

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL MAY
18, 2006**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, May 18, 2006, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Rennie Brantz, Janet Pepin, Bunk Spann and Dempsey Wilcox. Town Attorney Sam Furgiuele was also present. Staff present was Town Manager Greg Young; Town Clerk Freida Van Allen; Police Captain Curtis Main; Fire Chief Reggie Hassler; Finance Director Amy Davis; Human Resources Director Peri Moretz; Assistant to the Manager Jim Byrne; Development Services Director John Spear; Public Services Director Blake Brown and Public Utilities Director Rick Miller.

ANNOUNCEMENTS

Mayor Clawson read the following proclamation congratulating Tweetsie Railroad on its 50th anniversary:

PROCLAMATION

***WHEREAS**, in 1881 the East Tennessee and Western North Carolina Railroad Company began operations through the rugged Blue Ridge Mountains running a train from Johnson City, Tennessee to Cranberry, North Carolina; and*

***WHEREAS**, after additional tracks were laid, passenger rail service from Johnson City, Tennessee to Boone, North Carolina was established in 1916; and*

***WHEREAS**, the name “Tweetsie” was given to the railroad by local folks who became accustomed to the shrill “tweet, tweet” train whistle that echoed through the mountains; and*

***WHEREAS**, after severe flooding and a changing economy the East Tennessee and Western North Carolina Railroad Company came to an end in 1950; and*

***WHEREAS**, after the engine was sold to several people, Watauga County native Grover Robbins, Jr., purchased Tweetsie in 1956 from legendary singer Gene Autry and brought her back home to Blowing Rock; and*

***WHEREAS**, on May 20, 1956, then Governor Luther Hodges proclaimed that day as “Tweetsie Homecoming Day”; and*

***WHEREAS**, in the summer of 1957, Tweetsie Railroad became North Carolina’s newest travel attraction at a location where it continues today; and*

***NOW, THEREFORE BE IT RESOLVED**, that the Town of Boone Town Council congratulates Tweetsie Railroad on its success over the past 50 years in hopes that it will continue to delight rail buffs, children and tourists for many years to come.*

Mayor Clawson then recognized Public Utilities Director Rick Miller who introduced winners of the first annual Town of Boone water conservation poster contest:

Andy Lee of Ms. McGuire’s class- 3rd place - \$100 savings bond
Shawn Grimes of Ms. McGuire’s class - 2nd place - \$150 savings
Dakota Lee Miller of Ms. Lentz’s class - 1st place - \$200 savings bond

All the children attend Hardin Park Elementary School.

TENTATIVE AGENDA ADOPTION

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

-Addition of “Acceptance of Steve Metcalf Proposal” to the Consent Agenda.

-Deletion of Item 7. D. “Requested Appearance - Frank Bolick.”

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

VOTE: Aye-All

Nay-None

CONSENT AGENDA ADOPTION

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

Minutes: April 7, 2006, Special Meeting
April 10, 2006, Special Meeting
April 20, 2006, Regular Meeting

Approval of Code amendment - Chapter 102: Park Rules & Regulations.

WHEREAS, pursuant to the police power of the Town, conferred by N.C. Gen. Stat. §§ 160A-174, et seq., the Town is given the power to adopt ordinances to define and regulate acts, omissions and conditions to protect the health, safety and welfare of its citizens and the peace and dignity of the Town; and

WHEREAS, the State of North Carolina has adopted provisions, N. C. Gen. Stat. §§ 99E-21, et seq., concerning skateboarding, inline skating and/or freestyle bicycling activities whereby municipalities can allow such activities within their boundaries without incurring potential liability; and

WHEREAS, the Town of Boone wishes to provide for the safe use of designated areas and facilities within the Town limits for skateboarding, inline skating and/or freestyle bicycling;

NOW, THEREFORE, PURSUANT TO N.C. GEN. STAT. §§ 160A-174, ET SEQ., AND N.C. GEN. STAT. §§ 99E-21, ET SEQ., BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA, THAT A NEW SECTION 102.02 BE ADDED TO THE TOWN OF BOONE, NORTH CAROLINA, CODE OF ORDINANCES, AS STATED BELOW:

§ 102.01 HAZARDOUS RECREATIONAL ACTIVITIES WITHIN THE TOWN OF BOONE

(A) Definitions. For purposes of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

Hazardous Recreational Activity. *Skateboarding, inline skating, or freestyle bicycling.*

Inherent Risk. *Those dangers or conditions that are characteristic of, intrinsic to, or an integral part of skateboarding, inline skating, and freestyle bicycling.*

Skateboard Park. *An area or facility, whether or indoor or outdoor, legally operating within the Town of Boone, whether owned and/or operated by a private entity or by a governmental entity, as that term is defined in N.C. Gen. Stat. § 99E-22 (1), which is designed and maintained for persons to engage in hazardous recreational activities, as above defined.*

(B) Duties of Non-Governmental Operators of Skateboard Parks.

(1) No operator of a skateboard park shall permit any person to engage in a hazardous recreational activity unless that person is wearing a helmet, elbow pads, and kneepads.

*(2) The operator of a skateboard park operated by a non-governmental entity must have an employee present and on-duty during all hours of operation who is trained in first aid and certified to administer cardio-pulmonary resuscitation (CPR). **Hours of operation must be prominently displayed, and the operator must secure the park during off-hours so as to***

prevent its use when an attendant is not present.

(3) The operator of a skateboard park operated by a non-governmental entity must post signs in plain view at the skateboard park advising any person wishing to engage in or engaging in a hazardous recreational activity of the requirement that any person engaging in a hazardous recreational activity must wear a helmet, elbow pads, and kneepads.

© Duties of Governmental Entities Operating Skateboard Parks.

(1) No governmental entity operating a skateboard park shall permit any person to engage in a hazardous recreational activity unless that person is wearing a helmet, elbow pads, and kneepads.

(2) A governmental entity shall either have an employee present and on-duty during all hours of operation of a skateboard park, or if the use of the skateboard park is not supervised on a regular basis, must post signs at the skateboard park affording reasonable notice that any person engaging in a hazardous recreational activity in the facility must wear a helmet, elbow pads, and kneepads, and that any person failing to do so will be subject to citation by the Town of Boone.

(D) Duties of Persons Engaged in Hazardous Recreational Activities.

(1) Any person who participates in or assists in a hazardous recreational activities operated by a governmental entity assumes the inherent risks in these activities, irrespective of age, and is legally responsible for all damages, injury, or death to himself or herself or other persons or property that result from these activities.

(2) No person may participate in a hazardous recreational activity or allow another person who is in his or her custody or control, to engage in a hazardous recreational activity unless the participant wears a helmet, elbow pads and knee pads.

(3) While engaged in a hazardous recreational activity, a person must act within the limits of his or her ability and the purpose and deof the equipment used, must maintain control of her or her person and the equipment used, and must refrain from acting in any manner that may cause or contribute to death or injury to himself or herself or to other persons.

(E) Limitation. Nothing herein shall authorize the use of any facility or area for hazardous recreational activities, nor shall anything herein authorize a person to engage in a hazardous recreational activity, except in a facility properly designed, maintained and permitted for that purpose.

(F) Penalties. Any person who violates sub-sections (B) or (D) of this section shall be guilty of an infraction, pursuant to N.C. Gen. Stat. § 14-4 (b), punishable by a penalty of up to \$50.00.

THIS AMENDMENT IS EFFECTIVE WHEN ADOPTED.

