

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL MAY
17, 2007**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, May 17, 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 Furguele was also present. Staff members present were Town Manager Greg Young, Deputy Town Clerk Kimberly Tester, Special Assistant to the Town Manager Jim Byrne, Police Captain Curtis Main, Fire Marshal Ronnie Marsh, Public Services Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, Human Resources Director Peri Moretz, and Development Services Director John Spear.

ANNOUNCEMENTS

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

Mayor Clawson invited Public Utilities Director Rick Miller to introduce the winners of the 2nd Annual *Every Drop Counts* Poster Contest:

1st Place: Rebekka Eloranta, 8 years old, Hardin Park School, Ms. Queen's class, Poster Title: Dinosaur!

2nd Place: Emily Whittaker, 7 years old, Hardin Park School, Ms. Hyler's class, Poster Title: Use Water Wisely!

3rd Place: Abigail Catone, 7 years old, Hardin Park School, Ms. Blackburn's class, Poster Title: The Water Waster from the Black Lagoon

Mr. Miller and Program Coordinator Andrea Gimlin presented each of the winners with a prize ranging from a Wal Mart gift card to a brand new bicycle. Mr. Miller explained that the poster contest was held for members of the second grade class from Hardin Park Elementary School, Appalachian Christian School, and Twin Rivers Community School, instead of the third grade, to coincide with a lesson on the water cycle. He also announced that the classes from the Twin Rivers Community School and Appalachian Christian School both won a pizza party and tour of the Water Treatment Plant since they had 100% participation in the contest.

Public Works Director Blake Brown recognized retiring Street Department employee B. J. Hardy for over 22 years of service with the Town of Boone. Mr. Brown praised B. J. Hardy for his dedication and tireless work ethic and wished Mr. Hardy all of the best in his retirement. The Town Council members echoed Mr. Brown's appreciation of Mr. Hardy's service to the Town of Boone and its citizens.

Council member Pepin announced that the 3rd Annual Boone Pride Celebration and Festival, celebrating Gay, Lesbian, Bisexual and Transgender pride, will hold events on Friday, June 8th and Saturday, June 9, 2007.

TENTATIVE AGENDA ADOPTION

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

-Addition of Item 2.A.(1). - Announcement of Water Conservation Poster Contest Winners.

-Addition of Item 4.E. - Appointment of an Alternate to the High Country Regional Transportation Planning Organization.

-Addition of Item 5.N. - Scheduling of a Water Use Committee meeting.

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

VOTE: Aye - All
 Nay - None

CONSENT AGENDA ADOPTION

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

Minutes: April 19, 2007 - Regular Meeting.
 April 23, 2007 - Special Meeting.

Correction of March 8, 2007 - Special Meeting Minutes:

***SPECIAL PUBLIC HEARING
BOONE TOWN COUNCIL & PLANNING COMMISSION
MINUTES***

*The fourth speaker was Mr. Lorin Baumhover, Chief of Staff to the Chancellor’s Office at Appalachian State University of 1200 Pinnacle Drive. Mr. Baumhover said that the university has no intentions of moving into the central business district, however, he doesn’t know what the future holds for growth of the university. He **spoke against** ~~in support of~~ the proposed text amendment.*

Tax Releases & Refunds: March 2007.
TAX RELEASES

Taxpayer	Year	Amount	Description
DELLINGER, DANIEL RAY	2006	16.89	TURN IN TAG
TAYLOR, RUSSELL CARL & TERRY	2006	32.12	INCORRECT SITUS
HATHCOCK, AMY KATHLEEN	2006	50.51	MOVED OUT OF COUNTRY
USB LEASING LT	2006	41.25	TURN IN TAG
WORDEN, CLIFFORD MARSHALL	2006	2.93	NEW OWNER
PROTHERO, LORI MICHELLE	2006	2.39	MOVED TO LA
HUMPHREY, OLEN RAY	2006	4.99	TOTALLED VEHICLE
GLIDEWELL, POWELL WATKINS IV GLIDWELL, MARY KELLY	2006	72.82	INCORRECT SITUS
JOHNSON, BETTIE BROCK	2006	24.05	INCORRECT SITUS
SCHALK, RICHARD JOSEPH	2006	12.62	MOVED TO VA IN ‘05
CANIPE, DOUGLAS H & JO ANN G	2006	8.82	TURN IN TAG
WARD, CHARLIE RAY	2006	5.21	MH NO LONGER EXISTS
WARD, CHARLIE RAY	2005	5.81	MH NO LONGER EXISTS
WARD, CHARLIE RAY	2004	5.98	MH NO LONGER EXISTS

WARD, CHARLIE RAY	2003	6.01	MH NO LONGER EXISTS
WARD, CHARLIE RAY	2002	6.44	MH NO LONGER EXISTS
WARD, CHARLIE RAY	2001	7.50	MH NO LONGER EXISTS
		306.34	

TAX REFUNDS

Taxpayer	Year	Amount	Description
BOONE FORD LINCOLN MERCURY	2006	32.38	TURN IN TAG
HOLADAY, LYNN E	2006	2.94	TURN IN TAG
LEUPOLD, JOHN KENNETH LEUPOLD, IMOGENE FORTUNE	2006	13.73	TOTALLED VEHICLE/TAG TURNED IN
BARNEY HAMPTON FUNERAL SERVICE	2006	4.66	TURN IN TAG
BARNEY HAMPTON FUNERAL SERVICE	2006	2.57	TURN IN TAG
		56.28	

**MSD MARCH
2007**

Taxpayer	Year	Amount	Description
		0	

Adoption of Code Amendment: Street Closing Fee:

***CODE AMENDMENT TO TITLE 9 - GENERAL REGULATIONS
CHAPTER 9 - STREETS AND SIDEWALKS***

Addition of §98.11 STREET CLOSINGS AND RIGHT-OF-WAY VACATIONS

Any person requesting a permanent street closing or right-of-way vacation, as defined by G.S. 160A-299, must pay a non-refundable fee of \$500, before a resolution of intent will be adopted by Town Council.

Appointment of Council member Bunk Spann as an alternate to the High Country Regional Transportation Planning Organization (RP).

VOTE: Aye - All
 Nay - None

AWARDING OF BID - VOIP TELEPHONE EQUIPMENT

Finance Director Amy Davis explained that she has been working with Craig Carter, with the NC Department of ITS, to research options available to upgrade the Town's telephone system. She stated that the current equipment was installed in the late 1980's and is no longer available should any of the telephone consoles need replacing. Ms. Davis pointed out the lowest bid of \$87,102 for equipment and installation was submitted by Alpha-Gamma Technologies, Inc., a vendor of 3 Com equipment. She stated that the fee would be paid in installments over a five-year period, and she is currently exploring financing options. Ms. Davis stated that the upgraded phone system would be installed town-wide with the exception of the Wastewater Treatment Plant and the Jones House. Upon a motion by Council member Pepin, seconded by Council member Spann, Council moved to approve the awarding of the bid for \$87,102 from Alpha-Gamma Technologies, Inc./3 Com for installation and equipment to upgrade the Town's telephone system to a VOIP system.

