

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL JUNE
21, 2007**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, June 21, 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; Town Clerk Freida Van Allen; Finance Director Amy Davis; Safety Officer Terry Story; Police Chief Bill Post; Fire Chief Reggie Hassler; Personnel Director Peri Moretz; Special Assistant to the Manager Jim Byrne; Development Services Director John Spear; Public Utilities Director Rick Miller and Public Services Director Blake Brown.

TENTATIVE AGENDA ADOPTION

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

-Addition of CHS/ASU lawsuit to Closed Session.

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

VOTE:Aye-All

Nay-None

CONSENT AGENDA ADOPTION

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

Minutes: May 10, 2007 Quarterly Public Hearing
 May 17, 2007 Regular Meeting
 May 24, 2007 Special Meeting
 May 31, 2007 Special Public Hearing
 May 31, 2007 Special Joint Public Hearing

Tax Releases: April 2007

Taxpayer	Year	Amount	Description
CHARLOTTE OBSERVER PUBLISHING COMPANY	2006	22.46	DOUBLE BILLED UNDER 1607703
GARCIA, LUIS ENRIQUE	2006	7.51	SOLD-TURNED IN TAG SAME MONTH AS RENEWAL MONTH
PRICE, CARL E PRICE REBA R	2006	23.83	INCORRECT SITUS
BRYAN, CLIFTON EDWARD	2006	12.88	TURN IN TAG
OSTMANN, FRANCIS ALOYSIUS III	2006	56.83	LIVES IN CUMBERLAND COUNTY
GREENE, JAMES KEITH	2006	17.32	TURN IN TAG
ADVANCED REALTY INC	2006	27.34	TURN IN TAG
PERRY, LYNN M	2006	26.50	TURN IN TAG
SNEAD, ROBERT E	2006	7.96	LIVES IN SCOTLAND

JOHNSON COOK INC	2006	25.43	TURN IN TAG
KELLNER, LYND A WEIR	2006	4.48	ADJ FOR BILL OF SALE
ERICKSON, KENT NORMAN	2006	3.87	SOLD VEHICLE
BUCKNER, BARRY SCOTT	2006	8.94	TURN IN TAG
TOTAL		245.35	

Tax Refunds: April 2007

Taxpayer	Year	Amount	Description
ANDREWS, GLENN DALE SR	2006	13.64	TURN IN TAG
PARKER, LORENE M	2006	2.00	TURN IN TAG
POPE, GREGORY E POPE, CAROLYN	2006	1.04	SOLD VEHICLE
KELLNER, LYND A WEIR	2006	8.42	TURN IN TAG
BYRD, AMBER BROOKE	2006	1.30	TURN IN TAG
SPILLMAN, ELIZABETH M	2006	49.58	TURN IN TAG
FINANCIAL SERVICES VEHICLE TRUST	2006	77.70	TURN IN TAG
TOTAL		153.68	

Tax Releases: May 2007

Taxpayer	Year	Amount	Description
MID SOUTH HOLDINGS INC	2006	80.66	SHOULD HAVE BEEN EXCLUDED BECAUSE TAX EXEMPT
FANKHAUSER, GABE	2006	10.66	ADJ CODE DID NOT CARRY
WEST JEFFERSON OFFICE EQUIPMENT	2006	33.60	INCORRECT SITUS
HICKS, JOSHUA LEE	2006	15.43	TURN IN TAG
MOUNTAIN LUMBER COMPANY	2006	166.50	TURN IN TAG
SPARKS, MARGARET K MARGARET K SPARKS LIVING TRUST	2006	11.71	TURN IN TAG
HAWTHORNE, GREG ALLEN	2006	26.33	TURN IN TAG
CRITCHERS AUTO PARTS CRITCHER, PHIL WARREN	2006	7.65	SOLD VEHICLE
CANIPE, TOBIN DOUGLAS	2006	7.93	TURN IN TAG
ANDERS, JASON MICHAEL	2005	27.22	OVERLAP OF PLATES

TOTAL		387.69	

Tax Refunds: May 2007

Taxpayer	Year	Amount	Description
OLIVIERI, VICTOR MATEO	2006	11.20	TURN IN TAG
EDMISTEN, NELL LOWE	2006	3.40	TURN IN TAG
BEUTTEL, HENRY E	2006	1.68	TURN IN TAG
POLLITT, PHOEBE ANN	2006	1.11	TURN IN TAG
TINOCO HERRERA, SINHUE JEOVANI	2006	5.35	TURN IN TAG
POARCH, VICKI RUMFELT	2006	16.61	TURN IN TAG
HAMMER, LEE ANDREW	2006	4.14	TURN IN TAG
WOODRUFF, BRENT WINFIELD	2006	13.86	TURN IN TAG
WALLER, TERRI BUCHANAN	2006	11.73	TURN IN TAG
SPARKS, MARGARET K MARGARET K SPARKS LIVING TRUST	2006	5.50	TURN IN TAG
PRESNELL, MICHAEL WAYNE	2006	31.61	TURN IN TAG
TOTAL		106.19	

Approval of Contract: Watauga County Arts Council

STATE OF NORTH CAROLINA

CONTRACT

COUNTY OF WATAUGA

This contract, made and entered into this the 1st day of July, 2007, by and between the Town of Boone, (hereinafter called "Town"), and the Watauga County Arts Council (hereinafter called "Arts Council").

WITNESSETH:

WHEREAS, the Jones House Advisory Board has recommended to the Boone Town Council that the Town enter into a contract with the Arts Council for the purpose of providing an Executive Director for the Jones House; and

WHEREAS, the Arts Council is willing to provide such a service.

Now, therefore, in consideration of the mutual promises contained herein, as well as other good and valuable consideration flowing between the parties, it is mutually agreed as follows:

1. The Arts Council shall provide an Executive Director and an Administrative Assistant for the Jones House. The Arts Council shall include as part of its

personnel committee, one representative of the Town of Boone and one from the Jones House Advisory Board. The purpose of these appointees is to assist the Arts Council in selection and performance appraisal of the Jones House Executive Director and Administrative Assistant. The duties and responsibilities of such personnel shall be as follows:

- a. To promote the purpose and goals of the Jones House Community Center which is to provide via the Jones House structure, its grounds, and any additions, a community and cultural center for performances, exhibitions, classes and meetings sponsored by various community organizations.
- b. To assist the Jones House Advisory Board in implementing policies and objectives of the Board.
- c. The Jones House Executive Director shall:

--Provide administrative support to the Jones House Advisory Board to carry out responsibilities set forth in the Jones House Resolution dated May 27, 1993.

--See that Jones House is made available to the public, 25 hours per week, for meeting space and to keep the gallery open 20 hours per week.

--Oversee facility maintenance - cleanup, etc.

--Schedule Special Events and community groups for maximum use of the house.

--Work with the Advisory Board in developing Annual Budget and Annual plan for the House.

--The Executive Director will employ and supervise part-time help as needed with input from the Personnel Committee.

--Handle other reasonable activities as directed by Jones House Advisory Board.

- 2. The Town shall pay the Arts Council the sum of \$38,566. for said services, said sum to be paid in twelve equal monthly installments, commencing on July 30, 2007.
- 3. The Arts Council agrees to help keep the Jones House open for nighttime and weekend events as much as possible.
- 4. This contract shall terminate on June 30, 2008.