Acceptance of Metcalf Proposal:

Corporate Background

The Policy Group is a public policy consulting firm located in Asheville, North Carolina. The firm offers governmental relations, lobbying and business development services to businesses and nonprofits that do business or have regulatory and legislative concerns with state and local governments; public and private colleges and universities; and local school districts. We specialize in bringing businesses and government together to work for common community goals. We recognize that businesses and nonprofits are greatly impacted by governmental policy and that they must have access to competent public sector counsel and aggressive representation.

The philosophy of The Policy Group is simple and straightforward. We believe that the success of our clients is rooted in our twenty years of experience in policy development and implementation. From this experience we have developed a clear understanding of the complex

nature of government and how government works. In addition, we believe that governmental leaders and policy makers respond to those who they know and trust. That trust does not come easy, it must be earned. It is based on relationships that are built over years of working together.

Scope of Work

Based on our discussions and our understanding of the scope of work, The Policy Group offers the following consulting services:

- \$ *General governmental relations*
- \$ *Collection of political intelligence*
- \$ *Analysis of policy status and political considerations*
- \$ *Introduction of Town of Boone officials to key elected leaders and appropriate regulatory and policy making officials*
- \$ *Development and ongoing maintenance of relationships with key elected officials and appropriate regulatory and policy making officials*
- \$ *Development and implementation of governmental relations strategies*

Approach

At The Policy Group we strongly believe that additional components to the success of our clients are hard work and smart planning. For each engagement, we develop a comprehensive strategic plan that is thoughtful, systematic and well researched. Elements of The Policy Group approach and planning process include the following:

Step 1: Client review and understanding

Step 2: Policy initiatives and message development

Step 3: Political environmental assessment

Step 4: Policy status assessment Step

5: Strategic plan development Step 6:

Strategic plan implementation

Step 7: Continuous strategic plan review and update

Cost Proposal

The Metcalf Group will provide the scope of work outlined above for a monthly retainer of \$5,000.

VOTE:Aye-All

Nay-None

ASDREX & DUNBAR ANNEXATION PUBLIC HEARINGS

Mayor Clawson opened the public hearings at 6:41 p.m. There being no public comments, the hearing closed at 6:41 p.m.

ADOPTION OF ZONING AMENDMENTS

Development Services Director John Spear presented the following cases:

Case 2006192 - Den Mac LLC Conditional District General Business (CB-3) zoning approval to permit a change of use of one building from a restaurant and dance hall (UDO Use 8.100) to retail and storage (UDO Use 2.111 and 10.210) and construction of a new building of approximately 20,000 square feet with associated site improvements. The applicant is also requesting vesting of the project for five (5) years. This project is located on the southwest corner of the intersection of Bamboo Road (NCSR 1514) and Brook Hollow Road (NCSR 1614). Development Services Director Spear said the Planning Commission had recommended approval of the rezoning request.

On a motion by Council member Brantz, seconded by Council member Pepin, Council moved that the application is consistent with all objectives and policies for growth and development of the 1993 Boone Comprehensive Plan.

VOTE:Aye-All
Nay-None

On a motion by Council member Pepin, seconded by Council member Spann, Council moved that the Town Council finds that this application is both reasonable and in the public interest for the following reason:

! The project is beneficial to the community.

VOTE:Aye-All
Nay-None

On a motion by Council member Pepin, seconded by Council member Mason, Council moved that the zoning application be approved with the following conditions:

1. The project is approved subject to a petition from Den Mac, LLC dated April 6, 2006 and plans "DEN-MAC GENERAL BUSINESS-CONDITIONAL ZONING" prepared by Municipal Engineering Services Company, P.A. dated April 4, 2006. Where there is a conflict between the application information and the plans, the plans shall control. 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 that are in compliance with the provisions of the UDO and other provisions of the Town and State Codes shall be submitted.
3. Vesting for this project is approved for five (5) years.
4. Prior to proceeding with Phase Two a driveway permit shall be obtained from the North Carolina Department of Transportation.
5. A petition for voluntary annexation shall be submitted.

VOTE:Aye-All
Nay-None

Case 20060210 - C.C. Bear Development, Inc. Conditional District General Business (CB-3) zoning approval to permit construction of a combination-use project consisting of office, retail, restaurant and residential uses. The total project will be 40,500 square feet. This project is proposed to be constructed in two phases, and the applicant is requesting vesting for four (4) years. This project is located between NC 105 Extension and Horn in the West Drive south of King Street. Development Services Director Spear said the Planning Commission had recommended approval of the rezoning request.

On a motion by Council member Mason, seconded by Council member Brantz, Council moved that the application is consistent with all objectives and policies for growth and development of the 1993 Boone Comprehensive Plan.

VOTE:Aye-All
Nay-None

On a motion by Council member Mason, seconded by Council member Spann, Council moved that the Town Council finds that this application is both reasonable and in the public interest for the following reason:

! The development represents the type of development the comprehensive plan supports and is a fine example of mixed use development for our community.

VOTE:Aye-All
Nay-None

On a motion by Council member Brantz, seconded by Council member Mason, Council moved that the zoning application be approved with the following conditions:

1. The project is approved subject to petitions from Richard Todd Greene, George Calvin Greene III, William Len Greene, Freda Greene, Cheryl Greene, Ann Alexander, Kenneth Wood, Ellen Wood, Robert D. Hollar, Janette Willard, Helen Miller, and Shanty Greer, and plans "BOONE SQUARE NC HWY 105 EXT." prepared by Municipal Engineering Services Company, P.A. dated April 11, 2006. Where there is a conflict between the application information and the plans, the plans shall control. 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 that are in compliance with the provisions of the UDO and other provisions of the Town and State Codes shall be submitted.
3. Vesting for this project is approved for four (4) years.
4. This project is approved to be developed in two phases.
5. Prior to issuance of a zoning compliance certificate an NCDOT driveway permit shall be obtained.
6. Prior to issuance of a zoning compliance certificate, approval to fill the wetland shall be obtained from the US Army Corps of Engineers.
7. The five parcels shall be combined prior to issuance of any certificate of occupancy.
8. An easement shall be recorded authorizing the driveway and a portion of the parking lot to be located on the parcel to the south before a permit is issued.

VOTE:Aye-All
Nay-None

Case 20060211 - The Watauga County Board of Education General Use District request to rezone portions of the Watauga High School Campus and surrounding property from R-3, Multi-family Residential to B-3, General Business. Development Services Director Spear said the Planning Commission had recommended approval of the rezoning request.

On a motion by Council member Wilcox, seconded by Council member Pepin, Council moved that the application is consistent with all objectives and policies for growth and development of the 1993 Boone Comprehensive Plan.

VOTE:Aye-All
Nay-None

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

! Because the requested land use is consistent with the surrounding area.

VOTE:Aye-All
Nay-None

On a motion by Council member Brantz, seconded by Council member Mason, Council moved that the zoning application be approved.

VOTE:Aye-All
Nay-None

Case 20060213 - Watauga County Conditional District Central Business (CB-1) zoning approval to permit conversion of the building that previously housed the Watauga County Law Enforcement Center to a two-level parking structure. This project is located on the northwest corner of the intersection of Water Street and Queen Street. Development Services Director Spear said the Planning Commission had recommended approval of the rezoning request. Development Services Director Spear said a revised plan was presented to the Planning Commission reflecting a reduction in the number of parking spaces, 47 to 33. Council member Wilcox pointed out that the County is proposing a split-level parking lot and not a parking deck. Council member Spann questioned the amount of buffering. County Manager Rocky Nelson said the property line facing Queen Street will have greenery and picnic tables.

On a motion by Council member Brantz, seconded by Council member Spann, Council moved that the application is consistent with all objectives and policies for growth and development of the 1993 Boone Comprehensive Plan.

