the notice required by this section and all subsequent sections, it shall be sufficient that the specific topic of the public hearing is

included in the agenda of the meeting during which it is to take place and the agenda, with the item listed, is posted in advance of the meeting on the Town's official website.

- (2) **Enforcement.** The provisions of this subsection may be enforced as the result of the receipt of a complaint or as the result of the observations of any police officer.
 - (3) **Penalties for Violation of § 93.02(C).** Violation of § 93.02(C) shall subject the offender to a civil penalty in the amount of \$100.00 for the first offense; no prior warning is required. A second violation of any provision of this chapter in any rolling twelve month period shall subject the offender to a civil penalty in the amount of \$200.00, and each subsequent violation in any rolling twelve month period shall result in the assessment of a \$500.00 civil penalty. A person committing more than two violations of this section during any rolling twelve month period shall also be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, in accordance with N.C. Gen. Stat. § 14-4, in addition to the civil penalties imposed.
 - (4) **Written Notice of Warning or Violation, Time for Payment, and Action by Town for Non-Payment.** A violator shall be issued a written warning or notice of the violation stating the amount of the civil penalty. Any civil penalty must be paid within thirty days after the receipt of said notice. If the violator does not pay the penalty within thirty days, the Town may recover such penalty and all subsequently accruing penalties in a civil action. In the event that it is necessary for the Town to institute a civil action to collect one or more civil penalties, the violator shall be responsible for all costs, including attorney's fees, incurred by the Town.
- (D) **Noises and Activities which do not Generally Violate this Chapter.** The following noises and activities do not generally violate this chapter:
- (1) **Town and Town-Arranged Vehicles.** The normal and customary sounds from Town vehicles and vehicles arranged by the Town, engaged in activities related to the discharge of critical Town duties such as removing snow, repairing damaged water or sewer lines, responding to fires, responding to vehicle accidents, and the like, will not be considered noises or activities which violate this chapter, but picking up solid waste and recycling, construction and non-routine maintenance activities are exempt only if conducted between the hours of 6:00 a.m. and 10:00 p.m., unless explicitly authorized by the Town Council following general notice to the public and a public hearing.
 - (2) **Community Events.** The normal and customary sounds emanating from a non-recurring community event conducted by a governmental entity, school, church, or similar non-commercial entity will not be considered noises or activities which violate this chapter, so long as the event with which the noise is associated begins no earlier than 6:00 a.m. and ends no later than 10:00 p.m., or the event is specifically authorized in advance by the Boone Town Council, following general notice to the public and a public hearing, upon a finding that such event provides a benefit to the public which exceeds the potential detrimental effects of the noise it may generate. For purposes of this paragraph, "non-recurring" shall refer to an event which occurs no more than four times during any calendar year.
 - (3) **Sporting Events Associated with Watauga High School or Appalachian State University.** The normal and customary sounds emanating from a sporting event held on the campus and associated with Watauga High School or Appalachian State University will not be considered noises or activities which violate this chapter, so long as the event with which the noise is associated does not begin prior to 6:00 a.m. and has been scheduled

to end by 11:00 p.m., and any crowd associated with the event is expected to disperse by 11:30 p.m., even if due to unexpected delays, overtime periods and the like, the event extends past 11:00 p.m. and the crowd does not disperse until after 11:30 p.m. This exemption, however, does not relieve people leaving such an event from minimizing any loud talking, shouting, etc., which may be heard in places of abode in the vicinity of the event, and should any such person fail to heed a request by a Boone police officer to lower the volume of any noise which he or she may be causing, such person may be cited and fined pursuant to §§ 93.02(A), (B) or (C).

- (4) **Remote Vehicle Entry or Key.** The use of a remote vehicle entry or key causing an audible “beep” when used simply to lock or unlock a vehicle prior to or following the reasonable use of the vehicle shall not be considered an excessive, unreasonable or unusually loud noise.
- (5) **Ordinary Use of Power Tools.** The ordinary use of a noise-causing tool, such as a lawnmower, “weed eater,” circular saw, chain saw, and the like, if used between the hours of 8:00 a.m. and dusk, shall not be considered an excessive, unreasonable or unusually loud noise so long as the tool is being used for a legitimate maintenance or construction purpose associated with the property upon which it is utilized, and the person using such tool takes all practical steps to minimize its disturbing noise impacts on others.

§ 93.03 VICARIOUS RESPONSIBILITY.