IN WITNESS WHEREOF, the parties hereto have executed this contract the day and first above written.

Approval of Lease Agreement: Watauga County Arts Council

STATE OF NORTH CAROLINA

LEASE

COUNTY OF WATAUGA

This LEASE is made on the 1st day of July, 2007, by and between the TOWN OF BOONE, (hereinafter referred to as Lessor), and the WATAUGA COUNTY ARTS COUNCIL, (hereinafter referred to as Lessee).

1. **Leased Premises.** The Lessor hereby leases to the Lessee an office in the 2nd floor of the Jones House, said office being the first office to the left of the stairs. The Lessee also has the right to use the reception area and gallery on the first floor, said use to be in common with others. Gallery exhibits shall be determined and maintained by Lessee.
2. **Term.** The term of this lease shall be one (1) year beginning on July 1, 2007, and end on June 30, 2008.
3. **Rent.** The rent for this term shall be fifty dollars (\$50.00), per month and shall be due by the 1st day of each month.
4. **Hours of Operation.** The Jones House shall operate on the average of 25 hours per week, and the gallery available to the public 20 hours per week, with the exception of 2 weeks when it shall be closed. Those weeks are: One week around the Christmas holiday; and one week independently selected by the Jones House Executive Director. These weeks must be approved and mutually agreed upon by the Jones House Advisory Board and the Arts Council.
5. **Lessee's Care.** The Lessee will commit no act of waste, will take good care of the premises, and will comply with all applicable laws and regulations.
6. **Maintenance and Repairs.** Lessee shall be responsible for any damages caused by its employees, agents or invitees. The Lessor shall be responsible for repairs related to ordinary wear and tear.
7. **Supplies.** The Lessor shall allow the Lessee to use any surplus office equipment the Lessor may have at the Jones House. The Lessee shall be responsible for 1/2 of the supplies and maintenance costs of this equipment.
8. **Assignment of Subletting.** The Lessee shall not assign or sublease the premises without the prior consent of the Lessor.
9. **Alterations.** The Lessee shall not make any alterations, additions, or improvements to the premises without the prior consent of the Lessor.
10. **Utilities.** The Lessee is responsible for paying its phone bill. Lessor shall pay all other utilities.
11. **Personal Property.** The Lessor is not responsible for any personal property located within the Jones House or situated on the grounds of the Jones House.
12. **Default.** If the Lessee defaults in the payment of rent or in the performance of any conditions of this lease, the Lessor may give Lessee written notice of default. If the Lessee does not cure the default within ten (10) days after the giving of notice, this lease shall terminate, and the Lessee shall at once quit and surrender the premises to the Lessor. If this lease is terminated by the Lessor, it may thereafter resume possession of the premises by any lawful means and remove the Lessee or other occupants and their property.
13. **Governing Law.** This lease shall be governed by and construed in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, the parties hereto executed this lease in duplicate originals, and agree to all the conditions set forth above, the day and year first above written.

Approval of Agreement: Downtown Boone Development Association

STATE OF NORTH CAROLINA

AGREEMENT

COUNTY OF WATAUGA

THIS AGREEMENT, made and entered into this the 1st day of July 2007, by and between the Town of Boone, hereinafter “Town”, and the Downtown Boone Development Association, Inc., hereinafter “DBDA”.

WITNESSETH:

WHEREAS, the Town has established a Municipal Service District pursuant to N.C.G.S. 160-535, *et seq.*: and

WHEREAS, the DBDA is a non-profit corporation organized to promote, encourage and assist the revitalization and economic health and stability of the Municipal Service District; and

WHEREAS, the parties hereto desire to enter into an Agreement for the purpose of promoting the economic development of the Municipal Service District.

NOW, THEREFORE, in consideration of the mutual promise contained herein, as well as other good and valuable consideration flowing between the parties, the parties hereto agree to the following terms and consideration.

1. The term of this contract shall begin on July 1, 2007 and shall end on June 30, 2008.
2. The services the DBDA shall provide include, but are not limited to, the following activities within the Municipal Service District.
 - A. Advancing, promoting and marketing the commercial, business, economic, residential and civic development of the Municipal Service District in whatever way and by such means as shall improve orderly growth and development.
 - B. Organizing and operating revolving loan funds and facade programs contingent on availability of funds in order to finance physical improvements to structures within the Municipal Service District at a reasonable and economic cost.
 - C. Providing a coordinating service to carry on the revitalization of the Municipal Service District, including the coordination of the efforts of the public and private sectors to render the guidance, expertise planning, support and capital necessary for such revitalization.
 - D. Acting as a real estate clearinghouse in order to match the needs of business ventures with the most appropriate structures available and thereby best utilize the commercial buildings of the Municipal Service District and to increase their occupancy rates.
 - E. Providing a public relations programs for the purpose of retaining presently existing businesses and attracting new businesses to the Municipal Service District.
 - F. Increasing the efficiency of Boone’s economy by capitalizing on existing public investments in services and physical improvements and private investments in business, service, and structures.
 - G. Improving the quality of life by enhancing the physical, environmental and business conditions in central Boone.
 - H. Generating additional jobs in the Municipal Service District through the expansion of commercial, office and ancillary economic developments.
 - I. Stabilizing the tax base, enhancing property values and promoting retail sales in the Municipal Service District.

- J. Engaging in or assisting in any “downtown revitalization project” as defined in N.C.G.S. 160A-536.
3. For services rendered by the DBDA pursuant to this Agreement, the Town shall pay to the DBDA the total sum of moneys collected from the Boone Municipal Service District tax for fiscal year 2007-2008, less all expenses the Town incurs collecting said taxes.
 4. The DBDA shall submit to the Town for approval a detailed budget and work plan reflecting the services to be performed on or before April 15, 2008.
 5. This agreement is contingent upon the approval of the DBDA’s budget and work plan by the Boone Town Council.
 6. Funds made available to the DBDA pursuant to this agreement shall be expended only in accordance with applicable federal, state, and local laws.
 7. DBDA shall operate in accordance with generally accepted accounting principals approved by a certified public accountant and the Town’s Finance Officer.
 8. DBDA shall provide the Town with such records, verification of expenditures of funds and such other information pertaining to the duties of the DBDA as requested by the Town.
 9. All records of the DBDA shall be available for inspection by employees or agents of the Town at all times.
 10. DBDA shall provide the Town with an audit of its finances for fiscal year 2006-2007 performed by a certified public accountant on or before October 1, 2007.
 11. DBDA is responsible for all Municipal Service District tax revenue that it receives and spends.
 12. A member of the Boone Town Council shall be an ex-officio member of the DBDA’s Board of Directors.
 13. The DBDA shall provide the Town with a progress report on its activities on or before December 31, 2006. This report shall be in a form acceptable to the Town.
 14. In the event the DBDA breaches this Agreement and fails to cure any breach promptly upon notice thereof, the Town shall have the right to suspend or terminate the grant of funds in whole or part and declare this agreement terminated. In the event the Town breaches this Agreement and fails to cure any breach promptly upon notice thereof, the DBDA shall have the right to declare this Agreement terminated.
 15. If for any reason the Town terminates this Agreement pursuant to Section 14 above, the DBDA agrees to remit forthwith to the Town any Town funds the DBDA then has on hand less any amounts necessary to pay obligations properly incurred by the DBDA pursuant to this agreement.
 16. The DBDA shall provide the Town with a final report of its activities for fiscal year 2006-2007 on or before July 31, 2007. This report shall be in a form acceptable to the Town.