VOTE:Aye-All
Nay-None

On a motion by Council member Brantz, seconded by Council member Spann, Council moved that the Town Council finds that this application is both reasonable and in the public interest for the following reasons:

VOTE:Aye-All
Nay-None

On a motion by Council member Brantz, seconded by Council member Mason, Council moved that the zoning application be approved with the following conditions:

1. The project is approved subject to a petition from Watauga County dated April 11, 2006 and plans "Watauga County Parking Structure" prepared by Appalachian Architecture, PA dated April 11, 2006. Where there is a conflict between the application information and the plans, the plans shall control. 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 that are in compliance with the provisions of the UDO and other provisions of the Town and State Codes shall be submitted.
3. Prior to issuance of a zoning compliance certificate, an NCDOT driveway permit shall be obtained.

VOTE:Aye-All
Nay-None

FINAL PLAT APPROVAL - COUNCIL OAKS SUBDIVISION

Development Services Director John Spear presented the final plat for the Council Oaks subdivision. This 82-lot subdivision is located off Farthing Street on about 93-acres and is being developed by WWC Development, LLC. Development Services Director Spear reported that the subdivision has been constructed in compliance with the regulations and that all Town departments have approved the subdivisions. On a motion by Council member Wilcox, seconded by Council member Brantz, Council approved the final plat for the Council Oaks subdivision. Before voting, Council member Brantz questioned how the water allocation was granted for this subdivision. Public Utilities Director Rick Miller explained that water was allocated to the subdivision in October, 2001, before any restrictions on water were placed.

VOTE:Aye-All
Nay-None

ADOPTION OF ORDINANCE - ASDREX ANNEXATION

Development Services Director John Spear said this is the third and final step in the non-contiguous annexation request. Development Services Director Spear said the annexation was required as a contingency for water and sewer services and that the annexation will be effective June 30, 2006. On a motion by Council member Mason, seconded by Council member Pepin, Council moved to adopt the following annexation ordinance:

Ordinance 06-03

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE TOWN OF BOONE, NORTH CAROLINA (Asdrex)

WHEREAS, the Town Council has been petitioned under G.S. 160A-58.1 to annex the area described below; and

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

WHEREAS, the Town Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at Council Chambers at 1500 Blowing Rock Road at 6:30 p.m. on May 18, 2006 after due notice by Watauga Democrat on May 3, 2006; and

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

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

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

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

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

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

Beginning at a point in the centerline of U.S. Highway 421 North, a corner with Roberts, said point being located N 55°15'10"W 81.25' from an existing iron pipe found being shown as an existing ½" conduit pipe in the margin of U.S. Highway 421 on the Annexation survey for the Snyder Family Limited Partnership recorded in Plat Book 17 Page 255, being a point on the Corporate Limits on the Town of Boone, thence N70°10'33"W 64.98' to a point center line of U.S. Highway 421 North, thence N68°45'33"W 134.74' to a point in the centerline of U.S. Highway 421 North, a common corner with Eggers, thence running with Eggers the following 9 calls, N 12°20'32"E 37.55' to an existing iron, thence N12°41'21"E 13.05' to a new iron in the

R/W of U.S. Highway 421 North thence N12°41'21"E 11.47' to an existing iron, thence N22°12'13"E 26.43' to a new iron, thence N28°58'47"E 54.77' to a new iron, thence N41°51'47"E 79.00' to a new iron, thence N42°42'47"E 121.00' to a new iron, thence N52°23'47"E 23.69' to a new iron, thence N58°35'47"E 53.81' to a new iron common corner with Eggers and Hodges, thence N70°22'41"E 50.94' with Hodges to a new iron, thence with Hodges N78°20'17"E 50.42' to a common corner with Hodges and Tennille Properties LLC, thence with Tennille Properties, LLC S00°06'70"W 215.81' to an existing iron, thence running with Tennille Properties, LLC S33°28'11"W 119.79' to an existing iron common corner with Tennille Properties, LLC and Roberts, thence with Roberts N78°56'31"W 67.48' to an existing iron pipe, thence S13°01'44"W 77.25' to a new iron in the R/W of U.S. Highway 421 North, thence with Roberts S13°01'44"W 34.74' to an existing iron (control corner), thence with Roberts S13°01'44" 15.61' to the point of beginning, containing 1.901 acres and being all of Lot 1. There is reserved a 20' R/W along the North to the Hodges and Tennille Properties, LLC's common line.

Section 2. Upon and after June 30, 2006, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Boone and shall be entitled to the same privileges and benefits as other parts of the Town of Boone. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the Town of Boone shall cause to be recorded in the office of the Register of Deeds of Watauga County and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described herein in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the County Board of Elections as required by G.S. 163-288.1.

Adopted this the 18th day of May, 2006.

Mayor

ATTEST:

Town Clerk

(ORDNANCE TO BE TYPED IN BOOK 3, PAGES 286-287)

VOTE: Aye-All
Nay-None

ADOPTION OF ORDINANCE - DUNBAR ANNEXATION

Development Services Director John Spear said this is the third and final step in the contiguous annexation request. Development Services Director Spear said the annexation was required as a contingency for water and sewer services and that the annexation will be effective June 30, 2006. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to adopt the following annexation ordinance:

Ordinance 06-04

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

WHEREAS, the Town Council has been petitioned under G.S. 160A-31 to annex the area described below; and

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

WHEREAS, the Town Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at Council Chamber at 1500 Blowing Rock Road at 6:30

p.m., May 18, 2006, after due notice by Watauga Democrat on May 3, 2006; and

WHEREAS, the Town Council finds that the petition meets the requirements of G.S. 160A-31;

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

Section 1. By virtue of the authority granted by G.S. 160A-31, the following described territory is hereby annexed and made part of the Town of Boone as of June 30, 2006:

Beginning at an existing iron (control corner) the common corner of Dunbar and Brown, thence the common line with Brown S77°00'30"E 58.28' to an existing iron, common corner of Brown and Bulla, thence the common line with Bulla S18°07'37"W 238.77" to an existing iron, common corner with Bulla and Osborne, thence with the common line of Osborne N75°29'37"W 117.35' to an exiting iron (control corer), common corner of Osborne and Dunbar, thence with the common line of Dunbar N31°15'34"E 248.10' to the point of beginning containing 0.47 acres.

Section 2. Upon and after June 30, 2006, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Boone and shall be entitled to the same privileges and benefits as other parts of the Town of Boone. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the Town of Boone shall cause to be recorded in the office of Register of Deeds of Watauga County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the Watauga County Board of Elections, as required by G.S. 163-288.1.

Adopted this the 18th day of May, 2006.

Mayor

ATTEST:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGE 288)

VOTE:Aye-All

Nay-None

**REQUEST FOR AUTHORIZATION FOR DEVELOPMENT OF PEDESTRIAN
ENHANCEMENT PROGRAM**

Mr. Larry Horine, Chairman of the Alternative Transportation/Greenway Committee, appeared before Council to request authorization from Town Council to develop a program pertaining to pedestrian enhancement. Mr. Horine explained that the first component would be the creation of a public educational program which would enlighten pedestrian and vehicular traffic participants about state laws, safety issues and the location of all cross walks in Town. The second component would be to coordinate with other agencies in order to explore enhancing pedestrian facilities within Town. Mr. Horine expected that the Committee would complete the tasks in a couple of months and report all findings to the Town Council as recommendations. After little discussion, on a motion by Council member Brantz, seconded by Council member Pepin, Council moved to authorize the Alternative Transportation/Greenway Committee to move forward with this plan.