- (A) **Responsibility of Person with Legal Right to Possession.** Except to the extent that such noises are authorized in the Town’s B-1, B-2, B-3 and U-1 zoning districts pursuant to Section 93.05, *infra*, the person with the legal right to possession of a premises shall be responsible and liable for the actions of his or her guests at the premises when such actions violate this chapter.
- (B) **Landlord’s Responsibility.** Unless the owner of the premises where an action in violation of this chapter occurs has provided in a lease that an offending tenant at such premises shall refrain from activities which violate this ordinance, the owner of the premises shall also be responsible and liable for the actions of his or her tenants and their guests at the premises when such actions violate this chapter. This section, however, shall in no way relieve an owner’s guests, a tenant, or a tenant’s guests from liability for any violation of this chapter.
- (C) **Enforcement Based Upon Vicarious Liability.** Vicarious liability is based upon the actions or omissions of a person or entity which has the legal right or actual ability to control or restrict a person violating this chapter. For purposes of the assertion of vicarious liability, it shall be immaterial whether the offending person has been cited as the result of a complaint or as the result of observations by a police officer.
- (D) **Penalties for Vicarious Liability Pursuant to §93.03(A) for Violation of §93.02(B).** Violation of § 93.02(B), except 93.02(B)(7), shall first subject any person with vicarious liability pursuant to § 93.03(A) to a written warning, the issuance of which shall be recorded and maintained by the Boone Police Department. A second violation in any rolling twelve month period shall subject any person with vicarious liability pursuant to § 93.03(A) to a civil penalty in the amount of \$100.00, a third violation to a civil penalty in the amount of \$200.00, and each subsequent violation in any rolling twelve month period shall result in the assessment of a \$500.00 civil penalty to any person with vicarious liability pursuant to § 93.03(A). A person vicariously liable for more than three violations of the section during any rolling twelve month period shall also be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, in accordance with N.C. Gen. Stat. § 14-4, in addition to the civil penalties imposed.
- (E) **Penalties for Vicarious Liability Pursuant to §93.03(A) for Violation of § 93.02(C).** Violation of § 93.02(C) shall subject any person with vicarious liability pursuant to § 93.03(A) to a civil penalty in the amount of \$100.00 for the first

offense; no prior warning is needed. A second violation in any rolling twelve month period shall subject any person with vicarious liability pursuant to § 93.03(A) to a civil penalty in the amount of \$200.00, and each subsequent violation in any rolling twelve month period shall result in the assessment of a \$500.00 civil penalty to the offender and any person with vicarious liability pursuant to § 93.03(A). A person vicariously liable for more than two violations of this section during any rolling twelve month period shall also be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, in accordance with N.C. Gen. Stat. § 14-4, in addition to the civil penalties imposed.

- (F) **Penalties for Vicarious Liability pursuant to § 93.03(B).** Any person with vicarious liability pursuant to § 93.03(B) shall first receive a written notice of the violation which has occurred on the property. Subsequent violations during any rolling twelve month period shall sequentially subject the owner of the premises to civil penalties equal to the civil penalties as for first, second and subsequent violations by a perpetrator of the type of violation in question.
- (G) **Written Notice of Warning or Violation, Time for Payment, and Action by Town for Non-Payment.** A person with vicarious liability for the acts of another pursuant to this section shall be issued a written warning or notice of the violation stating the amount of the civil penalty, as appropriate. Any civil penalty must be paid within thirty days after the receipt of said notice. If the violator does not pay the penalty within thirty days, the Town may recover such penalty and all subsequently accruing penalties in a civil action. In the event that it is necessary for the Town to institute a civil action to collect one or more civil penalties, the violator shall be responsible for all court costs and attorney's fees incurred by the Town.

§ 93.04 RESPONSIBILITY OF ALL PERSONS PRESENT.

- (A) **All Persons Present Responsible.** In those instances where the violating noise prohibited under § 93.02(B) or § 93.02(C) is the result of the actions of a group of persons, such as a late night party, all persons present shall be liable for the appropriate civil penalties, whether or not they individually created the offending noise.
- (B) **Responsibility for Violation of § 93.02(B).** Responsibility pursuant to this section for violation of § 93.02(B), except 93.02(B)(7), shall first subject each person responsible to a written warning, the issuance of which shall be recorded and maintained by the Boone Police Department. A second violation in any rolling twelve month period shall subject any person responsible pursuant to this section to a civil penalty in the amount of \$100.00, a third violation to a civil penalty in the amount of \$200.00, and each subsequent violation in any rolling twelve month period shall result in the assessment of a \$500.00 civil penalty to any person liable pursuant to this section. A person responsible for more than three violations pursuant to this section during any rolling twelve month period shall also be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, in accordance with N.C. Gen. Stat. § 14-4, in addition to the civil penalties imposed.
- (C) **Responsibility for Violation of § 93.02(C).** Responsibility pursuant to this section for violation of § 93.02(C) shall subject each person responsible to a civil penalty in the amount of \$100.00 for the first offense; no prior warning is required. A second violation in any rolling twelve month period shall subject any person responsible pursuant to this section to a civil penalty in the amount of \$200.00, and each subsequent violation in any rolling twelve month period shall result in the assessment of a \$500.00 civil penalty to any person responsible pursuant to this section. A person responsible for more than two violations of this section during any rolling twelve month period shall also be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, in accordance with N.C. Gen. Stat. § 14-4, in addition to the civil penalties imposed.
- (D) **Written Notice of Warning or Violation, Time for Payment, and Action by Town for Non-Payment.** A person held responsible for the acts of another

pursuant to this section shall be issued a written warning or notice of the violation stating the amount of the civil penalty, as appropriate. Any civil penalty must be paid within thirty days after the receipt of said notice. If the violator does not pay the penalty within thirty days, the Town may recover such penalty and all subsequently accruing penalties in a civil action. In the event that it is necessary for the Town to institute a civil action to collect one or more civil penalties, the violator shall be responsible for all costs, including attorney's fees, incurred by the Town.

