

**MINUTES-REGULAR MEETING
BOONE TOWN COUNCIL JULY
17, 2012**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Tuesday, July 17, 2012, in Conference Room C at the Watauga County Cooperative Extension office, 971 West King Street. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Jamie Leigh, Lynne Mason, Rennie Brantz, Andy Ball, and Allan Scherlen. Town Attorney Sam Furguele was also present. Staff members present were Town Manager Greg Young, Town Clerk Kimberly Brown, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Planning Director Bill Bailey, Urban Design Specialist Brian Johnson, Police Captain Jim Wilson, Police Lieutenant Danny Houck, Police Sergeant Geoff Hayes, Police Lieutenant Donnie Goodman, and Police Sergeant Bobby Creed.

ANNOUNCEMENTS

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

Police Chief Dana Crawford presented the Recognition of Advanced Law Enforcement Certification to Police Sergeant Geoff Hayes, Police Lieutenant Donnie Goodman, and Police Sergeant Bobby Creed. He stated that this award to given to recognize the level of competence of law enforcement officers serving governmental agencies throughout the state and the education, professional training, and on-the-job experience of these law enforcement officers.

TENTATIVE AGENDA ADOPTION

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

1. Addition of Item 6.R. – Approval of UDO Text Amendment: Case 20120342 University/College Office Uses.
2. Request from the Applicant, G. Perry “Skip” Greene, to table Item 6.R. until the August 2012 regular meeting.
3. Addition of Item to Closed Session Pursuant to NCGS 143-318.11(a)(3) – To consult with the Town Attorney in order to preserve the attorney/client privilege between the attorney and the Town Council to consider and give instructions concerning the handling of the Town’s claim against Bentley Taylor LLC and the proposal by Bentley Taylor LLC.

Council Member Leigh requested to move Items 6.D. and 6.E. to the Thursday night agenda and to move Item 6.F. to be considered after the Closed Session on Thursday night. Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to approve the agenda, as amended.

VOTE: Aye – All
 Nay – None

CONSENT AGENDA ADOPTION

Minutes: June 4, 2012 – Special Meeting.
 June 4, 2012 – Special Meeting.
 June 18, 2012 – Special Meeting.
 June 21, 2012 – Regular Meeting.

Formal Approval of Proposal for Construction Engineering and Inspection Services for Wilson Drive Improvement Project – Vaughn & Melton. **(Copy permanently on file in the Clerk’s Office.)**

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

VOTE: Aye – All
 Nay – None

PUBLIC COMMENT

There was no one present who wished to speak.

DISCUSSION OF ROADSIDE TREE ADDITIONS ALONG US HIGHWAY 421/4020 PROJECT

Council Member Leigh noted that the Highway 421 4020 Project is almost complete and inquired as to the development of a tree plan for this portion of the highway. Urban Design Specialist Brian Johnson stated that he can present a request to the Tree Board for species types and possible locations. Public Works Director Blake Brown stated that the Town will need to determine where the NC DOT right-of-way is located and that some easements on private property may be necessary. Mr. Johnson noted that the Tree Board meets on August 2, 2012. Council directed Mr. Johnson and Mr. Brown to present Tree Board recommendations and other information at the regular meeting in September.

UPDATE ON STREET LIGHTING FOR HIGHWAY 421 PROJECT – HEIGHT DIFFERENCES OF STREETLIGHTS

Council Member Leigh asked for an update on the cost of adjusting the height of the new street lights on Highway 421. Public Works Director Blake Brown stated that the cost to adjust the height of the streetlights is \$31,000 and that includes adjusting 24 poles from the New Market Shopping Center to Hardin Street. Lengthy discussion ensued as to which party is responsible for the difference in height of the streetlights. Upon a motion by Council Member Leigh, seconded by Council Member Scherlen, Council moved to discuss this matter in Closed Session at the Thursday night meeting.

VOTE: Aye – All
 Nay - None

DISCUSSION OF OUTSIDE AGENCY FUNDING ISSUES/POLICIES

Council Member Leigh requested that a definition for the terms “outside agency” and “government agency” be determined in regard to the outside agency funding process. She also requested that meetings of the Outside Agency Funding Committee be scheduled earlier in the year so that there is more time for consideration of the process and any questions that may arise during the process. Upon a motion by Council Member Mason, seconded by Council Member Leigh, Council moved to direct the Outside Agency Funding Committee to create a definition for “outside agency” and “governmental agency”, to schedule meetings of the committee earlier in the year, and to develop a mechanism for consideration of other agencies or programs which desire to request funding from the Town.