VOTE:Aye-All

Nay-None

ACKNOWLEDGMENT OF SUPPORT - FARE-FREE PUBLIC TRANSPORTATION

Mr. Larry Horine, Chairman of the Alternative Transportation/Greenway Committee, appeared before Council to encourage Town Council to continue support of the fare-free public transportation system in Town. Mr. Horine also suggested contacting AppalCART officials to request that they respond to the needs of all citizens, not just students, when scheduling routes and times. Council member Spann agreed that AppalCART services are needed, especially during holidays.

PRESENTATION OF STATUS REPORT - STEEP SLOPE TASK FORCE

Mr. Harvard Ayers, Chairman of the Steep Slope Development and Multi-Family Task Force appeared before Council to request that Town Council consider adopting another 120-day moratorium on multi-family development. Mr. Ayers presented the history of how the task force came about and said after meeting over twenty-eight times in the past year the task force has almost completed its objective; however, the current moratorium expires on May 29th. Mr. Ayers said the task force is awaiting the completion of the geologic hazards map which will act as a guide for steep slope development. Mr. Ayers explained that the proposed moratorium will affect only multi-family development on slopes with a 20% grade or more. Council discussed at length whether or not the proposed ordinance would affect the development of the Watauga High School property. Town Attorney Sam Furguele reiterated that the moratorium was for multi-family development, not a mixed-use development that is being speculated for the high school property. After some discussion, on a motion by Council member Spann, seconded by Council member Mason, Council moved to schedule a public hearing on June 13, 2006 at 6:45 p.m. on the proposed moratorium ordinance and to request that the Town Attorney include language that this moratorium would not affect mixed-use development. Before voting, Council member Wilcox stated his objection to the ordinance as it basically quells development for another building season.

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

COMMUNITY APPEARANCE COMMISSION NOMINATIONS

Two positions are available on the Community Appearance Commission effective 6/30/06. Council accepted the application of Daniel Sturge into nomination for one of two positions on the Community Appearance Commission. Further nominations and appointments will be made at the June meeting. Council member Spann thanked Nan Chase and Joan McLaughlin for their service to the Community Appearance Commission.

PLANNING COMMISSION NOMINATIONS

Three resident positions, two ETJ positions and one ASU student position on the Planning Commission expire 6/30/06. Council accepted the nominations of Stephen Phillips and Matthew Robinson for two of the three resident positions and accepted the nominations of Mary Bolick and Gayle Turner for the two ETJ positions. Council accepted the nominations of Christina DeStanfano for the ASU student positions. Further nominations and appointments will be made at the June meeting.

BOARD OF ADJUSTMENT NOMINATIONS

Two resident positions, one ETJ position, two alternate resident positions and one alternate ETJ position on the Board of Adjustment expire 6/30/06. Council accepted the nomination of Richard Crepeau for one of the two resident positions. Council accepted the nominations of Earl Keller for the ETJ position and James Marsh for the alternate ETJ position. Council accepted the nominations of Edward Brown and Allan Scherlen for the two alternate resident positions.

Further nominations and appointments will be made at the June meeting.

CABLE TV ADVISORY NOMINATIONS

Tim Wilson's position on the Cable TV Advisory Committee expired 4/30/06. Mr. Wilson indicated that he is willing to serve again if appointed. On a motion by Council member Brantz, seconded by Council member Mason, Council moved to appoint Tim Wilson to another three-year term on the Cable TV Advisory Committee. His new term will expire 4/30/09.

VOTE:Aye-All
Nay-None

Mayor Clawson declared a break at 8:00 p.m. Council reconvened at 8:14 p.m.

SCHEDULING OF BUDGET WORKSHOPS

On a motion by Council member Spann, seconded by Council member Mason, Council moved to schedule the following budget workshops:

Thursday, June 1st - 8:30 a.m. to 5:00 p.m. - budget workshop
Monday, June 12th - 8:30 a.m. to 5:00 p.m. - budget workshop (if needed)
Tuesday, June 13th - 6:30 p.m. - budget public hearing
Tuesday, June 13th - 7:00 p.m. - comprehensive plan public hearing.

VOTE:Aye-All
Nay-None

ADOPTION OF ORDINANCE - INITIATE RADFORD QUARRIES LAWSUIT

Town Attorney Sam Furguele said the proposed ordinance would initiate civil action against Radford Quarries to collect unpaid UDO penalties. On a motion by Council member Mason, seconded by Council member Pepin, Council moved to adopt the following ordinance:

ORDINANCE # 06-05

WHEREAS, the Town of Boone has duly adopted a Unified Development Ordinance, (hereinafter, the "UDO"); and

WHEREAS, on February 16, 2006, the Town Development Services Department issued a Notice of Violation to Mr. D. J. Cecile, Vice President/CFO of Radford Quarries of Boone, Inc. (hereinafter, "Radford"), advising Radford that on November 9, 2005, personnel from the Town's Development Services Department inspected its property located southeast of Charlie Hollar Road and identified by Watauga County PIN # 2920-18-9150-000, and that said inspection revealed the property was primarily being used for parking of vehicles and storing equipment outside of enclosed structures, UDO Use Description 10.310, a use not permitted on the property, which is in an R-A Zoning District. Radford was given until and including March 1, 2006 to discontinue its violation or be subject to civil penalties in the amount of \$100.00 per day.

WHEREAS, Radford failed to correct its violation until March 28, 2006, thus subjecting itself to a civil penalty of \$100 per day for twenty-seven days, for a total of \$2,700.00, and

WHEREAS, although it was advised in the Notice of Violation of its right to appeal the determination by the Town that it was in violation of the UDO, Radford did not appeal the Notice of violation to the Boone Board of Adjustment, making the notice of violation the Town's final decision;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN

OF BOONE, NORTH CAROLINA, PURSUANT TO N.C. GEN. STAT. § 160A-175, AS FOLLOWS:

1. Radford Quarries of Boone, Inc. is the owner of that certain real property situated at located southeast of Charlie Hollar Road and identified by Watauga County PIN # 2920-18-9150-000. Said real property is located within the zoning jurisdiction of the Town of Boone.
2. Radford Quarries of Boone, Inc. has violated the Unified Development Ordinance of the Town of Boone by using said property, which is zoned R-A, for parking of vehicles and storing equipment outside of enclosed structures, UDO Use Description 10.310, a use not permitted on the property. After it was notified of its violation, Radford Quarries failed to take action to discontinue its violation for twenty-seven days after its “cure” period expired, subjecting it to a civil penalty of \$2,700.00. It has paid the Town none of this penalty.
3. The Town Attorney is ordered to initiate a legal action in the General Court of Justice in Watauga County, North Carolina against Radford Quarries of Boone, Inc., seeking to collect the unpaid penalties for its violations of the UDO, including attorney’s fees and costs.
4. This Ordinance shall be recorded in the registry of the Watauga County Register of Deeds under the name Radford Quarries of Boone, Inc.

Adopted this 18th day of May, 2006.

Mayor

Attest:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGES 289-290)

VOTE:Aye-All
Nay-None

ADOPTION OF CONTRACT - HOBBS. UPCHURCH & ASSOCIATES

Public Utilities Director Rick Miller said this contract would allow Hobbs, Upchurch & Associates to re-evaluate the projected costs for the three remaining projects on the five-year capital improvement plan. Those projects are:

Project #4 - Tracy Circle & Edgewood Drive
Project #5 - Crest Drive, Mac Street and Arbor Lane
Project #6 - Pine Street, Woodland Drive and Blanwood Drive.