VOTE: Aye - All
 Nay - None

ADOPTION OF ZONING AMENDMENTS

Development Services Director John Spear presented **Case 20070168: Neighborhood Parks**. The Boone Town Council is requesting a zoning text amendment that would create a new land use classification for Town-owned neighborhood parks, playgrounds, pocket parks, and similar passive outdoor recreation space. Mr. Spear noted that the Planning Commission at the May 14th meeting moved to recommend approval of the proposed zoning text amendment with the condition that the word "Greenways" be added to the list. Council member Pepin voiced concern with including playgrounds after hearing the comments from the public hearing. Mayor Clawson agreed, stating that citizens need a way to voice their opinions about playgrounds proposed for their neighborhoods. Council member Mason stated that playgrounds need to stay in UDO Section 165 *Table of Permissible Uses* Use 6.220, which requires a Special Use Permit to construct a playground in all residential neighborhoods. Council member Wilcox stated that the Town does not strongly suggest construction of playgrounds to the citizens of residential neighborhoods. Council member Wilcox moved to approve the proposed text amendment with the inclusion of the word "Greenways" and directing the Greenways, Parks, and Gardens Committee to develop a process for public input. The motion died for lack of a second. Upon a motion by Council member Mason, seconded by Council member Pepin, Council moved to amend the text amendment by excluding the word "Playgrounds" in the list of passive recreational activities and including the word "Greenways." Council member Wilcox stated that he does not understand the concern with leaving playgrounds in the proposed amendment. Council member Spann stated the issue is control of the situation in regard to the hours of operation and the possible disruption to residential neighborhoods.

VOTE: Aye - All
 Nay - None

Council member Mason moved that the application is consistent with all of the objectives and policies for growth and development contained in the 2006 Boone Comprehensive Plan.

VOTE: Aye - All
 Nay - None

Upon a motion by Council member Mason, seconded by Council member Brantz, the Town Council found the application is both reasonable and in the public interest because it supports the following 2006 Comprehensive Plan policies:

2.2.3A - Future park development and open spaces shall be planned to provide for the rational and equitable distribution of recreation and open space opportunities within the planning area. Public Facilities shall be provided to address the unmet needs of area residents lacking access to university or private recreational facilities.

2.2.3E - Provision of open space and recreational facilities shall be encouraged in private developments and through intergovernmental and public/private partnerships.

2.2.3F - The identification and appropriate development of a system of open space greenways within the planning area shall be encouraged for both recreational and alternative transportation purposes. The use of natural corridors such as streams, floodplains, and

secondarily, man-made corridors such as utility and transportation rights-of-way and easements shall be emphasized.

VOTE: Aye - All
 Nay - None

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

New Text: Article X, 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
6.220 Publicly owned and operated outdoor recreational facilities such as athletic fields, golf courses, tennis courts, swimming pools, parks, and playgrounds etc., not constructed pursuant to a permit authorizing the construction of another use such as a school	S	S	S	S	S	S	S	Z	Z	Z	Z	Z	Z	Z
6.230 Town owned and operated passive outdoor recreation facilities such as, neighborhood parks, greenways, pocket parks and similar facilities	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z

VOTE: Aye - All
 Nay - None

Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved to direct the Greenway, Parks, and Gardens Committee to develop a policy regarding Town-owned parks.

VOTE: Aye - All
 Nay - None

Development Services Director John Spear presented **Case 20070185:Watauga County Conditional B-1 Zoning**. Watauga County is requesting Conditional Central Business District (CDB-1) zoning approval to permit conversion of the old Watauga County Law Enforcement Center property to a surface parking lot. This project is located on the northwest corner of the intersection of Water Street and Queen Street. Mr. Spear noted the Planning Commission at the May 14th meeting moved to recommend approval of the proposed zoning text amendment with three staff-recommended conditions and a condition that the Transportation Committee examine traffic concerns voiced by citizens at the public hearing. Council member Spann asked about the use of the lot for public parking after business hours and on weekends. Robert Marsh, Watauga County Maintenance Supervisor, stated the County does plan to leave the parking lot open after business hours and on weekends for public use. Council member Spann asked about installing a water garden on the property. Bill Dixon, the project architect, stated that may be a possibility as he is currently educating himself on the concept and conferring with a representative from the Cooperative Extension Office. Upon a motion by Council member Mason, seconded by Council member Pepin, Council moved to accept the application with the following conditions:

1. The project is approved subject to a petition from Watauga County dated April 10, 2007, and plans “Watauga County Parking Facility” prepared by Blue Ridge Engineering dated April 18, 2007, and the “Conceptual Design” plans prepared by Appalachian Architecture, P.A. dated April 10, 2007. Minor modifications may be permitted to comply with the requirements of the UDO. Any commitments and representations concerning the proposed project made by the applicant or his representatives at the public

- hearing shall also become a condition of the permit and a basis for a stop work order and/or permit revocation if violated.
2. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of Town and State Codes.
 3. Prior to issuance of a zoning compliance certificate, an NCDOT driveway permit shall be obtained.
 4. The Transportation Committee shall study traffic issues specifically related to that area.
 5. The parking lot shall be well-posted to alert citizens to the availability of public parking after business hours and on weekends.

VOTE: Aye - All
 Nay - None

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

VOTE: Aye - All
 Nay - None

Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved that the application is both reasonable and in the public interest because it supports the following 2006 Comprehensive Plan policies:

2.1.1D - Economic development efforts shall encourage the revitalization and reuse of currently unused or underutilized structures, sites, and infrastructure in appropriately located areas.

2.1.2G - Effective buffering and/or landscaping shall be provided where a large scale or automobile-oriented commercial or office use adjoins an existing or planned residential use.

2.1.5B - The Town, in concert with the downtown property owners and merchants, shall encourage public and private efforts to develop and publicize adequate and appropriately designed off-street parking lots in the downtown area.

2.1.5F - The maintenance and revitalization of downtown Boone, as well as planning for its future development, will reflect the realities and qualities befitting its geographical setting and function as a center of (1) commercial and service activities, (2) educational and cultural activities, events, and (3) public services.

VOTE: Aye - All
 Nay - None

Upon a motion by Council member Mason, seconded by Council member Pepin, Council moved to adopt the zoning map amendment.

VOTE: Aye - All
 Nay - None

Development Services Director John Spear presented **Case 20070186: Sidewalks**. The Boone Transportation Committee is requesting a zoning text amendment that would require sidewalk installation along public streets for new commercial projects and residential major subdivisions. Mr. Spear stated that the Planning Commission at the May 14th meeting voted to recommend approval of the proposed zoning text amendment. Mr. Spear further indicated that the Transportation Committee is slated to study alternative sidewalk construction materials and develop a sidewalk master plan. Council member Pepin agreed that a sidewalk master plan should be created. Upon a motion by Council member Mason, Council moved that the application is consistent with all of the objectives and policies for growth and development contained in the 2006 Comprehensive Plan.

VOTE: Aye - All
 Nay - None

Upon a motion by Council member Mason, seconded by Council member Brantz, Council finds that the application is both reasonable and in the public interest because it supports the following 2006 Comprehensive Plan policies:

2.1.5E - Public and private development decisions in the downtown area shall exhibit a special concern for maintaining the intensive, pedestrian-oriented character of the district.

2.2.1B - Planned systems of pedestrian ways, bikeways, greenways, and similar facilities shall be encouraged as energy efficient and environmentally sound transportation alternatives. Site planning that incorporates secure bicycle storage at places of living, working, or schooling, shopping, and gathering shall be required, where appropriate.

2.2.1G - The operational success of the area's mass transit system shall be enhanced through the encouragement of compact, transit-sensitive development patterns. Site planning that incorporates transit stops and convenience clusters shall be required, where appropriate.

VOTE: Aye - All
 Nay - None

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

Section 242. Road and Sidewalk Requirements in Unsubdivided Developments

Add subsection 242 [d] as follows:

[d] All development, except a single family home, shall construct a sidewalk along any abutting public street. The sidewalk shall extend along the entire frontage of the development parcel. If the abutting road is maintained by the North Carolina Department of Transportation (Department); the developer shall enter into an encroachment agreement with the Department for the sidewalk construction. If the Department refuses to enter into an agreement, said refusal shall be grounds for a waiver of the requirement to install the sidewalk.