VOTE: Aye – All
 Nay - None

RESCHEDULING OF SEPTEMBER MEETING DATES

Council Member Mason informed the Council that she will be out of town the entire third week of

September, thus missing both regularly scheduled council meetings for that month. No action was taken to reschedule the meetings.

ADOPTION OF ORDINANCE – AUTHORIZING LEGAL ACTION AGAINST TIM WILSON

Upon a motion by Council Member Leigh, seconded by Council Member Ball, Council moved to adopt the following ordinance with the condition that the Town Attorney will attempt to contact Mr. Wilson to inform him of this action:

ORDINANCE # 12-04

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

WHEREAS, the UDO regulates land disturbance activity within the Town of Boone and its planning jurisdiction; and

WHEREAS, The buffer must be a minimum of twenty five (25) feet wide or of sufficient width to confine visible siltation within the twenty five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater; and

WHEREAS, UDO Section 61 requires that substantial clearing, grading, or excavation may not be commenced except in accordance with and pursuant to a zoning permit or certificate of zoning compliance issued by the Administrator, and in addition, UDO Section 290[c][2] states that no land-disturbing activity shall be permitted in proximity to a lake or natural watercourse unless an undisturbed buffer zone is provided along the margin of the watercourse, and the U.S. Army Corps of Engineers, North Carolina Department of Environment and Natural Resources - Water Quality Division must also be notified for permitting requirements and copies provided to the Town of Boone Planning & Inspections office in the event of such disturbance; and

WHEREAS, following a February 7, 2012 inspection by personnel from the Planning & Inspections Department of the Town of Boone (hereafter, “P & I”) of land disturbing activity on property located within the Town’s corporate limits on property identified by Watauga PIN 2920-13-2525-000, and owned by Danny Timothy Wilson, staff notified Mr. Wilson that all such activity must cease until a proper plan was submitted, approved, and further work permitted; and

WHEREAS, by letter dated February 13, 2012, a Notice of Violation was issued to Mr. Wilson, which among others, imposed a penalty beginning March 17, 2012 of \$100.00 per day, if proper permitting was not obtained prior to that time, until such time as Mr. Wilson submitted an application for a permit; and

WHEREAS, Mr. Wilson was cited by the U.S. Army Corps of Engineers on March 28, 2012 for unauthorized activity in violation of the Clean Water Act; and

WHEREAS, an application for a permit was not submitted by Mr. Wilson until April 5, 2012, resulting in nineteen individual daily penalties, calculated as \$100.00 per day for nineteen days; and

WHEREAS, Mr. Wilson filed no appeal of the Town’s decision regarding the existence of violations or the amount or appropriateness of the penalties, to the Town of Boone Board of Adjustment, and the time to do so has now expired; and

WHEREAS, no payment of penalties has been made by Mr. Wilson, and those penalties total one thousand, nine hundred dollars (\$1,900.00); and

WHEREAS, the Town of Boone is authorized pursuant to N.C. Gen. Stat. §§ 160A-365 and 160-175 to initiate a civil action to collect civil penalties which have been imposed; and

WHEREAS, the UDO, through Section 132, authorizes a civil action for this purpose;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA, AS FOLLOWS:

- 1. Danny Timothy Wilson is the owner and operator of that certain property located within the corporate limits of Boone, North Carolina, identified by Watauga PIN identified by Watauga PIN 2920-13-2525-000. Said real property is located within the zoning jurisdiction of the Town of Boone.
- 2. Danny Timothy Wilson has violated the UDO engaging in substantial clearing, grading, and excavation without first obtaining a permit in violation of UDO Section 61.
- 3. The accrued and unpaid penalties for this violation total one thousand, nine hundred dollars (\$1,900.00).
- 4. The Town Attorney is ordered to initiate a legal action in the General Court of Justice in Watauga County, North Carolina against Danny Timothy Wilson to collect the unpaid penalties for his violations of the UDO, along with attorney’s fees and costs.
- 5. This Ordinance shall be recorded in the registry of the Watauga County Register of Deeds under the name Danny Timothy Wilson.