§ 93.05 LIMITS ON LIVE, RECORDED OR AMPLIFIED MUSIC ORIGINATING FROM COMMERCIAL ESTABLISHMENTS AND LIVE MUSIC VENUES IN THE TOWN’S B-1, B-2, B-3, AND U-1 ZONING DISTRICTS.

- (A) During the days and times set out in Tables 1 and 2, a commercial establishment or live music venue located in the Town’s B-1, B-2, B-3 or U-1 zoning districts may emit live, recorded or amplified music not exceeding the stated decibel limits, subject to the rules for measurement provided. For purposes of this section, a “live music venue” is an establishment within a business district which has the legal right to present live performances of music or amplification of recorded music to members of the public, or an establishment located in the U-1 zoning district which has the permission of Appalachian State University to present live performances of music or amplification of recorded music.

TABLE 1
FROM 2:00 O’CLOCK A.M. SUNDAYS THROUGH 10:00 O’CLOCK A.M. FRIDAYS

DAY AND TIME	DECIBEL LIMIT
SUNDAYS, 2:00 A.M - 7:00 A.M.	60 dB
SUNDAYS THROUGH THURSDAYS, 7:00 A.M. - 11:00 P.M.	70 dB
SUNDAYS THROUGH FRIDAY MORNINGS, 11:00 P.M - 7:00 A.M.	60 dB
FRIDAY MORNINGS, 7:00 A.M. - 10 A.M.	70 dB

TABLE 2
FROM 10:00 O’CLOCK A.M. FRIDAYS THROUGH 2:00 O’CLOCK A.M. SUNDAYS

FRIDAYS AND SATURDAYS, 10 A.M. - 10 P.M.	85 dB
FRIDAYS AND SATURDAYS, 10 P.M. - 12:00 A.M.	70 dB
SATURDAYS AND SUNDAYS, 12:00 A.M. - 2:00 A.M.	70 dB

- (B) **Rules for Measurement.** For purposes of this section, sound shall be measured using the following rules:
- (1) **Devices used for Measurement.** Measurements of decibel levels shall be made with a sound level meter designated at least as “Type II” meeting ANSI S1.4-1971 requirements, (referring to “American National Standard Specification for Sound Level Meters, Acoustical Society of America, New York, NY.”) (hereinafter referred to as, “decibel meter.”)
- (2) **Settings of Decibel Meter when Sound Measured.** The sound measurement shall be made with the decibel meter using the A-weighted scale, set on "slow" response.

- (3) **Location of Measurement.** Measurements taken to determine compliance with this section shall be made at or within ten (10) feet outside any property line for the property upon which the measured activity is taking place.
- (4) **Duration of Measurement to Establish Violation.** In order to establish a violation of this section, the duration of measurement(s) which must be registered by the decibel meter must equal or exceed a level continuously exceeding the established limits for fifteen continuous seconds, or for two or more periods within a sixty-second period, each exceeding the established limits for five continuous seconds.
- (5) **Time of Measurement.** Except for sounds created or broadcast outside the commercial establishment or live music venue, and unless the door of a commercial establishment or live music venue is open for periods exceeding times needed for normal ingress and egress, such as when a door is propped open, measurements shall be taken with the door closed.
- (C) **Associated Sounds Authorized by this Section.** So long as the live, recorded or amplified music does not exceed the limits of this section for establishing a violation, associated sounds of a commercial establishment or live music venue, including amplified speech from performers and disc jockeys, and the customary and expected crowd noises related to a performance, such as applause, cheering for the performer, conversations among spectators, and similar sounds, shall not be a basis for finding a violation under this section.
- (D) **Sounds Not Authorized by this Section.** This section does not excuse people who have left the premises of a commercial establishment or live music venue, temporarily or otherwise, from compliance with this chapter. “Premises,” for purposes of this subsection refers, when such activities are conducted indoors, to the indoor area of a commercial establishment or live music venue in which the live, recorded or amplified music is created or broadcast. Premises,” for purposes of this subsection refers, when such activities are conducted outdoors, to the borders of the property upon which the live, recorded or amplified music is created or broadcast. A person, for example, who has left an indoor music venue to smoke a cigarette on the public sidewalk outside the venue is subject to the full enforcement of this chapter. Similarly, otherwise prohibited noise created by an employee of the establishment or live music venue, such as that caused by depositing empty bottles or cans in recycling containers in the middle of the night, is not excused by this section, and such noise production shall subject the offending individual to enforcement in accordance with the provisions of this chapter.
- (E) **Enforcement.** The provisions of this section shall be enforced only as the result of the receipt of a complaint.
- (F) **Responsibility for Violation.** The owner of the commercial business establishment or live music venue shall be responsible for a violation of this section, or if none can be determined, the owner of the property shall be responsible. Before the owner of the property is cited, however, the Town shall determine whether there is any current lease of record registered in the Watauga County Registry, and if so, the lessee or tenant shall stand in the place of the owner and shall be responsible. An entity such as a limited liability company or corporation may not evade responsibility for repeat violations by altering its structure, and if there is any identity or overlap between the ownership, membership, or shareholders of a cited sole proprietorship, partnership, limited liability company, corporation, or other entity, and the ownership, membership or shareholders of a subsequently cited sole proprietorship, partnership, limited liability company, corporation, or other entity operating in the same location, or in the case of the **outdoor** emission of live, recorded or amplified music, in any

location within the corporate limits, the entities shall be considered one and the same.