IN WITNESS WHEREOF, each party hereto has caused this agreement to be signed in its corporate name by its duly authorized representatives, and its seal to be hereunto affixed by authority of its governing board, the day and year first above written.

Awarding of Bids: Property, Liability & Workers Comp Insurance

Property & Liability -	PRIME	\$142,101
Worker’s Compensation -	Wausau	\$197,860

WATAUGA HIGH SCHOOL ANNEXATION PUBLIC HEARING

Mayor Clawson opened the public hearing at 6:34 p.m. Development Services Director John Spear said the public hearing is the final requirement for this contiguous annexation request. There being no public comment, the hearing closed at 6:35 p.m.

UPDATE ON TOWN WEBSITE REDESIGN

Council member Pepin presented an update of the home page of the Town of Boone's website. Council member Pepin commented that the script describing Boone has been changed and that a rotating calender of photos has been added. Council member Pepin solicited Council's comments on the new design.

APPROVAL OF FILING DATE AGREEMENT - CHARTER COMMUNICATIONS

Town Manager Greg Young explained that Charter Communications is requesting a change in the filing date for FCC forms 1240 and 1205. Mr. Young said those forms are usually filed in July and that Charter is now requesting to file in December. Mr. Young said Charter is attempting to have the filing dates coordinated throughout their respective franchises. Council member Pepin asked if changing the date would cause an increase in rates. Town Manager Young said no. On a motion by Council member Pepin, seconded by Council member Mason, Council moved to approve the change in filing dates for Charter Communications.

VOTE:Aye-All
Nay-None

ADOPTION OF ZONING AMENDMENT - WATAUGA HIGH SCHOOL CONDITIONAL ZONING

Case 20070229 Watauga High School Conditional Zoning - Watauga County is requesting Conditional Office and Institutional (CDO-I) and Conditional General Business (CDB-3) zoning district approval for construction of the new Watauga High School designed for 1,600 students including associated athletic facilities and a future 80,000 square foot Indoor Community Recreation Center. The County has requested a 5-year zoning vested right due to the time required for planning, funding and constructing the Indoor Recreation Center. Development Services Director John Spear said the Planning Commission unanimously recommended approval with a number of conditions. Council member Mason asked if the County has seen the conditions. Development Services Director Spear said yes. Council member Mason felt that the roadway improvements to the proposed intersections should be implemented before receiving a certificate of occupancy (condition #5). Council member Mason also suggested that bike lanes and sidewalks be installed with the understanding that funding will be through a cooperative cost-share arrangement between the County, the Town and the DOT (condition #9). Council member Mason requested that the County donate an easement along the westernmost perimeter of the high school property and advocate to ASU for an easement to connect the greenway to the neighborhood (condition #14). Council member Spann then made a motion to hear additional public comment on the case. Council member Brantz seconded.

VOTE:Aye-All
Nay-None

County Commissioner Chairman Jimmy Deal explained that the County does not have control over the DOT and felt that mandating road improvements before occupying the high school is of great concern to the County. Mr. Deal assured Council that the County Commissioners will do everything possible to work with the DOT to construct the intersections. Regarding the sidewalks and bike lanes, Mr. Deal said that every dollar spent on sidewalks and bike lanes represents less money for completing the actual high school project. Council member Mason explained that not including sidewalks and bike lanes would be negligent and felt the matter is a huge safety concern. Mr. Deal agreed there should be sidewalks but stated that asking the County to share the cost, especially when the cost is unknown, is a huge commitment that will detract from the educational building. Council member Wilcox felt that the Town should accept the Planning Commission's recommendations and provide sidewalks since that is a Town

responsibility. Council member Spann agreed. Mr. Deal discussed condition #14 and said the County is willing to sign an easement for access to the greenway. After discussing some phraseology for condition #9, Council member Wilcox made a motion to accept the Planning Commission's recommendation, with conditions. Council member Brantz seconded.

VOTE:Aye-All

Nay-None

Town Attorney Furguele reminded Council of the procedures for adopting zoning amendments.

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

VOTE:Aye-All

Nay-None

On a motion by Council member Mason, seconded by Council member Pepin, Council moved that this application is both reasonable and in the public interest for the following reasons: The new high school will meet a critical community need and is in conformity with community plans.

VOTE:Aye-All

Nay-None

On a motion by Council member Mason, seconded by Council member Pepin, Council moved to approve the zoning map amendment with the following conditions:

1. The project is approved subject to a zoning map amendment petition received from Watauga County and all accompanying civil, architectural and electrical drawings and correspondence described on the letter of transmittal dated May 1, 2007 and the revised civil plan submittal and written summary dated June 14, 2007. Minor modifications may be permitted in order 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 approval.
2. The Town Council provides that rights are vested for a period of time not to exceed (5) years in accordance with UDO Section 79.
3. Final plans shall be submitted that are in compliance with the provisions of the UDO and other applicable provisions of Town, State and Federal Codes prior to final zoning approval.
4. NCDOT and Town of Boone driveway permits shall be obtained prior to final zoning approval.
5. All roadway improvements recommended by Kimley-Horn for Scenario II for the intersection of US 421 and E. King Street/Grove Street; the intersection of US 421 and E. King Street Street/Industrial Boulevard; and the intersection of E. King Street and the proposed school access must be diligently pursued. Refer to page 42 of the Traffic Impact Study for Watauga High School, received May 1, 2007.
6. Further analysis of the traffic impact at the intersection of Cecil Miller Road and E. King Street shall be provided prior to final zoning approval. Recommended improvements, if any, must be implemented prior to issuance of certificates of occupancy.
7. Realignment of Daniel Boone Drive with the intersection of US 421 and NC 194 must be incorporated into the design of NCDOT Project U-4020 – King Street Widening. A commitment from NCDOT shall be provided prior to issuance of certificates of occupancy.
8. Planned improvements to E. King Street shall be examined by the County, Town and DOT collectively to determine how sidewalks and bike lanes in accordance with NCDOT Safe Routes to Schools (SRTS) program goals, the Boone Comprehensive Plan and the Boone/Blowing Rock Alternative Transportation Plan can be incorporated.
9. Proposed cul de sacs at the end of Daniel Boone Drive Extension and Hill Top Drive must be constructed to Town standards and dedicated for public use.
10. The planned connector road from Hill Top Drive to Daniel Boone Drive Extension shall be built to Town standards and dedicated for public use prior to closing Daniel Boone

- Drive Extension.
11. The County and School Board will donate an easement along the westernmost perimeter of the high school property and the County will assist in advocating to ASU for an easement to connect the Greenway to the neighborhood without wetlands involvement with the understanding that any connector will be developed with input from the neighborhood.
 12. The proposed Indoor Recreation Center must be located further than 100' from the adjoining R-1 zoning district or it may not exceed 35 feet in height.
 13. The Community Appearance Commission must approve any deviations from the lighting standards prior to final zoning approval.
 14. In order to permit removal of certain historic and significant trees in the areas of the Indoor Recreation Center, and football field, the Town Council has determined that a redesign is not possible without reducing the intensity of development on the site.
 15. The westernmost 1.5 acres of the former Ray Greene property located between Spruce Street and Delmar Street shall retain the current R-1 zoning classification. No clearing or grading activity associated with this conditional district approval is permitted within this R-1 area.