VOTE: Aye - All
 Nay - None

Upon a motion by Council member Mason, seconded by Council member Pepin, Council moved to direct the Transportation Committee to study alternative sidewalk construction materials and to develop a sidewalk master plan.

VOTE: Aye - All
 Nay - None

Development Services Director John Spear presented **Case 20070188: Mixed Use Zoning Districts**. The Town of Boone is requesting a zoning text amendment that would create three new Mixed Use zoning districts and eliminate Planned Unit Development zoning districts. Mr. Spear noted that the Planning Commission at the May 14th meeting voted to recommend approval of the proposed zoning text amendment. Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved that the application is consistent with all of the objectives and policies of the 2006 Comprehensive Plan.

VOTE: Aye - All
 Nay - None

Upon a motion by Council member Mason, seconded by Council member Pepin, Council finds that the application is both reasonable and in the public interest for the following reasons:

1. It is indicative of smart growth development.
2. It allows for creativity in development.
3. It encourages mixed-use development.

VOTE: Aye - All
 Nay - None

Upon a motion by Council member Mason, seconded by Council member Spann, Council moved to adopt the following zoning text amendment.

PROPOSED TEXT

Section 155. Mixed Use Districts Established

[a] Mixed use districts are established to introduce some residential uses into areas with commercial designations on the Official Zoning Map. Objectives of the mixed use districts include: expanding housing opportunities; allowing businesses to locate in a variety of settings; providing options for living, working, and shopping environments; facilitating more efficient use of land while minimizing potentially adverse impacts; and providing options for pedestrian-oriented lifestyles.

[b] The following mixed use districts are hereby established:

- [1] MUB-1, Mixed Use Central Business District
- [2] MUB-2, Mixed Use Neighborhood Business District
- [3] MUB-3, Mixed Use General Business District

These mixed use districts correspond to the B-1, B-2, and B-3 primary zoning districts authorized by Section 152 of this ordinance. Within a mixed use district, only those uses authorized as permitted or special uses in the primary zoning district with which the mixed use district corresponds shall be permitted.

[c] Property may be placed in a mixed use district only in response to a petition filed by the owners of all property to be included in the district and following the legislative process and procedures established for Conditional Zoning district approval.

[d] Within mixed use districts, all requirements for development within the corresponding B-1, B-2, or B-3 zoning districts otherwise established by the UDO shall remain in full force and effect unless explicitly superseded by this section.

[e] The following development standards shall apply to property within the MUB-1, Mixed Use Central Business District:

- [1] All projects must provide ground level commercial land uses (i.e. retail, office, restaurant) of at least 1,000 square feet or 10% of the lot area (whichever is greater).
- [2] All projects must provide upper level commercial and/or residential land uses. Upper level residential uses must account for at least 20% of the project's gross floor area.
- [3] Buildings facades must be oriented to the public street and must have a primary entrance door facing the public sidewalk.
- [4] A minimum of 75% of the street facing ground level building facade must be comprised of transparent, non-reflective windows.
- [5] Surface parking must be located to the rear of the principal building.

[6] Structured parking is permitted internally but must be located behind ground level commercial uses.

[7] Building facades may be no further than 10'-0" from the established street setback line, except where necessary to provide landscaped courtyards, plazas, pocket parks or other pedestrian oriented amenities.

[8] Pedestrian weather protection such as awnings or canopies are encouraged along the public street provided they extend no further than 5'-0" over the public sidewalk.

All development meeting the above referenced standards may increase the allowable building height set forth in Section 207 by 25% and reduce the parking required for all uses by 25%. In addition, adjacent on-street parking may be applied toward the minimum number of parking spaces required for all uses and all development within 500' of a mass transit stop may further reduce the parking required for all uses by 10%.

[f] The following development standards shall apply to property within the MUB-2, Mixed Use Neighborhood Business District:

[1] All projects must provide ground level commercial land uses (i.e. retail, office, restaurant) of at least 2,500 square feet or 10% of the lot area (whichever is greater).

[2] All projects must provide upper level commercial and/or residential land uses. Upper level residential uses must account for at least 40% of the project's gross floor area.

[3] Buildings facades must be oriented to the public street and must have a primary entrance door facing the public sidewalk.

[4] A minimum of 65% of the street facing ground level building facade must be comprised of transparent, non-reflective windows.

[5] Surface parking must be located to the side or most preferably behind the principal building.

[6] Structured parking is permitted internally but must be located behind ground level commercial uses.

[7] Building facades may be no further than 15'-0" from the street right-of-way line, except where necessary to preserve existing trees or to provide landscaped courtyards, plazas, pocket parks or other pedestrian oriented amenities.

[8] Interior setbacks for all mixed use buildings shall be 10'-0" except where abutting a residential zoning district in which case the interior setback shall equal the required interior setback in the abutting residential district.

[9] Pedestrian weather protection such as awnings or canopies are encouraged along the public street provided they do not encroach into the public right-of-way.

[10] All development must comply with the landscape standards set forth in Article XX except that Type "A" interior landscape buffers may be provided regardless of adjacent land use classifications.

All development meeting the above referenced standards may increase the allowable building height set forth in Section 207 by 35% and increase the maximum floor area set forth in Section 200 by 30%. In addition, the parking required for all uses in a mixed use development shall be reduced by 25% and further reduced by 10% if the development is within 500' of a mass transit stop.

[g] The following development standards shall apply to property within the MUB-3, Mixed Use General Business District:

- [1] All projects must provide ground level commercial land uses (i.e. retail, office, restaurant) of at least 10,000 square feet or 25% of the lot area (whichever is greater).
- [2] All projects must provide upper level commercial and/or residential land uses. Upper level residential uses must account for at least 20% of the project's gross floor area.
- [3] Buildings facades must be oriented to the public street and must have a primary entrance door facing the public sidewalk.
- [4] A minimum of 50% of the street facing ground level building facade must be comprised of transparent, non-reflective windows.
- [5] Surface parking must be located to side or most preferably behind the principal building.
- [6] Structured parking is permitted internally but must be located behind ground level commercial uses.
- [7] Building facades may be no further than 20'-0" from the right-of-way line, except where necessary to preserve trees or to provide landscaped courtyards, plazas, pocket parks or other pedestrian oriented amenities.
- [8] Interior setbacks for all mixed use buildings shall be 10'-0" except where abutting a residential zoning district in which case the interior setback shall equal the required interior setback in the abutting residential district.
- [9] Pedestrian weather protection such as awnings or canopies are encouraged along the public street provided they do not encroach into the public right-of-way.
- [10] All development must comply with the landscape standards set forth in Article XX except that Type "B" interior landscape buffers may be provided regardless of adjacent land use classifications.

All development meeting the above referenced standards may increase the allowable building height set forth in Section 207 by 30% and increase the maximum floor area set forth in Section 200 by 25%. In addition, the parking required for all uses in a mixed use development may be reduced by 25% and further reduced by 10% if the development is within 500' of a mass transit stop.

VOTE: Aye - All
 Nay - None

ADOPTION OF RESOLUTION - SETTING DATE OF ANNEXATION PUBLIC HEARING - WATAUGA HIGH SCHOOL PROPERTY

Development Services Director John Spear stated that adopting a resolution setting the date of a public hearing is the second step in the annexation process for the proposed Watauga High

School property. Upon a motion by Council member Brantz, seconded by Council member Wilcox, Council moved to adopt the following resolution:

**RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION
OF ANNEXATION PURSUANT TO G.S. 160A-31**
(Watauga County High School Annexation)

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

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

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

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

Section 1. A public hearing on the question of annexation of the area described herein will be held at Council Chambers at 6:30 p.m. on June 21, 2007.