- (G) **Penalties for Violation of § 93.05.** The first four violations of the sound limits of § 93.05 shall subject the person or entity responsible for the violation to a written warning, the issuance of which shall be recorded and maintained by the Boone Police Department. A fifth violation in any rolling twelve month period shall subject the person or entity responsible to a civil penalty in the amount of \$100.00, a sixth violation to a civil penalty in the amount of \$200.00, and each subsequent violation in any rolling twelve month period shall result in the assessment of a \$500.00 civil penalty.
- (H) **Written Notice of Warning or Violation, Time for Payment, and Action by Town for Non-Payment.** A person or entity responsible for a violation under this section shall be issued a written warning or notice of the violation stating the amount of the civil penalty, as appropriate. Such written notice may be delivered to the person in charge of the commercial establishment or live music venue at the time of the violation, or, if none is present, to any employee of the commercial establishment or live music venue present at the time of the violation. Alternatively or in addition, in the case of an entity which has an agent for service of process registered with the North Carolina Secretary of State, a written warning or notice of the violation may be mailed to such agent at the registered address by regular mail or certified mail, return receipt requested. Any civil penalty must be paid within thirty days after the receipt of said notice. If the person or entity responsible does not pay the penalty within thirty days, the Town may recover such penalty and all subsequently accruing penalties in a civil action. In the event that it is necessary for the Town to institute a civil action to collect one or more civil penalties, the person or entity responsible shall be responsible for all costs, including attorney's fees, incurred by the Town.

VOTE: Aye - 3 (Leigh, Mason, Brantz)
 Nay - 2 (Scherlen, Ball)

PRESENTATION OF REPORT - ON THE POSSIBILITY OF LOCAL LEGISLATION TO AUTHORIZE ON-PREMISES ALCOHOL CONSUMPTION IN CERTAIN TYPES OF ESTABLISHMENTS

Town Attorney Sam Furgiuele explained to the Council that the possibility of local legislation to authorize on-premises alcohol consumption is not a feasible action for the Council. He stated that the ABC Commission would probably oppose any local legislation for this action by the Council. At this time, Mr. Furgiuele advised against pursuing location legislation for on-premises alcohol consumption in certain establishments.

Mayor Pro-Tem Leigh declared a break at 8:42 p.m. Council reconvened at 8:55 p.m.

REQUEST FOR REVIEW OF GUIDELINES - UPDATED HISTORIC PRESERVATION GUIDELINES

Council Member Brantz presented the updated Historic Preservation Guidelines (**copy permanently on file in the February 2012 Town Council packet**) and requested that Council direct the Town Attorney to review the updated guidelines. He asked that the Town Attorney review the document to make sure it conforms to state statutes and town regulations. Council Member Brantz further explained that once the document is reviewed by the Town Attorney, it will be returned to the Historic Preservation Commission for review before being presented to the Council for adoption. He then noted that the guidelines will be sent to the State Historic Preservation office. Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to direct the Town Attorney to review the updated Historic Preservation Guidelines.

VOTE: Aye - All

Nay - None

REQUEST FOR TOWN PROPERTY INVENTORY - HISTORICAL SIGNIFICANCE

Council Member Brantz presented a request to Council to authorize the Town Manager to direct the appropriate Town Staff report to the Historic Preservation Commission an inventory of Town properties which may have historical importance. Upon a motion by Council Member Ball, seconded by Council Member Brantz, Council moved to direct the Town Manager to have the appropriate Town Staff to report to the Historic Preservation Commission an inventory of Town properties which may have historical importance.

VOTE: Aye - All
 Nay - None

PRESENTATION OF DBDA QUARTERLY REPORT

Downtown Development Coordinator Pilar Fotta presented the Downtown Boone Development Association Quarterly Report for the 4th Quarter of 2011. **(Copy of report permanently on file in the February 2012 Town Council Packet.)**

PRESENTATION OF REPORT ON APPALACHIAN THEATER - QUARTERLY REPORT OF ACTIVITIES

Downtown Development Coordinator Pilar Fotta presented an update on the activities involved with the old Appalachian Theater including:

- \$ Organization, Operations, & Programming Subcommittee's Outline of Tasks and Priorities
 - \$ Proposed Organizational Structure
 - \$ Proposed Job Description for Members of the Board of Trustees
 - \$ Proposed Application for Inaugural Board of Trustees members
 - \$ Proposed Activity Survey and Space Utilization Survey for Potential Users
 - \$ Preliminary List of Potential User Groups
- (Copy of full report permanently on file in the February 2012 Town Council packet.)**
Council thanked Ms. Fotta for the work that she has accomplished thus far on this project.