Adopted this 17th day of **July**, 2012.

Mayor

ATTEST:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK (4), PAGE(S) 29-30)

VOTE: Aye – All
 Nay - None

AMENDMENT TO WATER AND SEWER CODE

Town Attorney Sam Furgiuele explained that the proposed amendment to the Water & Sewer Code relates to the requirements for meters for users of the water system, the availability of hearings, and technical corrections in terms of language. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve the following amendment to the Water & Sewer Code:

**ARTICLE III
WATER AND SEWER SYSTEM REGULATIONS**

' 50.003 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words used in the present tense include the future; the singular includes the plural; and the plural includes the singular. The word *shall* is mandatory and not directory, while the word *may* is permissive.

...

ADJUNCT CUSTOMER. Any individual, family, business or institution who would typically be required to have his own meter to receive service, but who, with prior approval of the Administrator, is allowed to connect onto the town's water system through the meter of another customer or to receive water through a meter assigned to another customer.

...

CUSTOMER. Any individual, family, business or institution who, after duly filing an application for service, with the permission of the Administrator connects onto the town's water and/or sewer system through a meter registered in his name.

'50.105 APPLICATION FOR SERVICE AND PAYMENT OF INITIAL FEES AND DEPOSITS.

(A) Water or sewer service shall only be supplied to a person, whether as a customer or as an adjunct customer, who has fully completed an application for service and who has met all other requirements of the Town for service, including the payment of such fees and deposits as may be required.

(B) Applicants for service, as either a customer or adjunct customer, shall apply, in person, at the designated office of the town. All applications for service must be made in the name of a natural person or other legal entity. In the case of legal entities, such as corporations, limited liability companies, and general partnerships, the applicant must be duly registered to do business in the State of North Carolina and be in good standing with the North Carolina Secretary of State. Any application for service by an entity other than a natural person must be personally guaranteed by a natural person residing in Watauga County, North Carolina, or the applicant must pay a deposit twice the normal deposit for service of the kind applied for, based on the rates established in Appendix AA hereto.

(C) Any person filing an application for service must provide satisfactory proof of identity, and if filing an application on behalf of another person or non-human legal entity, must provide the town with proof that the applicant is authorized to establish an account in the name of the entity. In addition, the applicant must provide satisfactory evidence, such as, but not limited to, a tax bill, deed or lease, that the entity in whose name the account is established is either the owner of the property in question or has the legal right to possession of the property.

(D) An applicant for water or sewer service for a property, residential unit or commercial unit not previously provided water and/or sewer service by the town, or where the use of the property has changed, must pay all required availability fees and tap-on fees before service will be provided. An applicant for service as an adjunct customer must pay any required additional availability fee before service is provided, and every adjunct customer must provide both the written approval of the customer in whose name service is currently maintained and written permission of the owner of the property to apply for service as an adjunct customer.

(1) Availability fees shall be calculated based upon the **rates** in effect at the time a building permit and/or zoning permit is issued, whichever is later, plus additional charges to reflect actual time and materials involved in the provision of services, including the cost of installing any needed lines or meters, which must be paid before service can be initiated.

(2) No applicant may be approved by any town department for occupancy of the property or unit in question until all required availability fees have been paid.

(E) The town may reject any application for service which involves excessive service cost, or which may adversely affect the supply of service to other customers, or for other good and sufficient reason.

(F) The town may reject any application for service when the applicant is delinquent in the payment of either water or sewer bills or associated fees incurred for service previously supplied by the Town at any location. Furthermore, when the owner of the premises has received water or sewer service and has not paid for the same, the Town shall not be required to provide service to anyone at that premises until all delinquent water or sewer bills, or associated fees have been paid.

(G) The town shall refuse service if the customer's lines or piping are installed in such manner that they may not prevent cross-connections or backflow.

(H) The town will only provide service outside the corporate limits of the town to new applicants in accordance with ' 50.290 of this Ordinance and until its expiration, Ord.11-01, as amended. (Ord. passed 6-21-11)

'50.106 CLASSIFICATION OF SERVICE.

All services are classified under two categories, residential and commercial.