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

A DEED DESCRIPTION FOR WATAUGA COUNTY: 58.649 ACRES FOR ANNEXATION BY THE TOWN OF BOONE

New River Township, Watauga County, North Carolina

. . . a 58.649 acre tract situated on the southern side of Daniel Boone Extension and being all of the Watauga County property inside the Town of Boone Extraterritorial Zoning district and described in the following deed references: Book 1239 of Records at page 633; Book 1239 of Records at page 641; Book 1239 of Records at page 644; Book 1239 of Records at page 647; Book 1239 of Records at page 796; Book 1239 of Records at page 639; and Book 1254 of Records at page 565; bounded on the north by the existing Town of Boone Corporate Limits line as shown in Plat Book 018 at page 213 and Daniel Boone Drive Extension (NCSR 1517); on the east by Mary Pierce (BoR 420, pg. 359), Paul Ollis (BoR 524, pg. 231), Clyde Jones (DB 129, pg. 722), Betty Church (DB 194, pg. 868 and BoR 031, pg. 899), Town of Boone Wastewater Treatment Plant (PB 10, pg. 333) and Appalachian State University (DB 11, pg. 380), on the south by Appalachian State University (DB 011, pg. 580) and on the west by Appalachian State University (DB 011, pg. 580); said 58.649 acres being surveyed by me, Russell C. Shaw, PLS L-2899 and being more particularly described as:

BEGINNING on the 1982 Town of Boone Corporate Limits survey monument #14, said monument being situated approximately 140 feet SSW of the intersection of NCSR 1609 (New River Heights Road) and NCSR 1517 (Daniel Boone Drive Extension) and being located South 24 degrees 51 minutes 30 seconds West 477.99 feet from NCGS monument "ROLLING" (N-908,546.09 E-1,218,977.66 NAD '83); THENCE from the beginning and along the existing Town of Boone Corporate Limits line, North 19 degrees, 02 minutes 40 seconds West 143.80 feet to a point in the center of Daniel Boone Drive Extension; THENCE continuing along the corporate limits line (2003 Annexation, PB 17, pg. 254) and along the line of Watauga County (BoR 1239, pg. 633 and BoR 870, pg. 087) and along the center of said road the of the following four calls: 1)South 8 degrees 41 minutes 35 seconds East 42.66 feet; 2)South 82 degrees 59 minutes 55 seconds East 98.87 feet; 3)South 68 degrees 51 minutes 55 seconds East 55.65 feet; 4)South 64 degrees 24 minutes 55 seconds East 82.97 feet to a railroad spike found, said spike being located South 04 degrees 45 minutes 30 seconds East 35.07 feet from a 5/8 inch rebar found in the line of Watauga County and Rolling Hills Subdivision; THENCE leaving said road South 02 degrees 09 minutes 35 seconds East 13.96 feet to a MagNail found in the edge of the street; THENCE along the Mary Pierce line and along the southern side of Daniel Boone Drive Extension, North 64 degrees 04 minutes 25 seconds West 80.88 feet; THENCE North 68 degrees 09 minutes 40 seconds West 52.75 feet; THENCE North 78 degrees 07 minutes 10 seconds West 30.11 feet to a 5/8 inch rebar found on the southeastern side of the intersection of said road and NCSR 1609 (New River Heights Road); THENCE continuing with Pierce and along the eastern side of NCSR 1609, South 01 degree 51 minutes 45 seconds East 215.67 feet to a 5/8 inch rebar found; THENCE leaving Pierce and along the line of Paul Ollis, South 01 degree 29 minutes 00

seconds East 96.11 feet to a 5/8 inch rebar found; THENCE leaving Ollis and along the line of Clyde Jones, South 02 degrees 02 minutes 45 seconds East 150.09 feet to a MagNail found; THENCE North 89 degrees 35 minutes 20 seconds East 146.70 feet to a 5/8 inch rebar set on the northern side of New River Heights Drive; THENCE crossing said road, South 00 degrees 10 minutes 30 seconds West 25.17 feet to a 5/8 inch rebar set and being located North 03 degrees 25 minutes 00 seconds West 4.91 feet from a ½ inch pipe found; THENCE along the line of Betty Church and along the southern side of said road, South 89 degrees 25 minutes 55 seconds West 159.06 feet to a 3/4 inch pipe found; THENCE leaving said road and continuing with Church, South 00 degrees 34 minutes 05 seconds East 5.07 feet to an axle iron found; THENCE South 19 degrees 54 minutes 55 seconds West 234.32 feet to a 5/8 inch rebar set at the corner of a cemetery; THENCE along the eastern line of said cemetery and continuing with Church, South 19 degrees 54 minutes 55 seconds West 28.37 feet to a ½ inch pipe found; THENCE South 45 degrees 57 minutes 55 seconds West 37.38 feet to a 5/8 inch rebar found, the southeastern corner of said cemetery; THENCE leaving the cemetery and along the line of Betty Church, South 46 degrees 55 minutes 55 seconds West 267.42 feet to an axle iron found on the western bank of the South Fork of the New River; THENCE North 81 degrees 25 minutes 55 seconds East 57.97 feet to the center of the river; THENCE leaving said line, along the line of the Town of Boone Wastewater Treatment Plant and up the center of the river the following seven calls: 1)South 01 degree 50 minutes 05 seconds West 269.01 feet; 2)South 05 degrees 57 minutes 55 seconds East 216.90 feet; 3)South 29 degrees 53 minutes 10 seconds East 147.06 feet; 4)South 35 degrees 57 minutes 25 seconds East 153.32 feet; 5)South 25 degrees 02 minutes 10 seconds East 282.00 feet; 6)South 17 degrees 38 minutes 30 seconds East 117.57 feet; 7)South 16 degrees 56 minutes 20 seconds East 213.75 feet; THENCE leaving the river, South 73 degrees 04 minutes 30 seconds West 76.10 feet to a concrete monument found in a fence corner; THENCE along the western bank of the river South 10 degrees 56 minutes 00 seconds East 153.47 feet to a 5/8 inch rebar found on the western side of the Greenway Trail; THENCE leaving the Town of Boone line and along the line of Appalachian State University, North 89 degrees 42 minutes 30 seconds West 377.32 feet to a 1 inch pipe found; THENCE North 46 degrees 08 minutes 00 seconds West 210.18 feet to a 5/8 inch rebar found; THENCE North 59 degrees 38 minutes 50 seconds West 103.55 feet to a 5/8 inch rebar found; THENCE North 76 degrees 04 minutes 25 seconds West 85.86 feet to a 5/8 inch rebar found on the edge of an overhead electrical transmission line; THENCE North 37 degrees 19 minutes 05 seconds West 41.62 feet to a 5/8 inch rebar found under the electric lines; THENCE North 74 degrees 57 minutes 15 seconds West 114.41 feet to a 5/8 inch rebar found; THENCE North 58 degrees 14 minutes 05 seconds West 250.55 feet to a ½ inch galvanized pipe found; THENCE North 59 degrees 16 minutes 40 seconds West 206.32 feet to a 5/8 inch rebar found; THENCE North 53 degrees 28 minutes 45 seconds West 121.50 feet to a 5/8 inch rebar found; THENCE North 27 degrees 06 minutes 05 seconds West 138.55 feet to a 40 inch oak tree; THENCE North 49 degrees 11 minutes 35 seconds West 368.10 feet to a 1 inch pipe found in a fence corner; THENCE North 25 degrees 56 minutes 10 seconds East 475.26 feet to a 5/8 inch rebar found; THENCE North 25 degrees 59 minutes 35 seconds East 14.92 feet to a 36 inch white pine; THENCE North 25 degrees 52 minutes 05 seconds East 13.05 feet to the center of Rocky Knob Creek; THENCE continuing with the college line and along the center of said creek the following seventeen calls: 1)South 80 degrees 07 minutes 40 seconds West 26.12 feet; 2)South 69 degrees 53 minutes 55 seconds West 58.67 feet; 3)North 65 degrees 58 minutes 00 seconds West 27.99 feet; 4)North 37 degrees 08 minutes 20 seconds West 57.33 feet; 5)North 18 degrees 03 minutes 20 seconds West 67.98 feet; 6)North 32 degrees 52 minutes 55 seconds West 70.01 feet; 7)North 37 degrees 15 minutes 50 seconds West 70.41 feet; 8)North 03 degrees 37 minutes 40 seconds East 42.69 feet; 9)North 25 degrees 06 minutes 45 seconds East 66.51 feet; 10)North 08 degrees 24 minutes 10 seconds East 21.44 feet; 11)North 06 degrees 27 minutes 10 seconds East 36.79 feet; 12)North 41 degrees 04 minutes 30 seconds West 23.15 feet; 13)North 73 degrees 26 minutes 00 seconds West 31.43 feet; 14)South 50 degrees 26 minutes 10 seconds West 19.27 feet; 15)North 30 degrees 28 minutes 35 seconds West 38.82 feet; 16)North 27 degrees 06 minutes 25 seconds West 46.98 feet; 17)North 53 degrees 12 minutes 50 seconds West 54.82 feet to a ½ inch rebar found on the western bank of the creek; THENCE North 53 degrees 10 minutes 15 seconds West 110.30 feet to a 5/8 inch rebar found, said iron being the southernmost corner of the Watauga County property described in Book 1239 of Records at page 641 and located South 53 degrees 14 minutes 25 seconds East 144.80 feet from the intersection of the old Town of Boone Corporate Limits (1982) line, said point of intersection being located South 53 degrees 14 minutes 25 seconds East 120.53 feet from a ½ inch rebar found, a common corner of Watauga County and Ben Logan in the Appalachian State University line; THENCE leaving the University line and along the line of the exiting Town of Boone Corporate Limits annexation survey (2004) and the line of Watauga County, North 47 degrees 18 minutes 50 seconds East 427.46 feet to a 5/8 inch rebar found; THENCE continuing along said line, North 36 degrees 26 minutes 05 seconds West 59.60 feet to the Town of Boone