PRESENTATION OF TREE SPECIES REPORT

Public Works Director Blake Brown and Urban Design Specialist Brian Johnson appeared before the Council to present a tree species report which lists recommendations from both Town Staff and the Tree Board for replacement of the 13 Bradford Pear trees in the downtown. **(Copy of full report permanently on file in the February 2012 Town Council packet.)** Mr. Brown stated that the recommended trees will be replacing the Bradford Pear trees which will be removed as they deteriorate. After discussion, Council agreed on the following tree species recommendations:

- \$ Halesia carolina - Carolina Silverbell
- \$ Gleditsia triacanthos inermis - Thornless Honeylocust
- \$ Acer buergeranum - Trident Maple
- \$ Zelkova serratta - Zelkova.
- \$

Council agreed that a variety of trees should be used in the downtown area and directed Mr. Brown to investigate sites where smaller trees can be planted.

APPROVAL OF AGREEMENT - EXTENSION OF SOLID WASTE & RECYCLING AGREEMENT

Public Works Director Blake Brown appeared before the Council to ask consideration of an extension of the current contract for Solid Waste and Recycling Agreement with Republic Services of North Carolina LLC (GDS, Inc.) He stated that the company has an excellent track record of efficient, healthful, and aesthetic collection, hauling, disposal and processing of solid waste and recycling materials for the Town of Boone. Before deliberation of this issue, Council

Member Mason asked to be excused from voting on the request because of the service that this company provides to the Hospitality House. Upon a motion by Council Member Ball, seconded by Council Member Brantz, Council moved to excuse Council Member Mason from consideration of this request.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to authorize an extension for three years with Republic Services of North Carolina LLC (GDS Inc.) for solid waste and recycling removal.

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

Upon a motion by Council Member Ball, seconded by Council Member Brantz, Council moved to reseal Council Member Mason.

VOTE: Aye - All
 Nay - None

TRANSPORTATION COMMITTEE RECOMMENDATION - ADOPTION OF COMPLETE STREETS RESOLUTION

Public Works Director Blake Brown presented a recommendation from the Transportation Committee for the adoption of a Complete Streets resolution. He explained that the term “Complete Streets” includes as many modes of transportation (pedestrian, cycling, mass transit, and cars) as possible whenever the construction/restoration of streets is considered. Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved to adopt the following resolution:

Resolution Setting Forth the Boone Town Council's Support of Complete Streets

WHEREAS, the term "Complete Streets" describes a comprehensive, integrated transportation network with infrastructure and design that allows safe and convenient travel along and across streets for all users, including pedestrians, bicyclists, motor vehicle drivers, public transportation riders and drivers, and people of all ages and abilities, including children, youth, families, older adults, and individuals with disabilities; and

WHEREAS, Complete Streets reduce congestion by providing safe travel choices that encourage non-motorized transportation options, increasing the overall capacity of the transportation network as well as decreasing consumer transportation costs; and

WHEREAS, Complete Streets will support economic growth and community stability by providing accessible and efficient connections between home, school, work, recreation and retail destinations by improving the pedestrian and vehicular environments throughout communities; and

WHEREAS, Complete Streets will support public health efforts by reducing greenhouse gas emissions and increasing opportunities for physical activity in the community; and

WHEREAS, the Boone Town Council wishes to build upon the existing NCDOT Complete Streets Policy, the Appalachian District Health Department Complete Streets Resolution and the Watauga County Parks and Recreation Commission Complete Streets Resolution that recognize the importance of addressing the transportation needs of pedestrians, bicyclists, and public transportation riders;

NOW, THEREFORE, LET IT BE RESOLVED that the Boone Town Council hereby recognizes the importance of creating Complete Streets that enable safe travel by all users,

including pedestrians, bicyclists, public transportation riders and drivers, and people of all ages and abilities, including children, youth, families, older adults, and individuals with disabilities.

BE IT FURTHER RESOLVED that the representatives from the Transportation Committee will work with the representatives from the Appalachian District Health Department and the Watauga County Parks and Recreation Commission to develop a Complete Streets policy to bring before the Boone Town Council.

Loretta Clawson, Mayor

ATTEST:

Kimberly S. Brown, Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 173)

VOTE: Aye - All
 Nay - None

WATER COMMITTEE RECOMMENDATION - WATER/SEWER POLICY STATEMENT

Public Utilities Director Rick Miller presented a recommendation from the Water Study Committee for the adoption of a Water & Sewer Policy Statement. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to adopt the following statement:

Town of Boone Water and Sewer Management Policy

The Town of Boone recognizes its responsibility to protect our environment for current and future citizens. The Town has a vested interest in managing its water resources and strives to be a recognized leader among small communities in maximizing water efficiency and minimizing environmental impacts of water extraction and from return flows to the environment from our wastewater treatment system. The Town of Boone is also faced with the task of building water supply infrastructure to satisfy anticipated water needs due to projected population growth by 2050. The Town will balance its infrastructure needs with the intent to conserve water resources and to manage those resources in the most environmentally friendly ways as possible. Combining strategic growth management with reducing how much water we each use offers the Town flexibility in ensuring that we can meet the needs of Boone’s citizens for many years. Toward this end, the Town has adopted a three-pronged policy concerning water management:

- \$ Promote conservation
 - \$ The Town of Boone has a successful water conservation program and will continue to dedicate appropriate resources to encourage and increase water conservation measures.
- \$ Ensure sound water allocation decisions
 - \$ The Town of Boone will adapt water allocation processes to be consistent with policies established in adopted plans the 2030 Land Use-Master Plan, Comprehensive Plan, and the Unified Development Ordinance. The allocation processes will be streamlined and structured to meet the diverse needs of homeowners, business owners, developers and others who require water.
- ! Conduct strategic planning for long-term water management
 - \$ The Town of Boone will strategically plan for water and sewer infrastructure placement and implementation timeframe to be consistent with adopted plans the 2030 Land Use Plan, Comprehensive Plan and the Unified Development Ordinance.