(A) Residential service shall be service to any residential customer or unit with a meter size up to one inch.

(B) Commercial service shall be service to any non-residential customer, unit(s) or building regardless of meter size, including a school or church, or to any single family or multi-family residential property or unit(s) with a meter size greater than 1".

(Ord. passed 6-21-11)

'50.107 RATE SCHEDULE AND DEPOSITS.

(A) All customers will be charged a deposit and billed at the rates currently in effect and approved by the Town Council, with adjustments as appropriate in compliance with the provisions herein relating to adjunct customers. Said rates and deposits are subject to change at any time.

(B) The schedule for deposits and monthly service rates is set out in " 50.460 through 50.462.

(C) A property owner who has a water and/or sewer account with the town may sign a Waiver of deposit and personal guarantee to establish residential service without payment of a deposit if the property owner has had an account with the town for at least two years and has timely paid the bill every month for the previous 24 months. To be eligible to sign a waiver, an applicant must provide satisfactory proof of identity and if acting on behalf of another person or non-human legal entity, the applicant must also provide the town with proof that the applicant is authorized to act in the name of the other person or entity. In addition, the applicant must provide satisfactory evidence, such as, but not limited to, a tax bill, deed or lease, that the person or entity in whose name the person is acting is the owner of the property in question. By signing a waiver of deposit and personal guarantee, the property owner authorizes the Administrator to add to his or her account any unpaid, past due charges incurred by the user of the residential service. By signing the waiver of deposit and personal guarantee, the property owner/guarantor agrees that in the event that the user of the residential service fails to pay any bill in full when due, the delinquent account balance owed to the town will be automatically added to the guarantor's account.

(D) A separate deposit is required for each customer and adjunct customer.

(Ord. passed 6-21-11)

'50.108 MINIMUM MONTHLY CHARGES.

(A) A minimum charge, as provided in the rate schedule, shall be assessed to a customer for each meter installed, as well as for each adjunct customer.

(B) Service furnished for a given property shall be used on that property and for that unit only unless approval is obtained to establish service as an adjunct customer.

'50.109 INDIVIDUAL METERING REQUIRED.

(A) *Policy statement.* To ensure a fair distribution of system costs among its customers, it is the policy of the town to require that every customer have its own meter and that each customer represent an individual water user, consisting of a single commercial unit or a single residential living unit. Since the town recognizes that certain current customers' water connections may not conform to this policy, the following rules seek to balance the need for implementation of this policy with the costs which might result if immediate and full compliance were required, while ensuring that customers are treated in a fair and uniform way in sharing the costs of the town's water system.

(B) *Meters for commercial developments.* In accordance with the following rules and at the times specified herein, each commercial unit shall have a separate meter installed, and each commercial customer's service must be separately metered at a single delivery and metering point. For purposes of this section, a commercial unit consists of each commercial use separately classified under the North Carolina Rate Discharge Schedule. For example, each separate bay, retail store, office, restaurant, etc., within a shopping center or mall, and every such unit existing on a single parcel of property, is considered a separate commercial unit. A commercial development consists of each separate parcel of land upon which there is one or more commercial units, excluding Mixed-Use Developments as defined herein.

(1) New water service will only be provided to a commercial unit constructed, erected or relocated at or to a location where no prior commercial unit existed if the unit is individually metered for water service. Each new unit constructed, erected or relocated is required to have its own individual meter.

(2) Before any new water service will be provided or current service maintained to an existing commercial development which has been repaired, replaced, renovated, or reconstructed, in which the total cost of all repair, replacement, renovation or reconstruction exceeds fifty percent (50%) of the value of the existing development, each and every commercial unit within the commercial development shall be separately metered. However, if the Administrator determines that the configuration of the existing commercial development is such that the costs involved in installing individual meters is so excessive as to significantly outweigh the interests of the Town in individual metering, he may waive this requirement in whole or in part.

(a) For purposes of this section, the total cost of all repair, replacement, renovation or reconstruction shall be the actual cost of the repair, replacement, renovation or reconstruction. Actual cost includes the cost of all materials and services utilized to accomplish the repair, replacement, renovation or reconstruction, including, but not limited to sales tax, the costs of design, engineering fees, and all construction costs, whether undertaken at one time or in stages extending over a period of up to two years or such longer period as is authorized by any single special use permit, special use permit modification, building permit, or conditional zoning district approval or modification, as applicable.