Before voting, Council member Pepin requested that the R-1 property return to the tax scrolls as quickly as possible.

VOTE: Aye-All
Nay-None

ADOPTION OF ORDINANCE - WATAUGA HIGH SCHOOL ANNEXATION

Development Services Director John Spear said this contiguous annexation of 58.649 acres of property located south of Daniel Boone Drive Extension will be effective June 30, 2007. On a motion by Council member Brantz, seconded by Council member Spann, Council moved to adopt the following ordinance:

Ordinance 07-04

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE TOWN OF BOONE, NORTH CAROLINA (Watauga County High School)

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., June 21, 2007, after due notice by Watauga Democrat on June 6, 2007 ; 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, 2007:

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 of 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 following four calls: 1) South 88 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 1/2 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 1/2 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; THENCE South 52 degrees 20 minutes 50 seconds East 224.26 feet to an axle iron found; THENCE North 81 degrees 25 minutes 55 seconds East 245.90 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 existing 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 monument #15; THENCE leaving said line, along the old 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 2. Upon and after June 30, 2007, 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 21st day of June, 2007.

Mayor

ATTEST:

Town Clerk

VOTE: Aye-All

Nay-None

ORDINANCE TO BE TYPED IN BOOK 3, PAGES 321-324)

ADOPTION OF RESOLUTION - STREET CLOSING ORDER FOR DANIEL BOONE DRIVE EXTENSION

Town Manager Greg Young said that all street closing procedures as required by the NC General Statutes is complete. Mr. Young explained that this is the final step in the process. On a motion by Council member Wilcox, seconded by Council member Spann, Council moved to adopt the following resolution:

STREET CLOSING ORDER

A RESOLUTION ORDERING THE CLOSING OF A PORTION OF DANIEL BOONE DRIVE EXTENSION.

WHEREAS, on the 19th day of April, 2007, the Council of the Town of Boone directed the Town Clerk to publish the Resolution of Intent of the Council to consider closing a portion of Daniel Boone Drive Extension in the Watauga Democrat once each week for four successive weeks, such resolution advising the public that a meeting would be conducted in the Watauga High School Auditorium on May 31, 2007; and

WHEREAS, the Town Council on the 19th day of April, 2007, ordered the Town Clerk to notify all persons owning property abutting that portion of Daniel Boone Drive Extension as shown on county tax records by registered or certified mail, enclosing with such notification a copy of the Resolution of Intent; and

WHEREAS, the Town Clerk has advised the Council that she sent a letter to each of the abutting property owners advising them of the day, time and place of the meeting, enclosing a copy of the Resolution of Intent, and advising the abutting property owners that the question as to closing a portion of Daniel Boone Drive Extension would be acted upon, said letters having been sent by registered or certified mail; and

WHEREAS, the Town Clerk has advised the Council that adequate notices were posted on the applicable street as required by G.S. 160A-299; and

WHEREAS, after full and complete consideration of the matter and after having granted full and complete opportunity for all interested persons to appear and register any objections that they might have with respect to the closing of a portion of Daniel Boone Drive Extension in the public hearing held on May 31, 2007; and

WHEREAS, it now appears to the satisfaction of the Council that the closing of said street is not contrary to the public interest, and that no individual owning property, either abutting the street or in the vicinity of the street or in the subdivision in which the street is located, will as a result of the closing be thereby deprived of a reasonable means of ingress and egress to his property;

NOW, THEREFORE, subject to the reservation of easement to the Town of Boone for utility purposes as shown on a map recorded in the Book of Maps _____, page _____ in the office of the Watauga County Register of Deeds, a portion of Daniel Boone Drive Extension is hereby ordered closed and all right, title and interest that may be vested in the public to said area for street purposes is hereby released and quitclaimed to the abutting property owners in accordance with the provisions of G.S. 160A-299.

The Mayor and the Town Clerk are hereby authorized to execute quitclaim deeds or other necessary documents in order to evidence vesting of all right, title and interest in those persons owning lots or parcels of land adjacent to the street or alley, such title for the width of the abutting land owned by them, to extend to the centerline of the herein closed street (with

provision for reservation of easements to the Town of Boone for utility purposes) in accordance with the provision of G.S. 160A-299 (c).

The Town Clerk is hereby ordered and directed to file in the Office of the Register of Deeds of Watauga County a certified copy of this resolution and order.

Upon a motion made by Council Member Wilcox, and duly seconded by Council member Spann, the above resolution was adopted by the Town Council at a meeting held on June 21, 2007 in the Council Chambers.

VOTE: Aye-All
Nay-None

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 34)

ADOPTION OF RESOLUTION - STREET CLOSING ORDER FOR HILL TOP DRIVE

Town Manager Greg Young said that all street closing procedures as required by the NC General Statutes is complete. Mr. Young explained that this is the final step in the process. On a motion by Council member Brantz, seconded by Council member Spann, Council moved to adopt the following resolution:

STREET CLOSING ORDER

A RESOLUTION ORDERING THE CLOSING OF A PORTION OF HILLTOP DRIVE.

WHEREAS, on the 19th day of April, 2007, the Council of the Town of Boone directed the Town Clerk to publish the Resolution of Intent of the Council to consider closing a portion of Hilltop Drive in the Watauga Democrat once each week for four successive weeks, such resolution advising the public that a meeting would be conducted in the Watauga High School Auditorium on May 31, 2007; and

WHEREAS, the Town Council on the 19th day of April, 2007, ordered the Town Clerk to notify all persons owning property abutting that portion of Hilltop Drive as shown on county tax records by registered or certified mail, enclosing with such notification a copy of the Resolution of Intent; and

WHEREAS, the Town Clerk has advised the Council that she sent a letter to each of the abutting property owners advising them of the day, time and place of the meeting, enclosing a copy of the Resolution of Intent, and advising the abutting property owners that the question as to closing a portion of Hilltop Drive would be acted upon, said letters having been sent by registered or certified mail; and

WHEREAS, the Town Clerk has advised the Council that adequate notices were posted on the applicable street as required by G.S. 160A-299; and

WHEREAS, after full and complete consideration of the matter and after having granted full and complete opportunity for all interested persons to appear and register any objections that they might have with respect to the closing of a portion of Hilltop Drive in the public hearing held on May 31, 2007; and

WHEREAS, it now appears to the satisfaction of the Council that the closing of said street is not contrary to the public interest, and that no individual owning property, either abutting the street or in the vicinity of the street or in the subdivision in which the street is located, will as a result of the closing be thereby deprived of a reasonable means of ingress and egress to his property;

NOW, THEREFORE, subject to the reservation of easement to the Town of Boone for utility purposes as shown on a map recorded in the Book of Maps _____, page _____ in the office of the Watauga County Register of Deeds, a portion of Hilltop Drive is hereby ordered closed and all right, title and interest that may be vested in the public to said area for street purposes is hereby released and quitclaimed to the abutting property owners in accordance with the provisions of G.S. 160A-299.

The Mayor and the Town Clerk are hereby authorized to execute quitclaim deeds or other necessary documents in order to evidence vesting of all right, title and interest in those persons owning lots or parcels of land adjacent to the street or alley, such title for the width of the abutting land owned by them, to extend to the centerline of the herein closed street (with provision for reservation of easements to the Town of Boone for utility purposes) in accordance with the provision of G.S. 160A-299 (c).