Corporate Limits (1982) and other properties of Watauga County, North 84 degrees 29 minutes 50 seconds East 1,021.75 feet to the BEGINNING, bearings being relative to the North Carolina State Plane Coordinate system, NAD '83 and all measurements being horizontal.

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

ATTEST:

Mayor

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGES 29-31)

VOTE: Aye - All
Nay - None

FINAL PLAT APPROVAL - PARK PLACE SUBDIVISION

Development Services Director John Spear stated that William and Virginia Martin have requested final plat approval for Park Place Subdivision, an eight-lot, single-family subdivision served by a private road and Town water and sewer services. Mr. Spear stated that Mr. Martin has received zoning approval to construct the infrastructure for the eight-lot subdivision. He further noted that Mr. Martin has submitted a letter of credit from Branch Banking and Trust covering the costs of all infrastructure, including private streets within the subdivision, underground electric and telephone service, water/sewer and storm water facilities, to the Town of Boone Finance Department. Finally, Mr. Spear stated that the Development Services staff has reviewed the final plat and corresponding documentation and has determined that the subdivision complies with the Town of Boone Unified Development Ordinance and the requirements of the Special Use Permit issued in 2006. Upon a motion by Council member Mason, seconded by Council member Spann, Council moved to grant approval of the final plat for the Park Place Subdivision.

VOTE: Aye - All
Nay - None

APPROVAL OF COST-SHARING PROPOSAL - HIGHWAY 421 SIDEWALKS

Town Manager Greg Young stated that in order to participate in a cost-sharing proposal with the North Carolina Department of Transportation (NCDOT), the Town would need to submit, in writing, a request for sidewalks along the southside of US Highway 421 within the project area and to agreeing to participate in a cost-share program. Mr. Young stated that according to the NCDOT Sidewalk Policy, the percentage for the cost-share program is based on the population of the municipality. He explained that for a town with a population between 10,000 and 50,000 persons, the NCDOT/Municipality split is 70/30. Upon a motion by Council member Wilcox, seconded by Council member Pepin, Council moved to approve sending a formal request by letter to the NCDOT for sidewalks along the southside of Highway 421 within the project area and to participate in the NCDOT cost-share program.

VOTE: Aye - All
Nay - None

TRANSPORTATION COMMITTEE RECOMMENDATIONS

Public Works Director Blake Brown informed the Council of the following recommendations made by the Transportation Committee at the May 8th meeting:

The Transportation Committee is recommending that the Town Council endorse the following enhancements to NCDOT U-4020 Road Project. These enhancements are bike lanes, sidewalks,

crosswalks, streetlights, landscaped or grass medians, and controlled left turns. Council previously addressed most of these requests by comments submitted before the April 13, 2007 deadline.

Bike lanes, sidewalks, and crosswalks are vital to the health and well-being of our community by offering safe, alternative means of transportation which allows citizens a way to travel without burning fossil fuels. It is also important that adequate crosswalks be put in place to allow people to move orderly and in a safe manner. We also request for consideration the installation of sidewalks on Highway 194 to the project's end.

Streetlights are needed for safety of vehicles and pedestrians. They are also the single cheapest security there is for people and property. We feel that there should be grass and landscaping instead of concrete barriers. The section from Hardin Street to Highway 105/221 Extension should be enhanced with a grass and landscaped median with at least one controlled crossover for traffic. The crossover should be similar to the new crossovers built by NCDOT on Highway 321 between Lenoir and Hickory.

Landscaped median enhancements along the section of road from NC Highway 105/221 to NC Highway 194 and Grove Street would promote a welcoming aesthetic appeal for motorists traveling into Boone, as well as provide both air and water quality benefits. We understand that there are plans for installing 4-foot concrete barriers in this area and hope that NCDOT will consider stamp concrete or brick pavers. All other sections that are wide enough, we would like to see landscaping and grass.

The Transportation Committee would like to recommend that Council encourage officials from Watauga County, Appalachian State University, the Boone Area Chamber of Commerce, and the High Country Council of Governments/RPO to endorse the above requests by way of a letter.

In addition to this statement, Mr. Brown stated that the Transportation Committee would like the letter to also address the following concerns previously submitted to the NCDOT before the public comment deadline:

- \$ Street lighting for the entire project area.*
- \$ Sidewalks on both sides of the road.*
- \$ Bike lanes on both sides of the road.*
- \$ Pedestrian crosswalks and crossing heads.*
- \$ Landscaped center medians for the entire project area.*
- \$ All retaining walls with an attractive facade, preferably of stone.*
- \$ Consideration of water and sewer upgrades.*
- \$ A left-turn access into the Town's Public Works Center.*

Mr. Brown stated that the Town should request the landscaping of the medians at this time to avoid incurring the cost of the landscaping in the future, and the Town will probably have to be responsible for the maintenance of the landscaped medians. Mr. Brown suggested having Brad Vines, Landscape Specialist from the Public Works Department, and Brian Johnson, Urban Design Specialist from the Development Services Department, along with input from the Community Appearance Commission, to develop a landscape plan for the proposed medians to submit to the NCDOT. Upon a motion by Council member Pepin, seconded by Council member Mason, Council moved to draft a letter to the NCDOT requesting the list of afore-mentioned enhancements along with a landscape plan designed by Town staff and the Community Appearance Commission and to encourage the agencies listed above to endorse the same requests.

VOTE: Aye - All
 Nay - None

Council member Spann suggested studying the use of roundabout designs in intersections for future projects.