After little discussion, on a motion by Council member Mason, seconded by Council member Brantz, Council moved to adopt the following contract:

AGREEMENT

Scope of Engineering Services

Listed below is the Scope of Services divided into two (2) categories to be provided for the execution of this project:

I. EVALUATION:

Hobbs, Upchurch & Associates will evaluate the following projects:

§ Project 4: Tracy Circle and Edgewood Drive

\$ Project 5: Crest Drive, Mac Street and Arbor Lane
\$ Project 6: Pine Street, Woodland Drive and Blanwood Drive

Each project will be evaluated to determine project scope and project path to assist in determining the total project cost. Each will include a GIS map with proposed project layout for each project.

II. COST ESTIMATION:

Hobbs, Upchurch & Associates will provide a detailed preliminary cost estimate including materials, engineering, permitting and asphalt overlay for each project.

PROPOSED FEE

In consideration for the ENGINEER's services, the OWNER (Town of Boone) agrees to pay the ENGINEER a Lump Sum Fee of \$3,500.

ADDITIONAL SERVICES

Any work not specifically listed in this proposal will be performed on an as needed basis. Additional services will be negotiated prior to the completion of work or in accordance with the attached Hourly Rate Schedule.

STANDARD TERMS AND CONDITIONS

In the event the ENGINEER has not performed according to the terms of the Agreement, for any reason, including but not limited to substantial and unjustified delays in work without approval of the OWNER, the ENGINEER is found incapable of performing the class of work specified, or other breach of the terms of the agreement, the OWNER may in its sole discretion declare the ENGINEER in default of the terms of this Agreement. Upon declaration by the OWNER of default of the ENGINEER, the OWNER shall furnish written notice of such default at the last known address which the ENGINEER has provided to the OWNER. If the ENGINEER has not satisfied such default within ten (10) days from the date of the default, the OWNER shall consider the Agreement terminated and in such termination agree to pay the ENGINEER for work performed, with the OWNER reserving unto itself any and all rights to damages or other relief allowable by law. The failure of the OWNER at any time to require performance by the ENGINEER of any provision hereof shall in no way affect the right of the OWNER hereafter to enforce same.

Payment shall be made on the basis of monthly invoices submitted to the OWNER by the ENGINEER as the project progresses. All invoices are due and payable upon receipt in accordance with the aforementioned "Payment Schedule." Owner shall pay each invoice in full within 30 days of the date of the invoice. Invoices are subject to review prior to payment by OWNER to ENGINEER.

VOTE:Aye-All
Nay-None

ADOPTION OF AMENDMENT #1 - WK DICKSON CONTRACT

Public Utilities Director Rick Miller explained that the amendment to the contract is needed because of a conflict with unmarked underground utilities. Since the utilities were unmarked, the engineer needed additional construction observation time to make sure the utilities were not disrupted. The cost for the additional time is \$3,000. After little discussion on a motion by Council member Pepin, seconded by Council member Brantz, Council moved to adopt the following contract amendment:

AMENDMENT NO. 1

CONTRACT FOR ENGINEERING SERVICES BETWEEN THE TOWN OF BOONE, NORTH CAROLINA

AND

**W. K. DICKSON & CO., INC.
HILL STREET GRAVITY SEWER PROJECT
WKD# 50162.00.CL**

Amendment No. 1 modifies the Contract for Services between Town of Boone, North Carolina (OWNER) dated May 2, 2005, and W. K. Dickson & Co., Inc. (CONSULTANT) for professional engineering services related to the Town of Boone Hill Street Gravity Sewer Project. The purpose of Amendment No. 1 is to adjust the compensation to the CONSULTANT to reflect additional services associated with a change in project scope as described below.

Modification to Scope of Services:

The OWNER requests the CONSULTANT to proceed with additional Construction Services for Town of Boone Hill Street Gravity Sewer Project. Limited Construction Services of Construction Observation as described below will be provided.

The CONSULTANT shall provide the services as listed below for the Town of Boone's Hill Street Gravity Sewer Project so that they may prepare an Engineer's Certification to the State of North Carolina for the project.

As required by the State, the Engineer's Certification shall state the following:

“I, [State Your Name], as a duly registered Professional Engineer in the State of North Carolina, having been authorized to observe periodically the construction of the Cullasaja River WWTP Expansion, Macon County project for the Permittee hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction such that the construction was observed to be built within substantial compliance of this permit; 15A NCAC 2H .0200; Division of Water Quality's (Division) Gravity Sewer Minimum DeCriteria adopted February 12, 1996 as applicable; the Division's Minimum deCriteria for the Fast-Track Permitting of Pump Stations and Force Mains adopted June 1, 2000 as applicable; and other supporting materials.”

The CONSULTANT's Construction Observers will be present for complete part time construction and testing in order to provide final certification of the project.

The total cost of the amendment shall be \$3,000.00 (i.e. up to 5 days of additional Construction Observation at \$600/day).

Attachment B - Basis of Compensation

Paragraph 1 - Basic Services: The fee the OWNER shall pay the CONSULTANT for the additional services set forth in modified Scope of Services described above shall be as follows:

§ Sewer Construction Observation: This phase shall be increased from \$4,800 to \$7,800 (Lump Sum).

VOTE:Aye-All
Nay-None

MONTHLY WATER USE STATUS REPORT

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

As requested by Town Council, staff and I have compiled the following information concerning water use for the month of April. The Water Treatment Plant recorded a maximum daily demand of 2.061 million gallons on Saturday, April 29, 2006, and the average daily demand was 1.735 million gallons for the entire month. If all allocated projects were online and utilizing the amounts of water calculated, the total for the month would be 2.293 million gallons for the maximum daily demand and 2.015 million gallons for the average daily demand.

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 twelve years.

As adopted in Ordinance 05-01, the Town of Boone Council has appropriated for 25,000 gallons per day usage for year 2006 for allocation to customers. Council chose to allocate 16,441 gallons from 2006 leaving a balance of 8,559 gallons for allocation. Eight previously approved allocations did not contact us within the one year period and did not acquire all necessary permits, as required in Ordinance 05-01. These water allocations totaled 16,965 gallons per day and combined with the 2006 balance, created a total of 25,752 gallons per day that can be allocated for use in 2006. The total water allotment remaining for the year 2006 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. At the last Town Council Meeting, Council chose not to re-appropriate 5000 gallons per day allotment for one project and since then the Utilities Department approved two projects that subtracted from the 2006 allotment.

As you can see in the attached “Approved Water Connections” chart, the Public Utilities Department now has 21,644 gallons per day remaining for allotment in 2006. Also, be reminded that all calculations are based on 60% of the North Carolina Discharge Rate Schedule.