VOTE: Aye - All
 Nay - None

MONTHLY WATER USE STATUS REPORT

Public Utilities Director Rick Miller presented the monthly water status report (**copy permanently on file in February 2012 Town Council packet**).

SCHEDULING OF SPECIAL MEETING - INTERGOVERNMENTAL RETREAT

Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved to schedule a special meeting on Monday, March 5, 2012, from 5:00-7:00 p.m. at the ASU Athletic Center for the Intergovernmental Retreat.

VOTE: Aye - All
 Nay - None

DISCUSSION ON ISSUE REGARDING NEW STATE BUILDING CODE AND INTERIM ISSUANCE OF BUILDING PERMITS

Town Attorney Sam Furguele explained to the Council that N.C. State law now requires that the new N.C. State Residential Code and the N.C. State Energy Code be implemented by towns and counties in N.C. effective March 1, 2012. He stated that state law requires these codes must be in the possession of the jurisdiction before permits can be issued, and that a printed version of the code will not be available by the March 1, 2012 effective date. Mr. Furguele advised that liability issues should be considered regarding this matter. Planning Director Bill Bailey suggested a suspension of the issuance of single-family residential, new duplex (two-family), and new townhouse permits, as well as permits for additions and/or renovations, until the new codes are issued and available to the inspectors. Council directed the Planning Staff to prepare a press release regarding this matter. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to direct the Planning & Inspections Department to refrain from issuing building permits for single-family residential, new duplex (two-family), and new townhouse permits, as well as permits for residential additions and/or renovations, until the new codes are issued and available to the inspectors and to issue a press release on this matter to make the public aware.

VOTE: Aye - All
 Nay - None

RECESS MEETING

Upon a motion by Council Member Brantz, seconded by Council Member Scherlen, Council moved to recess the meeting at 10:27 p.m. until Thursday, February 23, 2012, at 6:30 p.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE: Aye - All
 Nay - None

CALL TO RECONVENE

A recessed meeting from February 21, 2012 was called to order at 6:30 p.m., Thursday, February 23, 2012, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Jamie Leigh, Lynne Mason, Alan Scherlen, Andy Ball, and Rennie Brantz. Town Attorney Sam Furguele was also present. Staff members present were Town Manager Greg Young, Town Clerk Kimberly Brown, Assistant to the Town Manager Jim Byrne, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, Human Resources Director Peri Moretz, Planning Director Bill Bailey, and Downtown Development Coordinator Pilar Fotta.

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.

Mayor Clawson presented retiring Town Clerk Freida Van Allen with a Resolution of Appreciation for her service of 27 years to the citizens of Boone. Member of the Town Council, Town Manager Greg Young, and Town Attorney Sam Furguele expressed their appreciation of a job well done and wished Ms. Van Allen a long and happy retirement. Ms. Van Allen thanked the citizens of Boone, the Mayor and Town Council, and Mr. Young for allowing her to serve so many years.

TENTATIVE AGENDA ADOPTION

Town Manager Greg Young noted an addition to the agenda to clarify a motion regarding a Special Meeting scheduled for March 14, 2012. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to adopt the agenda as presented.

VOTE: Aye - All
 Nay - None

PUBLIC COMMENT

Stephen Efrid appeared before the Council to urge support of local microbreweries.

PUBLIC HEARING - CDBG GRANT FOR OASIS, INC.

Mayor Clawson opened a public hearing at 6:42 to hear public comment on an CDBG grant application on behalf of OASIS, Inc. for transitional housing. Assistant to the Manager Jim Byrne noted that this is the first of two required public hearings on this application. With no public input, Mayor Clawson closed the public hearing at 6:43 p.m.

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Clawson announced the following vacancies:

Historic Preservation Commission - Bill Bake has resigned his position on the Historic Preservation Commission. His term expires on June 30, 2015.

ABC Board - There is one term expiring on the ABC Board on March 31, 2012.

BOARD APPOINTMENTS

Affordable Housing Task Force

There were no applications submitted for the vacant positions.

Board of Adjustment

There were no applications submitted for the vacant positions.

Community Appearance Commission

Mayor Clawson noted that one application had been received from Dr. James Buchanan. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council appointed Dr. James Buchanan to serve on the Community Appearance Commission with a term expiring June 30, 2014.

VOTE: Aye - All
 Nay - None

Jones House Advisory Board

There were no applications submitted for the vacant positions.