CABLE TV ADVISORY COMMITTEE APPOINTMENTS

Mayor Clawson noted that both Robert Cherry's and Ernie Lane's terms have expired on the Cable TV Advisory Committee. She stated that both gentlemen have agreed to serve another three-year term, if reappointed, which would expire on April 30, 2010. Upon a motion by

Council member Brantz, seconded by Council member Wilcox, Council moved to reappoint both Robert Cherry and Ernie Lane to a three-year term on the Cable TV Advisory Committee with terms expiring on April 30, 2010.

VOTE: Aye - All
 Nay None

Council member Pepin asked for an update on the status of the Cable TV Advisory Committee. Town Manager Greg Young state that, as long as the Town has a franchise agreement with Carter Communications, the Cable TV Advisory Committee will exist to monitor Charter’s compliance with the terms of the franchise agreement. Mr. Young observed that there must be some competition for cable TV service before this will change.

PLANNING COMMISSION NOMINATIONS

Development Services Director John Spear listed the following Planning Commission members whose terms will expire on June 30, 2007:

Patrick Heavner (Resident)
Shawna Rhyne (ETJ)
Pat Vines (ETJ)
Christina DeStefano (ASU Student Representative)

Mr. Spear noted that although Commissioners Heavner and Rhyne are interested in reappointment, Commissioner Vines does not wish to serve another term. Also, he stated that since Commissioner DeStefano has served a one-year student term, Dr. Garry Cooper has recommended Mary Wise to serve as the ASU Student Representative. Mr. Spear stated that Ms. Wise is a senior at ASU majoring in community and regional planning. Mayor Clawson asked that the Council be prepared to list any nominations and make appointments at the June meeting. Mr. Spear reminded Council that any ETJ nominations will be forwarded to the Watauga County Board of Commissioners for appointment. Council member Mason asked that the ASU Student Representative complete a board member application so that the Council can know more about the person.

BOARD OF ADJUSTMENT NOMINATIONS

Development Services Director John Spear listed the following Board of Adjustment members whose terms expire on June 30, 2007:

Rebecca Kaenzig	Resident	Regular member
Bruce Jackson	Resident	Regular member
Rick Foster	ETJ	Regular member
Morgan Murray	Resident	Alternate

Mr. Spear noted the Board members Kaenzig, Jackson, and Murray are interested in reappointment. He stated that Board member Foster is not interested in serving further after a number of years of service. Mr. Spear informed Council that current ETJ Alternate Jim Marsh is interested in the position vacated by Rick Foster, and, if Mr. Marsh is appointed to a regular position, nominations will need to be received to fill the remainder of his vacant term as an alternate. Mayor Clawson asked that the Council be prepared to list any nominations they might have for these positions and make appointments at the June meeting.

COMMUNITY APPEARANCE COMMISSION NOMINATIONS

Development Services Director John Spear informed the Council that terms for both Sean Krause and Terry Taylor, Chairperson and Vice-Chair respectively of the Community Appearance Commission, expire on June 30, 2007. Mr. Spear stated that both Commissioners Krause and Taylor are not interested in being reappointed. He stressed that it is very important for members of the Community Appearance Commission to have formal training or experience in a design-related field such as architecture, landscape architecture, urban planning, or a similar field. Furthermore, he noted that all members must reside within the Town’s planning jurisdiction. Mr. Spear stated that his staff is currently advertising in the Watauga Democrat for applications for the Community Appearance Commission. Mayor Clawson asked the Council to investigate suggestions for nominations and be prepared to make appointments at the June meeting.

SCHEDULING OF SPECIAL MEETING

Mayor Clawson stated that a motion, second, and vote are needed to schedule a special meeting to further discuss stormwater issues. After a brief discussion of upcoming meetings in June, Council member Pepin moved to schedule a special meeting on Tuesday, July 17, 2007, at 4:30 p.m. in the Council Chambers to further discuss stormwater issues. Council member Mason seconded the motion.

VOTE: Aye - All
 Nay - None

MONTHLY WATER USE STATUS REPORT

Public Utilities Director Rick Miller presented the following status report:

As requested by Town Council, staff and I have compiled the following information concerning water use for the month of April. The Water Treatment Plant recorded a maximum daily demand of 1.896 million gallons on Thursday, April 26, 2007, and the average daily demand was 1.787 million gallons for the entire month.

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

As adopted in Ordinance 05-01, the Town of Boone Council has appropriated for 25,000 gallons per day usage for year 2007 for allocation to customers. Council chose to allocate 4,800 gallons from 2007 and after adding back the 6,788 gallons carried over from 2006, a balance of 25,943 gallons remaining for allocation in 2007. Since the last Town Council meeting Public Utilities approved no additional projects that subtracted from the allotment. The total water allotment remaining for the year 2007 has not broken the sixty percent threshold. All future water service requests in excess of 3000 gallons per day usage will be forwarded to Town Council as required in Ordinance 05-01.

As you can see in the attached “Approved Water Connections” chart, the Public Utilities Department now has 18,690 gallons per day remaining for allotment in 2007 and 15,991 gallons remaining for 2008. Also, be reminded that all calculations are based on 60% of the North Carolina Discharge Rate Schedule.

			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
Sarvos Properties	Feb-06	2100				27604
			Jamus FLP	Feb-06	4209	23395
Mauldin Chiropractic	Feb-07	69				23326
Ross Chrysler	Feb-07	60				23266
A-Z Enterpris	Feb-07	900				22366

es						
			Fatbellies LLC	Mar-06	3750	18616
High Country Bank	Mar-06	450				18166
Enterprise Leasing	Mar-06	45				18121
James Maltba	Mar-06	31				18090
Dana Willet	Jun-05	450				18540
Dana Willet	Jul-05	150				18690
			Approved Water Connections			
			2008			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						25000
			Watauga County	Nov-06	4800	20200
			Jamus FLP	Feb-07	4209	15991

ADOPTION OF BUDGET AMENDMENTS

DESCRIPTION	ACCOUNT #	TO:	FROM:
Wide Area Network	010-411-000-549102	\$4,280.00	
Appropriated Fund Balance (GF)	010-000-000-499900		(\$4,280.00)
Maintenance & Repair - Equipment (Fire)	010-500-350-525201	\$2,426.00	
Miscellaneous Revenue (GF)	010-000-000-489900		(\$2,426.00)

Finance Director Amy Davis explained that the first budget amendment is for the allocation of funding for a GroupWise email archival system, installation, and configuration, which are necessary to provide the governing body with email accounts. to app Ms. Davis stated this would be a web-based Town account so that members of the Council could access email and that all emails would be archived indefinitely to comply with public records laws. Upon a motion by Council member Pepin, seconded by Council member Brantz, Council moved rove a budget amendment for \$4,280.00 to be appropriated to the Wide Area Network account (010-411-000-549102) from Appropriated Fund Balance account (010-000-000-499900) to fund a GroupWise archival system, installation, and configuration.

VOTE: Aye - All
 Nay - None

Finance Director Amy Davis explained the second budget amendment as an allocation of insurance money received for damage to the Rich Mountain generator. Upon a motion by Council member Mason, seconded by Council member Pepin, Council moved to approve a budget amendment for \$2,426.00 from Miscellaneous Revenue (010-000-000-489900) to Maintenance & Repair-Equipment (010-500-350-525201) for the reimbursement of insurance money received for damage to the Rich Mountain generator.

VOTE: Aye - All
 Nay - None

SCHEDULING OF WATER USE COMMITTEE MEETING

Mayor Clawson stated that a motion, second, and vote are needed to schedule a special meeting of the Water Use Committee to hear a recommendation from the Water Use Subcommittee regarding rainwater reuse. Upon a motion by Council member Mason, seconded by Council member Pepin, Council moved to schedule a special meeting of the Water Use Committee on

Thursday, June 14, 2007, at 5:30 p.m. in the Council Chambers prior to the Budget Public Hearing to hear recommendations for the reuse of rainwater.