			Approved Water Connections			
			2006			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						25000
		4165	John Cook	May-05	8038	16962
			CataCorner Investments	Jul-05	7296	9666
			CAT Tractor	Oct-05	1107	8559
			2005 Balance Carry Over	Jan-06	228	8787
**Relinquished		Previously	Approved Allocations	Feb-06	16965	25752
Bob Young	Feb-06	450				25302
Sarvos Properties	Feb-06	2100				23202
William Klein	Feb-06	540				22662
Andy Garrett	Feb-06	90				22572
Charles Ulerey	Feb-06	2985				19587
Eric Woolridge	Feb-06	540				19047
Ray Howell	Feb-06	104				18943
			Lynhill Daycare	Mar-06	693	18250
Gene Jensen	Mar-06	180				18070
BREMCO	Mar-06	15				18055
Mels Diner	Mar-06	360				17695
Raymond Verling	Mar-06	430				17265
Jeff Nichols	Mar-06	180				17085
	(Not	Reallocated)	VIA LLC/Ed Street Co.	Apr-06	5000	22085
ECR Software	Apr-06	81				22004
S&T Enterprises	Apr-06	360				21644

APPROVAL OF BUDGET AMENDMENTS

Finance Director Amy Davis presented the following budget amendments:

DESCRIPTION	ACCOUNT #	TO:	FROM:
Stormwater Assessment	010-411-000-549109	\$5,612.00	
Transfer from Sanitation Capital Reserve	010-000-000-498013		\$5,612.00
Pay Study	010-411-000-549127	\$15,000.00	
Appropriated Fund Balance	010-000-000-499900		\$15,000.00

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

VOTE:Aye-All
Nay-None

REQUESTED APPEARANCE - MATT COOPER

Mr. Matthew Cooper appeared before Council to update Council on the community garden project located off Leola Street. Mr. Cooper said that twenty-five of the thirty-three lots available have been rented for the season. Mr. Cooper questioned if the split rail fence could be removed and if a mailbox could be placed for a physical address. Council was agreeable to those requests. Mr. Cooper then introduced Mike Duus, a graduate student, who oversees the deof passive solar greenhouses. Mr. Duus requested permission to construct a passive solar greenhouse on the property which would allow for plant production year round. Council member Pepin questioned how large the greenhouse would be. Mr. Cooper said the dimensions are 24' x 72' which includes office space. Town Manager Greg Young said that Development Services would need to be contacted about setbacks and permitted use, and that a modification to the current lease and insurance on the building is needed. Development Services Director John Spear pointed out that an agricultural use is not allowed in a B-3 zoning district, which is what the property is currently zoned. Council member Mason directed Development Services to present a recommendation to Council on permitting an agricultural use in a B-3 zoning district. Council agreed.

REQUESTED APPEARANCE - WILKENS INVESTMENT LLC

Town Attorney Sam Furguele opened the public hearing at 8:44 p.m. to hear sworn testimony from Douglas Wilkens, Mark Stephens, Lou Dessaint, Mary Cavanaugh, Public Utilities Director Rick Miller and Development Services Director John Spear on a request for sewer service to property located off Deck Hill Road. Mr. Wilkens explained that the 50-acre tract is located at the top of Deck Hill Road and that plans include an affordable housing single-family subdivision along with protected greenspace. Mr. Mark Stephens from McGill & Associates said the applicants are requesting sewer service only since water service is not available to the property. Mr. Stephens testified that the property is located in the WSII and WSIV watershed protection districts and that the Town’s sewer line is 1,200 feet away from the property. Mr. Stephens said the developer is willing to extend the sewer to the property. Council member Mason asked what the developers are planning in terms of affordable housing. Mr. Wilkes testified that a lot would sell for \$125,000 with acreage costing up to \$275,000 per lot. Public Utilities Director Rick Miller testified that the Deck Hill area is currently served by a 6" clay sewer line and that it must be upgraded to an 8" line if the sewer connection is allowed. Council member Brantz questioned the developers on plans if the sewer connection is denied. Mr. Miller assumed that septic systems would be used. Mr. Stephens agreed, but said the sewer connection would have less of an environmental impact. Public Utilities Director Miller reiterated that the main sewer line, which is now a 6" line, would have to be upgraded to an 8" line if the sewer connection is allowed. Mr. Lou Dessaint reiterated that the developers are willing to pay for the installation of the sewerline and would be willing to pay for the line upgrade also. Council member Spann questioned if the property is located in the rural growth area. Development Services Director

John Spear said yes and that the property is in the ETJ and zoned R-1, and that the development would have to be presented to the Planning Commission to ensure compliance with the watershed regulations. Council member Pepin questioned the percentage of slopes on the property. Development Services Director Spear commented that the property falls between 20 to 70% on steepness. Mr. Dessaint agreed but mentioned that the steepest slopes will be dedicated conservation space. Council member Brantz questioned what the values of the single-family homes would be, once constructed. Mr. Dessaint said about \$700,000 per lot which would be a significant tax increase to the Town if annexed. Ms. Mary Cavanaugh, who lives on Deck Hill, testified that the vast majority of the property is 30% or above in steep slopes and that the thoughts of adding forty or more homes on Deck Hill Road is frightening. There being no further comments, the public hearing closed at 9:13 p.m. Council member Spann commented that there are too many problems associated with the project, such as the steep slopes, the inadequate sewer facilities and the location of the project in a rural growth area. Council member Mason agreed, stating that the project density was of concern to her also. On a motion by Council member Pepin, seconded by Council member Spann, Council moved to deny the sewer request.

VOTE:Aye-All
Nay-None

REQUESTED APPEARANCE - FSH AND BNC PROPERTIES

Town Attorney Sam Furguele opened the public hearing at 9:15 p.m. to hear sworn testimony from Gene Norris, Public Utilities Director Rick Miller and Fire Chief Reggie Hassler on a request for a water tap to property located off Archie Carroll Road. Mr. Norris explained that the water tap is needed in order to provide a sprinkler system for a woodworking shop. Mr. Norris said the woodworking shop provides jobs for 10 people at this time and, if a new facility can be constructed, plans are to double the number of employees. The property is located outside the Town's zoning jurisdiction in Watauga County; however, a water line is accessible via a private easement from Archie Carroll Road. Mr. Norris explained that, unless the tap for the sprinkler system is approved, it would be cost prohibitive to provide a reservoir system. Council member Brantz questioned how much water would be needed. Public Utilities Director Rick Miller said there is no way of knowing since water would be used only if there is a fire emergency. Council member Mason questioned if the property could be annexed. Public Utilities Director Miller said he did not believe it could be annexed since it is part of a subdivision. Mr. Norris reiterated that this connection would not be an impact to the Town's water system, unless there is a fire emergency. Council member Spann asked Mr. Norris if he would be willing to abide by the Town's community appearance standards when constructing this new facility. Mr. Norris said he was unsure since he has not seen the requirements. Council member Mason asked if there is a monthly charge for the sprinkler line and if there are any other sprinkler-only connections. Public Utilities Director Miller said there is not a monthly charge and that there are no other sprinkler-only connections. Mayor Clawson requested that Fire Chief Reggie Hassler testify on this request. Fire Chief Hassler testified that the fire sprinkler should be constructed to meet Town of Boone standards since the Town is more stringent than state codes. Council member Mason expressed her concern about continually making policies in this area of the county without any landuse planning in place. Council member Wilcox agreed that zoning is needed in that corridor; however, he stated that this business is one of the few substitutes for the dying furniture industry and that the Town should try to support this request. Council member Mason asked if the request could be tabled for a couple of months in order to contact the County about extending our ETJ into that area. Mr. Norris said that, if a decision could not be made at this meeting, he would withdraw the request. Council member Brantz asked if this would be the only structure on the property. Mr. Norris said yes. The public hearing closed at 9:50 p.m. Town Attorney Furguele reminded Council that, since this request concerns property outside the Town limits, the Council could place any conditions on the request and require UDO standards be met for certain zoning districts. After little discussion, on a motion by Council member Brantz, seconded by Council member Wilcox, Council moved to grant the water tap for the sprinkler-only system, as long as the sprinkler system is constructed according to Town of Boone Fire Codes and that the facility is constructed according to UDO standards for an M-1 zoning district.

VOTE:Aye-All
Nay-None

REQUESTED APPEARANCE - JOHN GRASINGER OF CC BEAR DEVELOPMENT, INC.