(b) For purposes of this section, the value of the existing development shall be considered the value of the property, as determined by the Watauga County Tax Administrator and reflected in the tax rolls of Watauga County, North Carolina, at the time the repair, replacement, renovation or reconstruction is commenced.

(3) Although an existing, non-conforming, commercial development in which separate commercial units receive water service through a single meter may continue to receive water service until such time, if any, that the development must install individual meters in accordance with this section, the minimum water and sewer fees for each meter which serves multiple commercial units shall be the amount of the minimum fees which would apply if each separate commercial unit had its own meter, sized according to the size of the water line actually serving each separate commercial unit.

(C) *Meters for mixed-use developments.* Mixed use developments are individual parcels of land upon which both one or more commercial units and one or more residential units exist. For purposes of this section, a *residential unit* is each separate dwelling unit, consisting of a room or group of rooms within a structure forming a single independent habitable unit and containing independent kitchen, sanitary, and sleeping facilities. In accordance with the following rules and at the times specified herein, each commercial unit and each residential unit within a mixed-use development shall have a separate meter installed and must be separately metered at a single delivery and metering point.

(1) New water service will only be provided to a commercial or residential unit constructed, erected or relocated in a mixed unit development at or to a location where no prior like (commercial to commercial; residential to residential) commercial or residential unit existed, if the unit is individually metered for water service. Each new unit constructed, erected or relocated is required to have its own individual meter.

(2) Before any new water service will be provided or current service maintained to an existing mixed use development in which each separate commercial and residential unit not individually metered for water service is repaired, replaced, renovated, or reconstructed, and the total cost of all repair, replacement, renovation or reconstruction of the commercial portion of the development exceeds fifty percent (50%) of the value of the existing commercial development, each and every commercial unit within the commercial development must be separately metered. When an existing mixed use development in which each separate commercial and residential unit not individually metered for water service is repaired, replaced, renovated, or reconstructed, and the total cost of all repair, replacement, renovation or reconstruction of the residential portion of the development exceeds fifty percent (50%) of the value of the existing residential development, each and every residential unit within the mixed use development shall be separately metered before any new water service will be provided or current service maintained. However, if the Administrator determines that the configuration of the existing commercial or residential portion of the development is such that the costs involved in installing individual meters is so excessive as to significantly outweigh the interests of the Town in individual metering, he may waive this requirement in whole or in part.

(a) For purposes of this section, ~~A~~the total cost of all repair, replacement, renovation or reconstruction~~@~~ shall be the actual cost of the repair, replacement, renovation or reconstruction. ~~A~~Actual cost~~@~~ includes the cost of all materials and services utilized to accomplish the repair, replacement, renovation or reconstruction, including, but not limited to sales tax, the costs of design, engineering fees, and all construction costs, whether undertaken at one time or in stages extending over a period of up to two years or such longer period as is authorized by any single special use permit, special use permit modification, building permit, or conditional zoning district approval or modification, as applicable.

(b) For purposes of this sub-section, the value of the existing . . . development, whether referring to the commercial portion or residential portion of the mixed use development, shall be considered the value of that particular portion of the property, as determined by the Watauga County Tax Administrator and reflected in the tax rolls of Watauga County, North Carolina, at the time the repair, replacement, renovation or reconstruction is commenced, or if the Tax Administrator has not assigned separate values to the commercial and residential portions of the property, the appraised value of the individual portions, as provided by the customer. Should the Tax Administrator not have assigned separate values and no appraisal be provided, the Administrator will pro-rate the value of each portion based upon the square footage of each portion compared to the whole development to calculate the applicable value.

(3) Although an existing, non-conforming mixed use development in which separate commercial and/or residential units receive water service through a single meter may continue to receive water service until such time, if any, that the development must install individual meters in accordance with this section, the minimum water and sewer fees for each meter which serves multiple commercial and/or residential units shall be the amount of the minimum fees which would apply if each separate commercial and/or residential unit had its own meter, sized according to the size of the water line actually serving each separate commercial and/or residential unit.