VOTE: Aye - All
 Nay - None

Mayor Clawson declared a break at 8:28 p.m. Council reconvened at 8:35p.m.

REQUESTED APPEARANCES - MS. JASMINE SHOSHANNA

Jasmine Shoshanna appeared before the Council to present an update on the efforts of implementing zero waste practices in the area. Ms. Shoshanna explained that a benefit of using a “closed system” to hold zero waste events is an easy way to educate the public. She listed several zero waste events such as two large events for the Watauga County Democratic Party, two large events for Appalachian State University, and two events for the Agricultural Extension Office. Ms. Shoshanna noted an increase in participation of local groups and individuals and was very excited to announce an upcoming meeting with Senator Marc Basnight to discuss zero waste. Mayor Clawson and members of the Town Council praised Ms. Shoshanna for her efforts and encouraged her to continue informing the public about zero waste initiatives.

REQUESTED APPEARANCES - MS. NANCY REIGEL

Ms. Nancy Reigel presented a power-point presentation relating to the 2007 Litter Reduction Act (**Copy of Power-point presentation permanently on file at Town Hall**). Upon a motion by Council member Mason, seconded by Council member Pepin, Council moved to adopt the following resolution in support of the 2007 Litter Reduction Act:

**RESOLUTION SUPPORTING THE
2007 LITTER REDUCTION ACT (S215)**

WHEREAS, the grand, natural beauty of the State of North Carolina and a clean environment are sources of great pride for all North Carolinians, attracting tourists and adding to our overall quality of life; and

WHEREAS, beverage containers constitute a major source of nondegradable litter and solid waste in this State; and

WHEREAS, litter remains a large problem in North Carolina despite other efforts to discourage littering; and

WHEREAS, a more concerted effort to reduce litter is needed in North Carolina; and

WHEREAS, the collection and disposal of litter imposes a great financial burden on the citizens of North Carolina; and

WHEREAS, beverage containers should be reused or recycled; and

WHEREAS, other states’ experiences show that beverage container deposit legislation is successful in reducing litter and increasing recycling of discarded beverage containers;

NOW, THEREFORE, BE IT RESOLVED that the Mayor and the Town Council of Boone, North Carolina, do support and urge the State Legislature of North Carolina to pass the Litter Reduction Act of 2007.

Adopted this the 17th day of May, 2007.

Mayor

ATTEST:

Deputy Town Clerk

(RESOLUTION TO BY TYPED IN BOOK 3, PAGE 32)

VOTE: Aye - All
 Nay - None

REQUESTED APPEARANCE – MR. JOHN GRASINGER/CC BEAR DEVELOPMENT, INC.

Town Attorney Sam Furguele opened a public hearing at 9:07 p.m. to hear sworn testimony from John Grasinger, owner/president of CC Bear Development, Inc., and Public Utilities Director Rick Miller concerning a request for water allocation extension for a project consisting of five properties located between Highway 105 and Horn in the West Drive. Mr. Grasinger testified that he received a zoning permit for the project on May 18, 2006 and has had vested rights in the property for four years. He requested that the water allocation be extended to match the four-year vested rights period. Furthermore, he testified that he plans to submit site work plans in late July 2007. Mr. Grasinger stated that he will pay the availability fee but asked if a deadline exists for paying that fee. Public Utilities Director Rick Miller stated that Ordinance 05-01 does not project a time frame for payment of the availability fee. With no further public testimony, Mr. Furguele closed the public hearing at 9:12 p.m. Upon a motion by Council member Wilcox, seconded by Council member Mason, Council moved to grant John Grasinger, owner/president of CC Bear Development, Inc., water allocation extension for 6,984 gallons per day to run concurrent with the four-year vesting period of the project.

VOTE: Aye - All
 Nay - None

REQUESTED APPEARANCE - MR. JEFF GITHENS

Town Attorney Sam Furguele opened a public hearing at 9:13 p.m. to hear sworn testimony from Jeff Githens, Public Utilities Director Rick Miller, and Development Services Director John Spear regarding a request for water and sewer service for 49,200 gallons per day for a 9.4-acre tract located near the intersection of Fieldstream Drive and Highway 194. Mr. Githens testified that he is authorized to testify on behalf of his employer, Place Properties. He explained that Place Properties is currently pursuing a purchase agreement with Frank Petersile for the property. Mr. Githens presented a power-point presentation (**Copy of Power-point presentation permanently on file at Town Hall**) summarizing the details of the project and showing examples of similar apartment complexes around the state. Mr. Githens described the project as six residential buildings consisting of 82 units with 328 beds, 410 parking spaces, and a community complex housing a fitness center, computer lab, and town hall facility intended for student housing. He indicated that a potential expansion could possibly include the Roundtree Apartment Complex. Mr. Githens stated that based on the average water use of other complexes similar in size to the proposed project, the estimated usage is 79-80 gallons per day per unit. He projected a range of 22,650 to 26,240 gallons per day for a 328-bed project. Council member Spann asked if Mr. Githens has had any discussions with Appalachian State University in regard to potentially purchasing the property. Mr. Githens stated that no discussion has taken place other than to gather information on enrollment projections and housing needs. Council member Mason asked about the cost of renting a unit. Mr. Githens stated that he anticipates the rent to be about \$450 to \$500 dollars per bed and should include all utilities. Council member Spann asked if any traffic studies of the Highway 194 area have been performed and if any discussions with Appalcart have taken place. Mr. Githens stated that traffic issues in that area must to be addressed and that no discussions have taken place with Appalacart at this time. Council member Mason inquired about surrounding properties of the project. Mr. Githens listed the following abutting properties:

- \$ West - 50 ft. buffer to Highway 194
- \$ East - wooded buffer on a significant slope to Fieldstream Drive
- \$ North - single-family residences
- \$ South - Fieldstream Drive and a vacant property

Mr. Githens stated that an appropriate buffer would be utilized for the area where the property abuts single-family residences. Council member Mason asked about the entrance to the project. Mr. Githens stated that is not finalized at this time but an entrance/exit to Fieldstream Drive would be ideal. Mr. Githens stated that the complex will have a lead property manager, an

assistant manager, five or six community assistants, and a full-time maintenance employee. He stated that groundskeeping duties will be contracted. Council member Wilcox inquired about how the management would deal with issues like parties and loud tenants. Mr. Githens stated the complex would be subject to all local laws and room checks. He stated that the complex uses a “three strikes” system which allows a limited number of chances before a tenant is asked to leave. Council member Pepin left the Council Chambers at 9:41 p.m. at which time Mr. Furguele recessed the public hearing until her return at 9:42 p.m. Development Services Director John Spear stated that there had been no prior approval for water and sewer service for a project at this location. With no further public testimony, Mr. Furguele closed the public hearing at 10:01 p.m. Council member Mason pointed out that gallons per day are calculated using the North Carolina Discharge Rate Schedule (NCDRS) instead of being based on past usage history or usage figures from a similar use. Council members Mason and Spann voiced concern with allocating this amount of water without an interconnection agreement with ASU or a time frame for a new intake system. Town Attorney Sam Furguele reiterated that Ordinance 05-01 does not allow for allocation calculations based on past usage. Council member Wilcox suggested reviewing Ordinance 05-01 to determine if past usage figures or usage figures from similar uses should be considered in approving water allocations. Upon a motion by Council member Pepin, seconded by Council member Wilcox, Council moved to deny the application at this time and to further study the issue of water usage calculation. Council member Spann voiced his concern with the impact of this project on the entire community and especially the adjacent single-family neighborhood.