The Town Clerk is hereby ordered and directed to file in the Office of the Register of Deeds of Watauga County a certified copy of this resolution and order.

Upon a motion made by Council Member Brantz, and duly seconded by Council member Spann, the above resolution was adopted by the Town Council at a meeting held on June 21, 2007 in the Council Chambers.

VOTE:Aye-All
Nay-None

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 35.)

ADOPTION OF ORDINANCE - FISCAL YEAR 2007-2008 BUDGET

Town Manager Greg Young repeated the fund totals for the FY 2007/2008 budget and said the tax rate will remain the same at 37¢ per \$100 valuation. Council member Mason thanked Staff members for their diligence in providing the same level of service without raising taxes. On a motion by Council member Wilcox, seconded by Council member Brantz, Council moved to adopt the following budget ordinance, which did not include the Hospitality House allocation:

ORDINANCE #07-05

**TOWN OF BOONE, NORTH CAROLINA
2007-2008 BUDGET ORDINANCE**

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

SECTION 1: It is established that the following revenues will be available in each fund listed for the operation of the Town of Boone government and its activities for the fiscal year beginning July 1, 2007 and ending June 30, 2008.

GENERAL FUND	
Current Year Tax Levy & Penalties	4,657,644
Prior Year Taxes	25,000
Tax Penalties & Interest	11,000
Tax Refunds - Current Year	(1,500)
Tax Refunds - Prior Year	(1,000)

Gross Receipts Tax	21,000
Local Sales Tax 1%	1,677,318
Local Sales Tax ½%	545,000
Local Sales Tax ½%	545,000
Local Sales Tax ½%	645,000
Privilege Licenses	45,000
Room Occupancy Tax	170,000
Administrative Costs - Room Occup. Tax	20,350
Local Video Programming Revenue	75,000
Utilities Franchise Tax	450,000
Telecommunications Sales Tax	210,000
Beer & Wine Tax	61,000
ABC Revenues	305,000
ABC Board - Law Enforcement	11,000
State Funds - Powell Bill	395,000
Payment in Lieu of Taxes	88,000
Building & Sign Permits	130,000
Parking Violation Fines	105,000
Police Fees	16,000
School Resource Officer	59,500
Fire Protection Charges - Watauga Co.	47,125
Fire Protection Charges - ASU	165,500
Fire Department - Misc. Fees/Permits	17,500
Interest Earned on Investments	255,000
Interest Earned on Powell Bill	8,000
Library Lot Parking	5,500
Tracy Circle Parking	3,800
Jones House Parking	4,500
Town Hall Parking Lot	62,500
Queen Street #1 Parking	5,000
Queen Street #2 Parking	25,000
Boot Fees	2,000
Parking Meters	25,000
Sale of Surplus Property	5,000
Contributions/Donations	500
Rental Income	7,500
Rental - Jones House	750
Miscellaneous Revenue	38,889
Transfer from E-911	15,578
Transfer from Separation Allowance Trust	19,883
Transfer from TOB Rural Fire Tax	166,110
Appropriated Fund Balance	2,937,500

TOTAL REVENUE - GENERAL FUND	\$14,083,447
EMERGENCY TELEPHONE SYSTEM	
E911 Telephone Surcharges	80,000
Wireless Surcharges	80,000
Interest Earned on Investments	8,500
TOTAL REVENUE - EMERGENCY TELEPHONE SYSTEM	\$168,500
NARCOTICS ENFORCEMENT	
Fund Balance Appropriated	17,500
TOTAL REVENUE - NARCOTICS ENFORCEMENT	\$17,500
WATER & SEWER FUND	
Interest Earned on Investments	147,000
Water Sales	2,256,292
Sewer Charges	2,820,131
Water Tap Connection Fees	25,000
Sewer Tap Connection Fees	10,000
Re-connection Fees - Water	10,000
Septic Tank Discharge Fees	66,000
Sale of Biosolids	2,500
Impact/Availability Fees - Water	75,000
Impact/Availability Fees - Sewer	75,000
NSF/Returned Check Charges	500
Meter Check/Meter Re-Read Charges	8,500
Late Payment Penalties	60,000
Miscellaneous Revenue	9,690
Water Capital Reserve Contribution	50,000
Sewer Capital Reserve Contribution	519,367
TOTAL REVENUE - WATER & SEWER FUND	\$6,134,980
HEALTH INSURANCE FUND	
Insurance Revenue - Retiree	16,000
Insurance Revenue - General Fund	725,000
Insurance Revenue - Water/Sewer Fund	300,000
Interest Earned on Investments	25,000
Miscellaneous Revenue	1,000
TOTAL REVENUE-HEALTH INSURANCE	\$1,067,000

MUNICIPAL SERVICE DISTRICT	
Current Year Taxes	110,232
Prior Year Taxes	350
Tax Penalties & Interest	250
Interest Earned on Investments	1,750
TOTAL REVENUE - MUNICIPAL SERVICE DISTRICT	\$112,582
TOB RURAL FIRE SERVICE DISTRICT	
Current Year Taxes	273,163
Prior Year Taxes	2,000
Tax Penalties & Interest	500
Tax Refunds & Releases	(150)
Interest Earned on Investments	5,000
Miscellaneous Revenue	250
Appropriated Fund Balance	10,957
TOTAL REVENUE - TOB RURAL FIRE SERVICE DISTRICT	\$291,720
GRAND TOTAL OF ALL APPROPRIATIONS	\$21,875,729

SECTION 2: The following amounts are hereby appropriated in each fund listed for the operation of the Town of Boone government and its activities for the fiscal year beginning July 1, 2007 and ending June 30, 2008.

GENERAL FUND	
Governing Body	93,830
Administration	752,379
Finance	362,729
Tax Collections	98,503
Legal	67,450
Elections	15,000
Fire Station # 1	19,255
Fire Station # 2	10,880
Blowing Rock Road Building	40,250
Brown Building	76,600
Jones House	81,801
Town Hall Building	62,600
Special Programs & Projects	3,356,660
Subsidies & Allocations	232,887
Professional Memberships	16,969
GIS / Information Technology	151,805
Non-Departmental	100,723

Police Department	2,689,756
Communications	435,740
Fire Department	1,191,534
Development Services	821,838
Public Works & Engineering	310,265
Street Department	1,174,419
Powell Bill	395,000
Fleet Maintenance	297,250
Facilities Maintenance	956,924
Sanitation	133,900
Recycling	136,500
TOTAL GENERAL FUND APPROPRIATIONS	\$14,083,447
EMERGENCY TELEPHONE SYSTEM	
Emergency E-911	168,500
TOTAL EMERGENCY TELEPHONE SYSTEM APPROPRIATIONS	\$168,500
NARCOTICS ENFORCEMENT DIV.	
Enforcement	17,500
TOTAL NARCOTICS ENFORCEMENT DIVISION APPROPRIATIONS	\$17,500
WATER & SEWER FUND	
Public Utilities - Administration	278,034
Water Operations	972,190
Sewer Operations	1,085,783
Water Treatment Plant	704,769
Wastewater Treatment Plant	1,293,831
Utility Billing & Collections	202,693
Non-Departmental	1,597,680
TOTAL WATER AND SEWER FUND APPROPRIATIONS	\$6,134,980
HEALTH INSURANCE FUND	
Health Insurance	1,067,000
TOTAL HEALTH INSURANCE FUND	\$1,067,000
MUNICIPAL SERVICE DISTRICT	
Municipal Service District	112,582
TOTAL MUNICIPAL SERVICE DISTRICT APPROPRIATIONS	\$112,582

TOB RURAL FIRE SERVICE DISTRICT	
TOB Rural Fire Service District	291,720
TOTAL TOB RURAL FIRE SERVICE DISTRICT APPROPRIATIONS	\$291,720
GRAND TOTAL OF ALL APPROPRIATIONS	\$21,875,729

SECTION 3: There is hereby levied a tax rate of thirty seven cents (\$0.37) per one hundred dollars (\$100.00) valuation of property as listed for taxes as of January 1, 2007 for the purpose of raising the revenues listed “Current Year Taxes” in the General Fund in Section 1 of this Ordinance. This rate is based on an estimated total valuation of property for the purpose of taxation of \$1,291,100,200 assessment ratio of 100% of the appraised value. The collection rate of 97.5% is reflected in the budget. The FY 2007-2008 operating budget follows the general reappraisal of real property for the Town of Boone.