Town Attorney Sam Furgiuele opened the public hearing at 9:54 p.m. to hear sworn testimony from Alan Crees, John Grasinger and Public Utilities Director Rick Miller on a request for water and sewer connections to property located off Highway 105 Extension. Mr. Grasinger testified that he plans to construct the project in two phases over the next two years. The project is a mixed-use development consisting of an office building, condominiums and a restaurant. Mr. Grasinger requested that the Phase I water allocation of 2,550 gallons be allocated from 2006 and that the Phase II water allocation of 4,434 gallons be allocated from 2007. Mr. Grasinger also requested that his water rights be extended the same amount of time, four-years, as the conditional zoning vested rights. Mr. Alan Crees, Engineer with Municipal Engineering, also requested that the project be credited the amount of water the existing houses now use and that a credit be issued for availability fees. Council member Pepin asked if some of the existing houses will be moved. Mr. Grasinger said that he plans to meet on May 19, 2006 to discuss moving the houses. Public Utilities Director Miller clarified that the total impact of the project will be less than 6,984, but that he does not know what the figure will be at this time. There being no further comments, the public hearing closed at 10:02 p.m. On a motion by Council member Pepin, seconded by Council member Brantz, Council moved to grant in 2005 the water allocation for Phase I of the project and water for Phase II out of 2007 allocations. Actual figures will be determined by the Public Utilities Department.

VOTE:Aye-All
Nay-None

PUBLIC COMMENT - MARTI WILSON

Ms. Marti Wilson appeared before Council to request funding for equipment and site improvements to the Boone Tot Lot which is located next to the Watauga County Swim Complex. Ms. Wilson said any support the Town can give will be appreciated.

CLOSED SESSION

On a motion by Council member Wilcox, seconded by Council member Brantz, Council moved to enter Closed Session at 10:09 p.m. pursuant to NCGS 143-318.11a)3)5) in order to discuss ASU violations; property acquisition and Liberty Tax Service violations.

VOTE:Aye-All
Nay-None

On a motion by Council member Mason, seconded by Council member Brantz, Council moved to exit Closed Session at 10:28 p.m.

VOTE:Aye-All
Nay-None

ACTION FOLLOWING CLOSED SESSION

On a motion by Council member Mason, seconded by Council member Brantz, Council moved to adopt the following ASU sewer agreement:

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

AGREEMENT

This Agreement, made this ____ day of _____, 2006, by and between Appalachian State University, an agency or instrumentality of the State of North Carolina and a constituent institution of the University of North Carolina (hereafter referred to as "ASU") and the Town of Boone, (hereafter "the Town"), known and referred to collectively as "the parties."

WITNESSETH

THAT WHEREAS ASU controls certain land and facilities which are owned by the State of North Carolina and served by utilities, including, but not limited to sewer lines, constructed and/or maintained by the Town; and

WHEREAS, The Town desires access to such land and facilities for the purposes herein described; and

WHEREAS, the Town wishes to insure that ASU's connections into the Town sewer system are fully compatible with the Town's sewer system and the Town's Water and Sewer Use Code, and further wishes to avoid future questions concerning the accuracy of sewer use charges by the Town to ASU; and

NOW, THEREFORE, for and in consideration of the mutual promises herein contained, the Parties agree as follows:

I. Compatibility of ASU meters with Town Sewer System:

- 1.0 Within five years from the execution of this Agreement by ASU, ASU will calibrate all of its sewer meters and will replace or repair any meters which are inaccurate to a degree exceeding + or - 4% of the correct reading, and shall replace all sewer meters which do not have the capacity to measure usage in 1,000 gallon increments. Any new meters which are installed by ASU in the future will be compatible with the requirements of the Town of Boone's Water and Sewer Code, including the capacity to be "touch read," and within five years from the execution of this Agreement by ASU, ASU will fit all meters which can be so fit with "touch read" capacity. ASU will confer with appropriate staff of the Town's Public Utilities Department before installation of any new meters so as to determine such compatibility. Any meters which are not presently equipped as touch-read meters will be retro-fitted within five years.

II. Access by Town to ASU lands and facilities

1.0 Grant:

ASU hereby grants permission to the Town to access all ASU lands and facilities served by Town utilities (hereinafter called "Facilities") for the following purposes: installing, inspecting, operating, maintaining, repairing and reconstructing its sewer lines, and such pipes, manholes, fittings, fixtures and other accessories as from time to time may be required, together with the full right of access to and egress from said area. (hereinafter referred to collectively as "Town activities").

2.0 Term:

Town shall be permitted access to the Facilities from March 1, 2006 to February 28, 2009, for the purposes stated above. Unless either of the parties notifies the other within thirty days prior to the end of this or subsequent renewal terms of its desire that the Town's access, created hereunder, should terminate, the Agreement will automatically renew for an additional three year period thereafter, according to the same terms and conditions.

3.0 Conditions of Use:

- 3.1 The Town shall, in all cases except emergencies, notify the ASU Director of Deand Construction or that person's designees (hereinafter referred to as "Director") of its plans to access Facilities at least three (3) business days prior to the date on which it engages in activities contemplated by this agreement. For purposes of this agreement, an emergency is a situation or set of facts that would lead a reasonable person to conclude that the condition of the Town's utilities presents an immediate or

imminent threat to public health or safety. In any case of emergency, the Town shall notify the Director or ASU's Police Department as soon as practicable after Town staff or the Town's contractor enter upon ASU lands. The Town agrees that except in an emergency, it will not engage in any land disturbance or activities in which fires, flame, weapons or other similarly potentially dangerous equipment or substances are involved without the prior written approval of the Director. Approval will not be unreasonably withheld.

- 3.2 This license shall establish a presumptive thirty-five (35) foot wide "zone" over and across the real property of the State of North Carolina, straddling existing sewer lines in such locations as lines currently exist, and creating such zones in areas where sewer lines are to be installed or constructed.
- 3.3 ASU, other than while the lines are under actual construction or repair, shall have the right to use the property of the zone, but shall avoid any use which interferes with or is inconsistent with the use thereof by the Town as provided herein. ASU shall be entitled to landscape the area within the zone with trees, bushes, flowers, grass or other vegetation and/or mulch, so long as the roots from the bushes do not damage the sewer line. In the event of any such damage, ASU shall bear the expense of necessary repairs to the sewer line and will hold the Town harmless for such damage, and will defend against and indemnify the Town for any claims against it as a result of damage to the property or person of any other sewer customer served by the damaged sewer line resulting from the damage to the sewer line thereby caused. If the Town is unable to reasonably access and repair damaged sewer lines without causing damage to such trees or vegetation, which the Town will make all reasonable efforts, in light of the circumstances, to avoid, ASU will hold the Town harmless for such damage. Any utility lines currently existing within the aforesaid zone(s) shall either remain where they are, or at the option of ASU, they shall be relocated at the expense of ASU. If new construction or renovations require modifications, relocation or repair of existing sewer lines so as to facilitate ASU's compliance with its obligations under this section, such modifications, relocation or repairs shall be undertaken by ASU at its sole expense, but no such relocation or repair will be undertaken without reasonable advance notice to the Town, in light of the circumstances. Any relocation or repair will be completed by ASU in compliance with all State and Town requirements. Should ASU construct or allow the construction of other utility lines, including but not limited to, electric, gas, telephone, cable, or water lines, within the aforesaid zone, ASU shall provide the Director of the Town Department of Public Utilities with such information as may be necessary to fully inform the Director of the exact location of any new lines, it being the intention of the parties that should the Town undertake any repairs to the sewer lines, it can do so without risking injury to its personnel or damage to other utility lines. However, if ASU elects to place other utility lines within the aforesaid zones, and the Town is unable to reasonably access and repair damaged sewer lines without causing damage to such other utility lines, which the Town will make all reasonable efforts, in light of the circumstances, to avoid, ASU will hold the Town harmless for such damage and will defend and indemnify the Town for any resulting claims against it.