Planning Commission

Mayor Clawson pointed out that one application had been received from Dr. Susan McCracken. Upon a motion by Council Member Mason, seconded by Council Member Scherlen, Council moved to appoint Dr. Susan McCracken to serve a resident position on the Planning Commission with a term expiring June 30, 2014.

VOTE: Aye - All
 Nay - None

Tree Board

There were no applications received for the vacant positions.

Water Study Committee

There were no applications received for the vacant positions.

DISCUSSION OF LIST SUBMITTED BY JONES HOUSE ADVISORY BOARD

Council Member Leigh pointed out that at the joint Town Council/Jones House Advisory Board meeting on January 31, 2012, Council had requested that the Board members prepare and submit a list detailing their perception of tasks currently performed, as well as tasks the Board members would like to see accomplished. She noted that the supplemental packet contains the list submitted by the Jones House Advisory Board which includes the following:

- \$ Possible mission statement for the Jones House Community Center.
- \$ Proposed Activities and Duties of the Jones House Advisory Board.
- \$ Compiled Recommendations to the Town Council regarding the facilities, scheduling, management, hours of operation, and publicity.

(List permanently on file in the January Town Council Supplemental Packet.) After consideration of the information submitted by the Board, Council discussed the possibility of creating a cultural resources board which could oversee cultural activities for town facilities such as the Jones House, the Appalachian Theater, and the Rivers house. Upon a motion by Council Member Ball seconded by Council Member Scherlen, Council moved to amend the agenda to take action on the possibility of creating a cultural resources board.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Ball, seconded by Council Member Scherlen, Council moved to direct the Jones House Advisory Board to work with Council Members Leigh and Brantz to create a framework for a cultural resources board and present the information to the Council at the March meeting.

VOTE: Aye - All
 Nay - None

CONTINUED DISCUSSION OF NEW ROAD PROPOSAL

Council continued discussion of the proposed new road from the southside of the ASU campus to NC Highway 1-5. Council Member Leigh asked if the design will include components of the Complete Streets design which includes infrastructure designs for all modes of travel such as pedestrian, bicycle, motor vehicles, and public transportation. Town Manager Greg Young stated that the Town would be responsible for a 30% cost-share for the implementation of sidewalks but that any decorative fixtures such as fencing will be the full responsibility of the Town. Council Member Mason agreed that any design used should incorporate components of the Complete Streets design. Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to adopt the following resolution of support to consider all alternatives for a

secondary access from the south side of the ASU campus to NC Highway 105 and to incorporate the Complete Streets design into the proposed project:

RESOLUTION

WHEREAS, Appalachian State University has determined a need for a secondary access to its campus to assist with ingress and egress; and

WHEREAS, ASU indicates that such improvements will reduce congestion on NC Highway 105 and US Highway 321 during special events and will allow for through-traffic to continue along the primary travel routes; and

WHEREAS, the North Carolina Department of Transportation is considering an appropriation of \$250,000 for the purpose of preliminary engineering design to evaluate alternatives for the design of a road from the south side of ASU property to NC Highway 105 to provide a secondary access to the campus of ASU; and

WHEREAS, North Carolina Statute 136.11.1 requires the NC Department of Transportation notify municipalities affected by a planned transportation project, with the purpose of notification being to obtain a resolution of support from the respective local government;

NOW, THEREFORE BE IT RESOLVED, that the Boone Town Council formally endorses this resolution dated February 23, 2012, which supports the NC DOT request for preliminary engineering to evaluate alternatives for the design of a road from the south side of ASU property to NC Highway 105;

BE IT FURTHER RESOLVED that the Council formally directs this resolution to be presented to appropriate NC DOT officials immediately upon approval in order that these improvements may take place as quickly as possible.

ADOPTED the 23rd day of February, 2012.

Loretta Clawson, Mayor

ATTEST:

Kimberly S. Brown, Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 174)

VOTE: Aye - 4 (Scherlen, Mason, Ball, Brantz)
 Nay - 1 (Leigh)

CLARIFY MOTION FOR SPECIAL MEETING - MARCH 14, 2012

Planning Director Bill Bailey explained that the Planning Commission does not need to be at the joint meeting scheduled by the Council for March 14, 2012. He pointed out that the Planning Commission has already been presented the update on the Table of Permitted Uses. Upon a motion by Council Member Ball, seconded by Council Member Scherlen, Council moved to schedule a special meeting on Wednesday, March 14, 2012, beginning at 6:00 p.m. so that the Council can receive an update on the Table of Permitted Uses.

VOTE: Aye - All
 Nay - None

REQUESTED APPEARANCES - BILLY G. COMBS

Mr. Billy Combs appeared before the Council to request a special public hearing to hear a rezoning request for property he owns at 592 Poplar Grove Road. He explained that this is a single-family residence that is between a church and a daycare center and is surrounded by ASU

property. He explained that he will be requesting a rezoning change to this property to make it R-3 Multi-family Residential that will allow him to rent the residence to a total of five persons. Mr. Combs explained that he is requesting a special hearing so that the property will be ready to rent as soon as possible. Upon a motion by Council Member Ball, seconded by Council Member Scherlen, Council moved to place this request on the May Quarterly Public Hearing agenda.