SECTION 3 (a): There is hereby levied a tax rate of twenty one cents (\$0.21) per one hundred dollars (\$100.00) valuation of property as listed for taxes as of January 1, 2007 for the purpose of raising the revenues listed “Current Year Taxes” in the Downtown Municipal Service District in Section 1 of this Ordinance. This rate is based on an established taxation of \$53,837,491 assessment ratio of 100% of the appraised value. The collection rate of 97.5% is reflected in the budget. The FY 2007-2008 operating budget follows the general reappraisal of real property for the Downtown Municipal Service District.

SECTION 4: The Budget Officer is hereby authorized to transfer appropriations within a Fund as contained herein under the following conditions:

- A. He may transfer amounts between objects of expenditure within a Department to a maximum of the budgeted amount per Department. Transfers shall be filed with the Finance Department for public and Town Council inspection. Town Council shall approve transfers in excess of the limitation.
- B. He may transfer available funds between departments of the same fund with an official report of such transfer on file with the Finance Department for inspection by the general public and the Town Council.
- C. He may not transfer any amounts between Funds.
- D. Town Council shall establish, by governing body procedure, the purchasing mechanism for large capital items (e.g. vehicle purchases). Such procedures shall not be in conflict with NCGS 143-129.

SECTION 5: The rates for water and sewer shall be established as set forth in Exhibit A, which is an attachment to this Ordinance. These rates will remain in effect until subsequently repealed or modified by the Town Council.

SECTION 6: Copies of this Budget Ordinance shall be furnished to the Finance Director and to the Budget Officer of the Town of Boone to be kept on file by them for their direction in the disbursement of funds.

ADOPTED this the 21st day of June, 2007 by the Town Council of the Town of Boone, North Carolina.

Mayor

ATTEST:

Town Clerk

**EXHIBIT A TOWN
OF BOONE
WATER AND SEWER ORDINANCE**

EFFECTIVE 07/01/2007

Late Penalty Charge	\$ 10.00	
Meter Re-read Charge	\$ 10.00	
Meter Connect / Disconnect / Reconnect Charge (Each)	\$ 10.00	
Returned Check Charge	\$ 20.00	
Septic Disposal Fees	\$ 7.00 Residential \$ 10.00 Commercial Per 100 Gallons	
USAGE RATES	INSIDE CITY LIMITS	OUTSIDE CITY
1,000 Gallons Water	\$ 4.15	\$ 8.30
1,000 Gallons Sewer	\$ 4.25	\$ 8.50

Each customer will be allowed 2,000 gallons water and/or sewer usage for the following minimum charges. After that point, charges will be assessed at the above usage rates.

	WATER	SEWER
Residential	\$ 14.00	\$ 14.00
Commercial		
METER SIZE		
¾”	\$ 18.00	\$ 18.00
1”	\$ 23.00	\$ 23.00
1 ½”	\$ 28.00	\$ 28.00
2”	\$ 28.00	\$ 28.00
3”	\$ 38.00	\$ 38.00
4”	\$ 48.00	\$ 48.00
6”	\$ 68.00	\$ 68.00
8”	\$ 88.00	\$ 88.00
DEPOSITS	INSIDE CITY LIMITS	OUTSIDE CITY
Residential	\$ 125.00	\$ 250.00
Commercial	\$ 225.00	\$ 450.00
Construction (Temporary):		
¾”	\$ 200.00	
2” or 3”	\$ 800.00	
AVAILABILITY FEES	WATER	SEWER
Per Gallon	\$ 2.50	\$ 3.00

(ORDINANCE TO BE TYPED IN BOOK 3, PAGES 325-334)

On a motion by Council member Wilcox, seconded by Council member Spann, Council moved to excuse Council member Lynne Mason from voting on the next item due to financial interests.

VOTE:Aye-All
Nay-None

On a motion by Council member Wilcox, seconded by Council member Brantz, Council moved to adopt the following budget amendment to FY 2007/2008 budget:

DESCRIPTION	ACCOUNT #	TO:	FROM:
Appropriated Fund Balance-GF	010-000-000-499000		\$12,500.00

Hospitality House Allocation	010-412-000-549212	\$12,500.00	
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VOTE: Aye-All
Nay-None
Excused-1 (Mason)

Council member Mason commented that she was not involved with the new outside agency process at all.

APPROVAL OF SMART GROWTH AUDIT CONTRACT

On a motion by Council member Pepin, seconded by Council member Spann, Council moved to adopt the following smart growth audit contract:

1.0 General Project Description

The Lawrence Group will provide planning services to the Town of Boone to prepare and publish a Smart Growth Audit for the Town. The goal of this Audit is to identify weaknesses in the Town’s plans, policies, programs, ordinances, and regulations that could impede Smart Growth goals.

2.0 Scope of Services

- 2.1. Project Orientation and Kick-off Meeting (1 trip; 1 day): The Lawrence Group will conduct a kick-off meeting with the project Advisory Committee to gain an understanding of specific issues, Town policies, and/or challenges associated with the audit and to determine Smart Growth Audit goals.
- 2.2. Document Collection: The Town will collect relevant documents from the Town and supporting organizations for the Smart Growth Audit. Documents should include, but are not limited to:

- \$ Comprehensive plans
- \$ Unified Development Ordinance
- \$ Utility service plans and policies
- \$ Transportation plans, including Collector Street Plans
- \$ Park, Recreation, and Greenway Plans
- \$ Current local Smart Growth initiatives including capital projects
- \$ Budget, CIP’s, and other related planning documents
- \$ Relevant plans and documents from the University
- \$ NCDOT project plans.

- 2.3. Key Stakeholder Interviews (1trip; up to 2 days): Upon a thorough review of all documents, The Lawrence Group team will than lead a series of interviews. These interviews will consist of detailed, one-on-one discussions with key Town elected and appointed officials, staff, and interest group members such as University representatives, significant developers, property and business owners, and community leaders, as identified by the Town and the Advisory Committee. (A town-wide public meeting can also be arranged during this trip.)

Discussions will address the following issues, but are not limited to:

- \$ Growth and development visions for the community
- \$ Current plans, programs, and initiatives
- \$ Existing regulatory and policy deficiencies
- \$ Suggested issues for inclusion in the Audit.