VOTE: Aye - All
 Nay - None

PUBLIC COMMENT

Morgan Murray appeared before the Town Council to voice his concern with the increase in housing prices and demand, a loss of a sense of community in downtown Boone, the lack of greenspace in downtown Boone, and the lack of residential housing in the downtown area. He suggested that Council investigate the use of incentives for residential housing in the downtown area of Boone.

CLOSED SESSION

Upon a motion by Council member Wilcox, seconded by Council member Pepin, Council moved to enter Closed Session at 10:21 p.m. pursuant to NCGS 143-318.11a)3)5) in order to discuss the following matters:

- ASU Matters
- CHS/ASU LLC Settlement
- Property Acquisition - Water.

VOTE: Aye - All
 Nay - None

Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved to exit Closed Session at 11:16p.m.

VOTE: Aye - All
 Nay - None

ACTION FOLLOWING CLOSED SESSION

Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved to adopt the following consent order with CHS/ASU, LLC.:

TheSTATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
COUNTY OF WATAUGA SUPERIOR COURT DIVISION

FILE NUMBER: 07 CyS-64

CHS/ASU, LLC,)
a Virginia Limited Liability Company,)
Petitioner,)
)

vs.	)
	)
TOWN OF BOONE, and	)
THE NORTH CAROLINA	)
DEPARTMENT OF INSURANCE,	)
Respondents.	

CONSENT ORDER

THIS MATTER HAVING COME before the Court upon Plaintiff’s action for declaratory, injunctive and other relief, and Plaintiff having appeared, represented by David J. Turlington, III, and Plaintiff having indicated its intention to dismiss its action, concurrently with the entry of this consent order, against the Board of Adjustment of the Town of Boone, the North Carolina Department of Insurance, and James Long, Commissioner, North Carolina Department of Insurance, and Defendant Town of Boone having appeared, represented by Samuel F. Furgiuele, Jr., and counsel for the remaining parties having reported to the Court that they have resolved the issues between them, and requesting that the Court accept and endorse their agreement as the Order of this Court; based upon the consent of the parties, who further stipulate that the Court may enter this Order without full findings of fact and conclusions of law, the Court finds as follows:

1. On December 2, 2004, the Town of Boone Board of Adjustment issued a Special Use Permit SU 2004-13 dated December 7, 2004 to Plaintiff for the construction of a seventy unit, three story condominium to be located on East King Street, Boone, North Carolina, on property identified by the Watauga County Tax Administrator as PIN # 2910-79-3325-000 (hereafter, “The Project”). The vesting period of the special use permit was two years. During the course of the hearing before the Board of Adjustment, Plaintiff’s representatives represented that the buildings of the project were not intended to be used as rental apartments for students, but would be sold as condominiums. This representation became part of the conditions imposed upon the Plaintiff as part of the special use permit.
2. CHS applied for, and the Town of Boone on March 16, 2006 issued a building permit, Building Permit Number 2005-104 to Plaintiff for the construction of the condominium structure.
3. Prior to the expiration of Plaintiff’s special use permit, however, The Town’s of Boone’s Building Code official determined and declared that the building permit had expired.
4. Prior to the determination by said official that the building permit had expired, Plaintiff expended substantial sums of money in pursuit of the construction authorized by the building permit. The parties disagree whether Plaintiff had completed “substantial construction” as authorized by the permit.
5. Pursuant to N.C. Gen. Stat. §160A-385.1(d)(5), the building permit should not have expired prior to the expiration of the special use permit.
6. During the pendency of the special use permit, Plaintiff applied for and was granted certain specified rights to connect its project to the Town’s water and sewer system. In order to extend the period of time which such water and sewer rights were available, Plaintiff paid Defendant availability fees projected for the project. Plaintiff’s vesting period for said water rights has expired.

WHEREFORE, BASED UPON THE FOREGOING FINDINGS AND THE CONSENT OF THE PARTIES, IT IS HEREBY ORDERED AS FOLLOWS:

1. Plaintiff’s building permit is declared and found to be unexpired in that construction is deemed to have commenced before the expiration of the special use permit. So long as within nine months from the entry of this order, Plaintiff completes substantial

construction pursuant to the building permit in addition to the construction which has already taken place, the provisions of N.C. Gen. Stat. § 160A-418 shall apply and the building permit shall not expire unless work pursuant to the permit is discontinued for a period of 12 months, in which case the building permit shall immediately expire. Should the Plaintiff not complete such additional construction within the nine month period from the entry of this order, the permit shall immediately expire. The parties agree, in an effort to avoid further disagreement concerning whether additional substantial construction has taken place, that within the aforesaid nine month period, Plaintiff must at minimum install temporary electrical service on site, and construct to the point that it is ready for inspection by the Town, the complete foundation of one of the buildings to be constructed pursuant to the Project.

2. For purposes of this Order and in furtherance of the provisions of paragraph 1, *supra*, work shall not be considered to have been discontinued during any discrete twelve month period so long as \$100,000.00 or more in construction activities are completed on the Project during that discrete period. Construction activities shall include, but are not limited to, carpentry, roofing, masonry, concrete, electrical, plumbing, painting, HVAC, water, sewer, insulation, parking lot paving, drainage, retention ponds, excavation for construction, retaining walls and such other activities as would normally be referred to as construction. Should Plaintiff not perform \$100,000.00 or more in construction activities during any discrete twelve month period, the parties stipulate and agree that this shall not presumptively exclude a determination that substantial continued work activity has occurred. Should the parties be unable to agree as to whether construction activities costing less than \$100,000.00 constitute substantial continued construction activity, either party may, on application to this court and proper notice to the other party, **prior** to a determination that the permit has expired, submit such question to the presiding judge of the Superior Court of Watauga County. Until such question is determined by said Judge, the permit will remain in full force and effect.
3. Plaintiff's water and sewer rights, previously awarded by the Boone Town Council, are reinstated to run concurrently with the building permit for the Project. Should the building permit expire, said water and sewer rights will simultaneously expire. Plaintiff's water and sewer rights will be only as extensive as they would have been had its water and sewer rights vesting period not expired, and Plaintiff shall be responsible for compliance with the Town of Boone's Water and Sewer Use Ordinance, including the payment of any other fees due in relation to its connection to the Defendant's water and sewer system, in the same manner and to the same extent as it would have been had its water and sewer rights not have expired. Should the building permit of the Plaintiff expire for any reason and the water and sewer rights simultaneously expire, Plaintiff shall not be foreclosed from reapplying to the Boone Town Council for a new allocation of water and sewer rights, and for credit for availability fees previously paid for this Project be credited against the fees required for any new such allocation.
4. Plaintiff's project must be completed in compliance with its special use permit and the conditions attached thereto at the time of the issuance of the special use permit, unless modified in accordance with the Town's Unified Development Ordinance, including the condition that it must be built in accordance with its representations to the Board of Adjustment, and in particular, Plaintiff hereby reiterates that the Project will be a condominium, with the units therein offered for sale. Should Plaintiff's Project not conform to the conditions attached to the approval of its special use permit, Defendant may withhold or revoke the certificate of occupancy for the Project. The parties agree that an end owner of a particular unit, however, is not hereby precluded from offering the unit for lease to third parties. Furthermore, this paragraph is not intended to, nor shall it preclude requests by the Plaintiff for administrative approval of modifications to the Project to the extent such approvals were available prior to this dispute.

5xk,lljxCd]]. Each party shall bear its own costs, including attorney's fees, incurred in this action.

VOTE: Aye - All

Nay - None

ADJOURNMENT

On a motion by Council member Spann, seconded by Council member Brantz, Council moved to adjourn the meeting at 11:17 p.m.

VOTE: Aye - All
 Nay - None

Deputy Town Clerk

Mayor