VOTE: Aye - All
 Nay - None

WATER & SEWER REQUEST - JOHN WINKER

Town Attorney Sam Furgiuele opened a public hearing at 7:30 p.m. to hear sworn testimony on a request from John Winkler for water and sewer service to property located at the corner of US Highway 321 and Clement Street. Jason Gaston, being duly sworn, stated that he is the project engineer and represents the applicant. He explained that the project will be a mixed-use project consisting of 16,000 square feet of retail space and 130 bedroom units for student housing. He stated that the property is located in the G-3 corridor and is in the corridor overlay district. Mr. Gaston stated that the applicant is awaiting action by the Council on the possibility of an overlay district which will affect density requirements. Planning Director Bill Bailey, being duly sworn, stated that the proposed density requirements should be ready by the May Quarterly Public Hearing deadline. With no other testimony offered, Mr. Furgiuele closed the public hearing at 7:39 p.m. Upon a motion by Council Member Ball, seconded by Council Member Brantz, Council moved to table consideration of the request by John Winkler for water and sewer service to property located at the corner of US Highway 321 and Clement Street until the May regular meeting.

VOTE: Aye - All
 Nay - None

CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to enter Closed Session at 7:40 p.m. pursuant to NCGS 143-318.11a)3) to hear the following items:

- Legal Advice - USDA Contract.
- Consideration of ADR Capital Settlement Proposal.
- Legal Advice - Water Intake.
- Legal Advice - Alleged UDO Violation.
- Legal Advice - Regarding Lawsuit against Town.
- Legal Advice - Regarding Proposed Consent Order.
- Consultation with Town Attorney regarding Municipal Code Amendment issue.
- Legal Advice - Threat of Legal Action against Town.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to exit Closed Session at 10:09 p.m.

VOTE: Aye - All
 Nay - None

POSSIBLE ACTION FOLLOWING CLOSED SESSION

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve and authorize the Town Attorney to sign a consent order on DOT vs. Buddy and Ellen Wood and Wood Masonry:

STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

Plaintiff,

v.

KENNETH BUDDY WOOD, and wife,
ELLEN O. WOOD, TOWN OF BOONE,
WATAUGA COUNTY, and WOOD
MASONRY SUPPLY,
Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08 CVS 790
08 CVS 791
08 CVS 812
08 CVS 814

CONSENT ORDER

- NOW COME the parties to the four cases referenced above, and show unto the Court that:
1. These are four condemnation lawsuits brought by the Department of Transportation relating to the King Street, or Highway 421, project in Boone.
 2. Three of these cases (08 CVS 790, 08 CVS 791 and 08 CVS 814) involve properties located directly on or fronting King Street.
 3. The fourth property (08 CVS 812) is located behind the first three and is accessed via a driveway from Woods Circle, a public street now maintained by the town of Boone.
 4. All four properties are a portion of the H.J. Hardin Estate as shown and described in a survey recorded in Plat book 001 page 089, Watauga County Register of Deeds.
 5. Said survey, recorded in 1946, shows the then present position of Highway 421 and Old Highway 60. The three properties referenced above in paragraph 2 are or were located in

the area between Highway 421 and Old Highway 60 as shown on said survey. The fourth property is on the other side of and was fronted by Old Highway 60.

- 6. Highway 60 was a maintained hard surfaced State Highway and is shown as such on the Watauga County map of the North Carolina County Road Survey 1930 prepared under the direction of the State Highway Commission.
- 7. The right of way for Highway 60 was 25 feet wide as shown on the plat of the Hardin Estate referenced above. The same 25 foot wide right of way for “Old Hwy 60” is shown on a plat recorded in plat book 14 page 002 of the Watauga County Register of Deeds, being a survey of the H.B. & Tina Wood Estate.
- 8. Highway 421 replaced Highway 60 sometime in the early to mid 1930s, and at or about that time Highway 60 was abandoned.
- 9. The court map prepared by the Department of Transportation in each of the four cases referenced herein shows the property lines of the four properties stopping at the edge of the former right of way for “Old Hwy 60 as per plats.”
- 10. The right of way shown for Old Highway 60 on the court maps in all four cases was 25 feet.
- 11. Prior to the institution of these actions, due to the abandonment of NC Highway 60 and the continuous, open, and notorious use of the area of the former right of way by Kenneth Buddy Wood, and wife, Ellen O. Wood, and Wood Masonry Supply, title to said former right of way had been acquired by Kenneth Buddy Wood, and wife, Ellen O. Wood, and Wood Masonry Supply.
- 12. The court maps prepared therefore need to be revised to reflect the abandonment of former NC Highway 60.

WHEREFOR, based on the foregoing and with the consent of the parties, the Court enters an Order directing the Court maps prepared in 08 CVS 790, 08 CVS 791, 08 CVS 812 and 08 CVS 814 be revised. Said revision will be to divide the former 25 foot right of way between the properties such that 12.5 feet are added to the rear of the property in each of 08 CVS 790, 08 CVS 791 and 08 CVS 814 and 12.5 feet is added to the front of the property in 08 CVS 812.

ADJOURNMENT

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to adjourn at 10:11 p.m.

VOTE: Aye - All
 Nay - None

Town Clerk

Mayor