4.0 Construction, Maintenance and Damage:

- 4.1 The Town shall not injure, mar or in any way deface the facilities or any other ASU property except to the extent reasonably necessary to complete the activities involved. If facilities are disturbed, the Town shall restore them to the condition that existed prior to the Town's activities. All waste resulting from the Town's activities shall be removed by the Town at its sole cost and expense.
- 4.2 Placement of equipment and supplies, and other physical arrangements –

including, but not limited to, trenching, erection of special platforms, water tanks, scaffolding, rigging, and other apparatus--shall be subject to the Director's approval except when an emergency exists and the Town is unable to obtain advance approval. However, the Director's approval shall not constitute an opinion or certification as to whether the Town's placement of equipment and supplies, or other physical arrangements, comply with applicable requirements (including, but not limited to, those imposed by the Occupational Safety and Health Act, and implementing regulations). Town shall be responsible to ASU for any damage to the Facilities through construction, maintenance or otherwise. ASU shall not be responsible for damage to or loss of Town's equipment or other property, or for any personal injury, except to the extent permitted and in the manner provided by the North Carolina Tort Claims Act, N.C.G.S. § 143-291, *et seq.*

5.0 ASU Equipment:

The Town shall not use equipment, tools or furnishings located in or about the Facilities, other than its own, without prior written approval of the Director.

6.0 Additional Users:

The license granted under this agreement is non-exclusive. Other events and activities may be held simultaneously in other parts of the Facilities. The Town shall conduct its activities so as to avoid unnecessary interference with such other activities, and ASU shall take necessary action to prevent interference with Town's activities by other licensees or invitees.

7.0 Parking:

The Town shall not place its vehicles or equipment in such way as to unnecessarily interfere with ASU parking facilities, and should there be a need to disrupt or use ASU Parking areas, the Town shall give advance written notification to the Director, describing the location and need for the disruption or use. Should Town personnel simply use ASU parking facilities for parking, they will be subject to rules and regulations then in force, and existing parking facilities shall be open to such traffic as is occasioned by the Town's use of the Facilities at the same costs charged to other visitors who operate motor vehicles on ASU's campus, but ASU shall not be required to hold such parking facilities for the exclusive use of such traffic.

8.0 Insurance:

8.1 Town shall maintain during the term of this agreement, at its own cost and expense, public liability insurance in the minimum limits of ONE MILLION DOLLARS (\$1,000,000.00) for each person injured or killed and not less than ONE MILLION DOLLARS (\$1,000,000.00) for the injury or death of two (2) or more persons in any one occurrence, and property damage insurance in the sum of not less than ONE MILLION DOLLARS (\$1,000,000.00) for each occurrence. Town shall, at the time of the execution of this agreement or no later than ten (10) days prior to the time for which use is authorized, furnish ASU with a certificate showing that such insurance has been issued and is in full force and effect.

8.2 Town shall maintain at its own cost and expense workers' compensation insurance in the amount required by statute throughout the term of this agreement.

9.0 Emergency Medical Service:

Town shall hire at Town's sole expense, or otherwise make available during its use of the Facilities, emergency medical personnel and equipment appropriate for

the nature of the Facilities, its use, and the planned activity.

10.0 Non-assignment:

This agreement shall not be assigned by either party without the prior written consent of the other party. Any attempt to assign this agreement without such consent will render this agreement null and void, and all obligations hereunder shall immediately cease.

11.0 Parties:

The relationship between the parties to this agreement is that of licensor and licensee. This agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, guardians, successors and assigns of the respective parties hereto.

12.0 Choice of Law:

This agreement shall be governed by, and construed in accordance with, the laws of the State of North Carolina.

13.0 Termination/Remedies Cumulative:

13.1 This agreement may be terminated by either party at its option by giving at least thirty (30) days' written notice of termination to the other party.

13.2 The rights and remedies herein granted to ASU in the event of default or breach are cumulative, and the exercise thereof shall be without prejudice to the enforcement of any other right or remedy available in equity or authorized by law or this agreement.

14.0 Force Majeure:

In the event that either party shall be interrupted or delayed in completing performance of its obligations hereunder by an act of God or any other occurrence whatsoever which is beyond the control of the parties hereto, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

15.0 Severability:

In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein; provided, however, in no case shall either party sue or otherwise assert any claim or cause of action, whether at law, in equity, or otherwise, against any signatory to the agreement in that person's individual capacity.

16.0 Indemnification:

Town shall indemnify and save harmless ASU and its trustees, agents and employees from all liabilities, losses, costs, damages, claims or causes of action of any kind or nature whatsoever, and expenses arising or claimed to have arisen out of any injuries or damages received or sustained by any person or persons or property, as a result of intentional acts or negligence of Town or its agents, employees, patrons or contractors.

17.0 Waiver:

No covenant or condition of this agreement can be waived except by written consent of the parties hereto. A waiver of any covenant or condition on one occasion shall not be deemed a waiver of said covenant or condition on any subsequent occasion unless such fact is specifically stated in the waiver. Forbearance or indulgence by ASU in any regard whatsoever shall not constitute a waiver of any covenant or condition to be performed by Town, and, until Town has completely performed all covenants and conditions of this agreement, ASU shall be entitled to invoke any remedy available to ASU under this agreement or any law or equity despite such forbearance or indulgence.

18.0 Entirety of Contract:

This agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matter. Each party to this agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not included herein, and that no other agreement, statement, or promise not contained in this agreement shall be valid or binding.

19.0 Access:

Director and other ASU personnel may enter any area around the Facilities

at any t

21.0 Applicable Laws and Regulations:

Town and ASU mutually agree to comply with all applicable policies, rules and regulations of ASU, and all applicable policies, rules and regulations, ordinances and laws of the Town of Boone, County of Watauga, State of North Carolina and the United States of America, in connection with the Town's use and occupancy of the Facilities. If at any time the uses of the Facilities by Town violate an applicable rule or regulation of ASU or ordinance or laws of the Town of Boone, County of Watauga, State of North Carolina or the United States of America, Town shall either cease and desist from continuing such use or surrender the Facilities forthwith upon demand of the Director. Town shall remove from service upon the request of the Director any volunteer, employee or contractor deemed by the Director to have violated any such rule, regulation, ordinance or law.

22.0 Notices:

All notices, demands and requests to be given or made hereunder shall be given or made in writing and shall be deemed to be properly given or made if sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

Appalachian State University
438 Academy Street
ASU Box 32050
Boone, North Carolina 28608
Attention: Director of Deand Construction
Telephone: (828) 262-7195
Facsimile: (828) 262-7200

As to Town:

Town of Boone
P.O. Drawer 192
Boone, North Carolina 28607
Attention: Town Manager
Telephone: (828) 262-4530

Facsimile: (828) 262-4572

Any such notice, demand or request may also be transmitted to the appropriate above-mentioned party by telegram, telephone or facsimile and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above. Any of such addresses may be changed at any time on written notice of such change sent by United States registered mail, postage prepaid, to the other parties by the party effecting the change.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement.

VOTE:Aye-All
Nay-None

On a motion by Council member Mason, seconded by Council member Brantz, Council moved to settle with Liberty Tax Service for \$250 for violations.

VOTE:Aye-All
Nay-None

ADJOURNMENT

On a motion by Council member Mason, seconded by Council member Spann, Council moved to adjourn at 10:30 p.m.

VOTE:Aye-All
Nay-None

Town Clerk

Mayor