(D) *Meters for residential developments.* In accordance with the following rules and at the time specified herein, each residential unit shall have installed a separate meter, and each residential customer's service must be separately metered at a single delivery and metering point. For purposes of this section, a residential unit is each separate dwelling unit, consisting of a room or group of rooms within a structure forming a single independent habitable unit containing independent kitchen, sanitary, and sleeping facilities.

(1) New water service will only be provided to a residential unit constructed, erected or relocated at or to a location where no prior residential unit existed if the unit is individually metered for water service. Each new unit constructed, erected or relocated is required to have its own individual meter.

(2) Before any new water service will be provided or current service maintained to an existing residential development in which each separate residential unit not individually metered for water service is repaired, replaced, renovated, or reconstructed, and the total cost of all repair, replacement, renovation or reconstruction exceeds fifty percent (50%) of the value of the existing development, each and every residential unit within the residential development shall be separately metered. However, if the Administrator determines that the configuration of the existing residential development is such that the costs involved in installing individual meters is so excessive as to significantly outweigh the interests of the Town in individual metering, he may waive this requirement in whole or in part.

(a) For purposes of this section, the total cost of all repair, replacement, renovation or reconstruction shall be the actual cost of the repair, replacement, renovation or reconstruction. Actual cost includes the cost of all materials and services utilized to accomplish the repair, replacement, renovation or reconstruction, including, but not limited to sales tax, the costs of design, engineering fees, and all construction costs, whether undertaken at one time or in stages extending over a period of up to two years or such longer period as is authorized by any single special use permit, special use permit modification, building permit, or conditional zoning district approval or modification, as applicable.

(b) For purposes of this section, the value of the existing development shall be considered the value of the property, as determined by the Watauga County Tax Administrator and reflected in the tax rolls of Watauga County, North Carolina, at the time the repair, replacement, renovation or reconstruction is commenced.

(3) Although an existing, non-conforming residential development in which separate residential units receive water service through a single meter may continue to receive water service until such time, if any, that the development must install individual meters in accordance with this section, the minimum water and sewer fees for each meter which serves multiple residential units shall be the amount of the minimum fees which would apply if each separate residential unit had its own 3/4" meter.

'50.110 LOCATION OF METERS.

(A) All water meters must be located so that, as determined by the Administrator, they may be easily accessed by the Town for measuring water usage, for repair and for replacement, and the requirements of this section and '50.114 regarding the customer's responsibilities relative to the meter must be met at all times.

(B) No new water meter may be installed in a publicly owned sidewalk unless there is neither available and suitable public right-of-way nor suitable location on the property to be served upon which to install the meter. When five or more water meters must be installed to serve any one location, they may not be installed in public right of way unless, as determined by the Administrator, there is no suitable location on the property to be served upon which to install them.

(C) A new water meter may only be installed on the property to be served at a location agreed upon by the Administrator and the property owner, and prior to the installation of the meter, the property owner must execute and deliver to the Administrator an easement, in a form acceptable to the Administrator and suitable for recording, conveying all rights necessary for the town to install, read, service, and replace the meter, and to maintain all appurtenant equipment, lines and facilities between the public water main and the meter.

'50.111 CONNECTION OF SERVICE BY TOWN.

(A) The town shall only be required to run a service line from the town's distribution line to the agreed upon location for the customer's meter if the customer's nearest property line is adjacent to a public right of way. When the customer's nearest property line is not adjacent to a public right of way, the customer is solely responsible for installing and maintaining all piping and other required facilities, and for acquiring and providing proof of all necessary easements from the customer's property to the appropriate public right of way. In every case it is the customer's responsibility to connect and maintain all piping and facilities from the meter to the customer's plumbing system.

(B) When the town installs two or more meters on the same property for different customers, they shall be closely grouped, but shall be labeled so as to identify to which customer each meter applies.

'50.112 TOWN NOT RESPONSIBLE FOR CERTAIN MATTERS OR DAMAGES.

(A) The town shall not be responsible for the following matters or damages. The failure to mention a particular type of claim or damage in the following paragraphs shall not authorize liability on the part of the town, does not constitute a waiver of governmental or sovereign immunity, and no responsibility or liability may be inferred by its exclusion. Among others:

(1) Although the town shall make a good faith effort to notify affected customers before service is discontinued or interrupted, the customer or adjunct customer, by making application for service, a customer or adjunct customer agrees to hold the town harmless from liability for any damages that may occur due to discontinuance or interruption of service.