Town staff and/or Advisory Committee members will identify appropriate stakeholders and be responsible for scheduling all meetings.

- 2.4. Document Review/Audit Report: The Lawrence Group will conduct a thorough review of all relevant documents and will prepare a draft Audit Report. Each

document will be assessed in terms of its impact on established Smart Growth goals for the Town. The report will reference key issues identified by stakeholders and the Advisory Committee.

Report Methodology: This Report will include discussion on the existing regulatory practices and recommendations for specific changes to the development ordinances. It will include an identification of regulatory barriers to Smart Growth as well opportunities to encourage best design and construction practices. A variety of techniques using best practices from across the United States will be included and referenced, but will generally focus on cities and counties from states with enabling legislation similar to North Carolina. Additionally, we will evaluate techniques that might be applied to improve the development approval process to encourage/incentivize best development practices. The report will include an implementation agenda for policy and regulatory actions.

- 2.5. Presentation of Draft Audit Report (1 trip; 1day): We will make a presentation to the Advisory Committee about the preliminary recommendations contained in the Audit Report. We will deliver a draft of the Report in .pdf format via email at least two weeks prior to the date of the meeting.
- 2.6. Final Smart Growth Audit Document: We will incorporate changes to the Audit Report as directed by the Advisory Committee and Town of Boone. We will prepare a complete report document including interview summaries and a reader-friendly executive summary.
- 2.7. Digital Format: Following approval, we will prepare a final copy of the Document and present it to Town of Boone as a hard copy and on a CD in its native format. In addition, we will provide a “web-ready” draft for easy posting on the Town of Boone’s website in .pdf format.
- 2.8. Schedule: We commit, for the purposes of this contract, to a six (6) month completion schedule from the notice to proceed. Town staff or Advisory Committee members will be responsible for scheduling meeting as appropriate. If our performance is delayed by more than three months beyond the assumed six month project period by the failure of the Town to comply with its responsibilities, the Town will consider additional compensation in an amount reflecting our increased costs and expenses which result. Otherwise, our performance may only extend beyond six months from the notice to proceed with the express approval of the Boone Town Council. Should we need to request an extension of time, other than based upon some failure by the Town, we shall not be entitled to compensation for our time and expenses in seeking the extension of time.

3.0 Additional Services

The Lawrence Group, if requested by Town of Boone, shall:

- 3.1. Assist Town of Boone in producing additional Documents to assist in the approval process or as a means of facilitating public education and/or involvement.
- 3.2. Assist Town of Boone in the facilitation of public meetings or workshops.
- 3.3. Complete any other services mutually agreed upon by Town of Boone and The Lawrence Group.

4.0 Payments to The Lawrence Group

The Lawrence Group proposes to provide the services listed for the following fees:

\$30,000, plus project expenses, including, but not limited to:

- \$ Expense of reproductions (photocopying, and plotting) and handling of drawings and other documents
- \$ Expense of long distance telephone calls
- \$ Delivery expenses (postage or express delivery services)
- \$ Meals during project-related trips
- \$ Transportation expenses

5.0 General Terms and Conditions

5.1. Compensation for Additional Services and Reimbursable Expenses.

Any Additional Services will be billed at the following hourly rates:

Principal Designer/Architect	\$150.00/hr.
Senior Planner/Designer	\$140.00/hr.
Associate Planner/Designer	\$90.00/hr.
Designer	\$75.00/hr.
Support	\$50.00/hr.

Expenses related to Additional Services will be reimbursed at 1.10 times their direct cost:

- \$ Expense of reproductions (blueprinting, photocopying, and plotting), postage and handling of drawings and other documents
- \$ Expense of long distance telephone calls
- \$ Delivery expenses
- \$ Meals during project-related trips
- \$ Transportation expenses.

5.2. Fee Payment and Schedule

Compensation shall be paid to The Lawrence Group in accordance with the following provisions:

- \$ Payment shall be rendered monthly based upon a percentage of work completed.
- \$ Payment of each invoice will be due within 30 days of receipt.
- \$ Town of Boone must notify The Lawrence Group of any questions or concerns regarding invoices promptly upon receipt. Where corrections or adjustments are necessary, a revised invoice shall be promptly issued by The Lawrence Group. Any disputes regarding invoice charges must be resolved within 60 days of the date of the invoice.

5.3. Early Termination

If, at any point during the project, the Town of Boone chooses to discontinue the project, The Lawrence Group will discontinue services. In addition, the Town and The Lawrence Group may mutually agree to discontinue the project. Contract termination shall occur upon 7 days written notice. Upon early termination, a final invoice will be issued reflecting total hours dedicated to the project by The Lawrence Group and The Lawrence Group’s consultants up to the point that the project was discontinued, plus all reimbursable expenses. All project work for which the Town has paid prior to project termination shall become property of the Town of Boone in accordance with 5.4 below.

5.4. Use of Documents

All project deliverables will become property of the Town upon payment of final invoice. The Lawrence Group maintains an interest in all files produced and reserves the right to use them for marketing and related project work.

VOTE:Aye-All
Nay-None

PLANNING COMMISSION APPOINTMENTS

On a motion by Council member Brantz, seconded by Council member Mason, Council moved to appoint Mary Wise and Patrick Heavner to another four-year term and to recommend reappointment of Shawna Rhyne as the ETJ representative on the Planning Commission. All terms will expire 6/30/11.

VOTE: Aye-All
Nay-None

COMMUNITY APPEARANCE COMMISSION APPOINTMENTS

Council did not have any applications for the two vacant positions.

BOARD OF ADJUSTMENT APPOINTMENTS

On a motion by Council member Mason, seconded by Council member Brantz, Council moved to appoint Rebecca Kaenzig and Morgan Murray and to recommend Gayle Turner for the ETJ representative to the Board of Adjustment. All terms will expire 6/30/10.

VOTE: Aye-All
Nay-None

GREENWAY, PARK & GARDENS APPOINTMENTS

On a motion by Council member Spann, seconded by Council member Mason, Council moved to appoint Susan Tumbleston and Matthew Burns to the Greenway, Park & Gardens Committee.

VOTE: Aye-All
Nay-None

HISTORIC PRESERVATION COMMISSION APPOINTMENTS

On a motion by Council member Brantz, seconded by Council member Pepin, Council moved to appoint Bettie Bond, Bill Dixon and Chuck Watkins to the Historic Preservation Commission.

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 May. The Water Treatment Plant recorded a maximum daily demand of 1.962 million gallons on Saturday, May 26, 2007, and the average daily demand was 1.738 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 May since 1995. Included is an average trend line that illustrates the extent the maximum daily demand has increased during the last thirteen years.

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 three projects that subtracted 328 gallons per day from the 2007 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 18,362 gallons per day remaining for allotment in 2007 and 15,991 gallons

remaining for 2008. At the last Council meeting a question arose as to if the allocation amount for 2009 had been altered. Since that time I have verified that the 2009 allocation allotment remains at 25,000 gallons per day.