(2) The town is not responsible for inspecting the customer's **or adjunct customer's** piping or plumbing apparatus and facilities and is not responsible for the condition of that piping, plumbing or facilities. A customer's piping or plumbing apparatus and facilities consists of all piping or apparatus from the customer's side of the meter on the customer's property or on property the customer has crossed.

(3) The town is not liable for damage of any kind whatsoever resulting from water or the use of water on the customer's or adjunct customer's premises, unless such damage results directly from negligence on the part of the town and is covered by the town's liability insurance coverage. The town is not responsible for damage done by or resulting from any defect in the piping, facilities, fixtures or appliances on the customer's or adjunct customer's side of the water meter. The town is not responsible for damage caused, wholly or in part, by the negligence of the customer, adjunct customer, or third parties, or damage caused by forces beyond the control of the town.

(4) To the extent practicable, the town will notify the customer of any anticipated interruption of service, but any failure on the part of the Town to give such notice will not create any liability on the part of the town.

'50.113 Availability Fee.

(A) *Policy statement.* Each new demand on the town's water and/or sewer system uses up a portion of the remaining capacity of the town's water and/or sewer plants. Eventually these new demands create the need to build additional plant capacity. This section codifies the town's policy that customers who create additional demands for water and/or sewer service should fund the cost of constructing additional plant capacity required to meet these demands.

(B) *Applicability.* The Availability Fee shall be paid:

(1) By all new customers and adjunct customers to the Town's water and/or sewer system that place an additional demand on said system; and

(2) By all existing customers and adjunct customers to the Town's water and/or sewer system that place an additional demand on said system through an expansion or a modification of an existing structure or use.

(C) *Measurement of new demand.* The new demand placed on the system by the customer shall be determined according to the schedule set forth in ' 50.460, taking into account adjustments to recognize the presence of adjunct customers.

(D) *Determination of the availability fee.*

(1) The amount of the availability Fee for the water system shall be determined by multiplying the customer's and/or adjunct customer's new demand in the terms of the predicted daily flow rate by the rate currently in effect per gallon.

(2) The amount of the availability fee for the sewer system shall be determined by multiplying the customer's and/or adjunct customer's new demand in terms of the predicted daily flow rate by the rate currently in effect per gallon.

(E) *Capital Reserve Fund.* All availability fees collected by the town from customers and/or adjunct customers that place additional demands on the town's water or sewer system shall be placed in the town's Water Reserve Fund and shall be earmarked for the construction of additional system capacity.

(F) *Transferability.* The availability fee attaches to the real property or unit receiving water and/or sewer service. The availability fee paid by the customer and/or adjunct customer automatically transfers to the new owner at the time the property is sold or transferred. The availability fee cannot be transferred to a different lot, except when an owner combines adjoining lots for a single residential or commercial purpose.

(G) *Credit.* Any property owner or customer who makes an off-site improvement to the town's water and/or sewer system infrastructure after 3-27-1997 shall be entitled to a credit toward **the** availability fee according to the conditions set forth below.

(1) The credit only applies to off-site water and sewer infrastructure improvements, not on-site improvements. The term **ON-SITE IMPROVEMENTS** means those improvements made on the owner's property.

(2) The credit only applies to the property for which the off-site improvements are made. The credit cannot be transferred to any other property.

(3) This credit shall expire and become null and void three years after the completion of the off-site improvements.

(4) The property owner or customer may be granted a maximum credit of 50% for every dollar spent on off-site improvements to be applied towards the availability fee. This credit is based upon the property owner's or customer's investment in the town's water and/or sewer system infrastructure calculated at the market rate in effect at time of the investment. Expenses the property owner or customer is entitled to include within this credit are actual labor and material costs. However, the property owner or customer shall not include secondary or indirect costs such as engineering fees. The town will not give a credit for more than the existing market rate for labor and materials.

(5) It shall be the responsibility of the person claiming the credit to provide the town with all necessary documentation to prove the actual expenses incurred in making the off-site improvements.

(6) The availability fee credit will be based upon the availability fee rate in effect at the time an application for a credit is submitted.

(7) In no event shall any payment be made from the town to the property owner or customer for this credit.