			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 Chiropratic	Feb-07	69				23326
Ross Chrysler	Feb-07	60				23266
A-Z Enterprises	Feb-07	900				22366
			Fatbellies LLC	Mar-06	3750	18616
High Country Bank	Mar-07	450				18166
Enterprise Leasing	Mar-07	45				18121
James Maltba	Mar-07	31				18090
Dana Willet	Jun-05	450				18540
Dana Willet	Jul-05	150				18690
HW Partners	May-07	45				18645
Hoan Nguyen	May-07	283				18362
			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

APPROVAL OF BUDGET AMENDMENTS

On a motion by Council member Wilcox, seconded by Council member Pepin, Council moved to adopt the following budget amendments:

DESCRIPTION	ACCOUNT #	TO:	FROM:
Watauga County-Collection of Taxes-GF	010-403-000-577110	\$6,000.00	
Watauga County-Collection of Taxes-MSD	050-450-000-577110	\$500.00	
Current Year Taxes-General Fund	010-000-000-411080		(\$6,000.00)
Current Year Taxes-MSD	050-000-000-411080		(\$500.00)
Wide Area Network	010-411-000-549102	\$23,380.00	
Miscellaneous Revenue-GF	010-000-000-489900		(\$23,380.00)
Smart Growth Audit	010-411-000-519132	\$33,000.00	

Appropriated Fund Balance-GF	010-000-000-499000		(\$33,000.00)
Crime Prevention-Police	010-500-300-513103	\$257.00	
Miscellaneous Revenue-GF	010-000-000-489900		(\$257.00)
Electricity-WWTP	030-700-805-523110	\$10,000.00	
Heat-WWTP	030-700-805-523122	\$5,000.00	
Appropriated Fund Balance-WS	030-000-000-499900		(\$15,000.00)
Transfer to Water Capital Reserve	030-700-890-598031	\$35,000.00	
Transfer to Sewer Capital Reserve	030-700-890-598032	\$45,000.00	
Impact/Availability Fees-Water	030-000-000-467301		(\$35,000.00)
Impact/Availability Fees-Sewer	030-000-000-467302		(\$45,000.00)
Health Insurance-Claims	035-430-000-535611	\$29,000.00	
COBRA Revenue	035-430-000-450001		(\$3,500.00)
Retiree Portion Health Insurance	035-430-000-45002		(\$7,500.00)
Interest Income	035-430-000-461201		(\$18,000.00)
Property Tax Allocation-MSD	050-450-000-553101	\$6,000.00	
Current Year Taxes-MSD	050-450-000-411080		(\$6,000.00)

VOTE:Aye-All
Nay-None

Mayor Clawson declared a break at 7:59 p.m. Council reconvened at 8:10 p.m.

REQUESTED APPEARANCE - JOHN WEAVER

Mr. Weaver did not appear before Council; however, Council considered his request for a special events permit for the Grandfather Mountain Marathon. On a motion by Council member Wilcox, seconded by Council member Spann, Council moved to grant the special events permit for the Grandfather Mountain Marathon for Saturday, July 14, 2007. All permit and insurance fees are required to be paid before the permit is issued.

VOTE:Aye-All
Nay-None

REQUESTED APPEARANCE - ERNEST McGUIRE

Mr. Ernest McGuire appeared before Council to request that his residence at 474 Jordan V. Cook Road be grandfathered as a multi-family unit. Mr. McGuire explained that he has tried to sell his residence as a single-family residence and because of its close proximity to multi-family units he has been unable to sell the property. Ms. Laurie Wilson, Realtor with RE-MAX, said she has shown Mr. McGuire’s house on more than twenty-seven occasions and is unable to sell the property unless it is rezoned multi-family. Town Attorney Sam Furguele explained the process for requesting zoning map amendments. No further action was taken.

REQUESTED APPEARANCE - ALICE WHISNANT

Town Attorney Sam Furguele opened the public hearing at 8:32 p.m. to hear sworn testimony from Brooks Youngburg of Cort Architects and Public Utilities Director Rick Miller on a water and sewer request for Caldwell Community College. Mr. Youngburg testified that Caldwell Community College is planning a 14,000-square foot occupational building that will require an

additional 1,650 gallons of water per day. Mr. Youngburg said the special use permit was approved in April, 2007 and that the building should be complete by next summer. Council member Mason asked if sewer service is needed. Mr. Youngburg said no, that a private sewer lift station will pump sewer back to the main line. Public Utilities Director Rick Miller testified that the lift station will be privately maintained by Caldwell Community College. There being no further comments, the public hearing was closed at 8:40 p.m. Council member Wilcox pointed out that annexation is irrelevant in this case since Caldwell Community College is tax-exempt. On a motion by Council member Mason, seconded by Council member Wilcox, Council moved to grant the additional 1,650 gallons per day to Caldwell Community College.

VOTE:Aye-All

Nay-None

REQUESTED APPEARANCE - TUESDAE RICE

Ms. Tusedae Rice of the Downtown Boone Development Association appeared before Council to request approval of Phase I of the public art project. Ms. Rice reminded Council that Phase I will include installation of public art in the planters located beside Town Hall. Ms. Rice said the Public Services Department has agreed to install the concrete pads where the public art will be anchored. Ms. Rice said the pads will accommodate various pieces of art, which will be interchanged every year. After little discussion, on a motion by Council member Mason, seconded by Council member Pepin, Council moved to implement Phase I of the public art project as presented by the DBDA (**permanently on file in June, 2007, Council packets**).

VOTE:Aye-All

Nay-None

Ms. Rice then explained Phase II of the public art project as the addition of a green space near the planter adjacent to Vetro's building. Ms. Rice requested that Council fund \$6,500 of the \$11,500 cost from the Town's green space fund, \$2,000 from the Mayor's tree fund, with the DBDA contributing \$3,000 toward the project. After very little discussion, on a motion by Council member Pepin, seconded by Council member Mason, Council moved to implement Phase II of the public art project as presented by the DBDA (**permanently on file in June, 2007, Council packets**) and to allocated \$6,500 from the green space funding and \$2,000 from the tree fund.

VOTE:Aye-All

Nay-None

REQUESTED APPEARANCE - MARTY WILSON

Ms. Marty Wilson appeared before Council to request paving of a walking trail around the tot lot located adjacent to the Watauga County Swim Complex. Council member Mason asked if there are restrictions regarding a walking trail in a playground. Development Services Director John Spear said no. Council member Brantz asked if there are liability issues. Ms. Wilson said no, that the County's liability insurance will cover any accidents. Public Services Director Blake Brown estimated that it will cost about \$6,200 to pave the trail. After very little discussion, on a motion by Council member Spann, seconded by Council member Mason, Council moved to have the Public Services Department pave the walking trail and that financing the project will be facilitated by the Town Manager.

VOTE:Aye-All

Nay-None

CLOSED SESSION

On a motion by Council member Wilcox, seconded by Council member Pepin, Council moved to enter Closed Session at 9:32 p.m., pursuant to NCGS 143-318.11a)3)4)5) to discuss ASU violations, an update on the Howard Street project, property acquisition for water, economic development, and the CHS/ASU lawsuit.

VOTE:Aye-All

Nay-None

On a motion by Council member Spann, seconded by Council member Mason, Council moved to exit Closed Session at 11:11 p.m.

VOTE: Aye-All
Nay-None

ACTION FOLLOWING CLOSED SESSION

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

The STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
	SUPERIOR COURT DIVISION
COUNTY OF WATAUGA	FILE NUMBER: 07 CvS-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. Furguele, 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 **as currently approved or as may be modified by Plaintiff with appropriate approvals.**
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.

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 Pepin, seconded by Council member Mason, Council moved to adjourn at 11:12 p.m.

VOTE: Aye-All
Nay-None

Town Clerk

Mayor