(H) *Availability fee adjustment.*

(1) An availability fee adjustment may be granted by the Town Manager or his or her designee whenever strict enforcement of the provisions would result in a hardship to the customer or adjunct customer and if by granting the availability fee adjustment the intent of this section will be satisfied. A full or partial availability fee adjustment may be granted only when all of the following requirements are met:

(a) The party requesting the availability fee adjustment is an existing commercial customer of the town and has been in business since 2-25-1988 or has paid an availability fee;

(b) The commercial customer requesting the availability fee adjustment is relocating the business to another location within the town;

(c) The demand on the town's water and/or sewer system at the commercial customer's previous location will be substantially reduced or will be eliminated, causing the net effect of the move to have less impact on water and/or sewer use than would the opening of a similar new business;

(d) The intent of this section will be satisfied by the granting of the availability fee adjustment;

(e) The owner of the property at the customer's previous location gives the town a written release releasing all right, title and interest in the availability fee for which a availability fee adjustment is granted; and

(f) All of the conditions set forth herein are satisfied within two years after the customer closes its business at its previous location.

(2) The credit given shall not be greater than the availability fee actually paid by the customer.

(3) (a) In the event a availability fee adjustment is granted, the dollar value of the credit shall be calculated by:

1. Using the customer's availability fee paid at the previous location; or

2. Using the customer's actual usage at the previous location.

(b) Further, if the customer disagrees with the manner in which the town calculates the demand at the new location, the customer may request that the town measure the actual usage at the new location for a 24-month period and re-calculate the availability fee based upon an average of the three highest months during that 24-month period. This re-calculation may result in a refund to the customer or in a payment to the town.

(I) *Low income housing.* The town will grant a credit of 50% of the availability fee for the construction of low income housing when the construction is undertaken by a 501(C)(3) non-profit corporation and the housing will be occupied by persons or families with incomes at or below 60% of the area median income and there are contractual limitations on the free transferability of property, if it is to be owned or legal limitations on the conversion of the housing to use by persons or families with incomes higher than 60% of the area median income, if it is to be leased so that at a minimum the development or construction may only be used to provide housing to persons or families with incomes as described for a period of at least ten years.

(Ord. passed 6-21-2011)

'50.114 CUSTOMER-S AND ADJUNCT CUSTOMER-S RESPONSIBILITIES.

(A) Every customer and adjunct customer shall arrange for piping on the premises to be installed so that the connections to the town's meter, lines or mains are conveniently located.

(B) When a meter is installed on the premises of a customer, the customer shall provide and maintain a suitable place to locate the meter so that it is unobstructed and accessible at all times to the meter reader.

(C) Every customer and adjunct customer shall furnish and maintain a private cutoff valve on the customer's side of the meter.

(D) Every customer and adjunct customer shall maintain all town piping, apparatus, and facilities within the customer's control in proper condition.

(E) Every customer and adjunct customer shall protect any town property placed on the customer's or adjunct customer's property and shall only permit access to it by authorized representatives of the town.

(F) Every customer and adjunct customer shall provide the town's representatives access to his property, as necessary for the town to maintain the town's water and/or sewer lines, to install or remove town property, to read or test the customer's water and/or sewer meter(s), and for any other purpose reasonably necessary for the town to efficiently provide service to the customer and adjunct customer, and to maintain and protect its system.

(G) If so requested, every customer and adjunct customer shall grant or convey to the town a perpetual easement and right of way across the customer's property wherever said perpetual easement and right of way is reasonably needed by the town to effectively furnish and maintain service to the customer. The refusal of a customer, adjunct customer, or applicant for service as either to grant or convey the town an easement is a basis for denying or discontinuing service to a customer or adjunct customer.

(H) The customer is responsible for keeping the town informed at all times of the customer's current billing address. An adjunct customer must likewise provide the town with a contact address and telephone number, and must keep such information current.

(I) In the event that any loss or damage to the property of the town is caused by the customer, adjunct customer, their invitees, agents or employees, or in the event the negligence or any wrongful act by the customer, adjunct customer, their invitees agents or employees results in any accident or injury to persons or property for which the town is held responsible, the customer must pay the cost of the necessary repairs or replacements to the town; and the customer shall assume any liability otherwise resulting from the customer's or adjunct customer's wrongful actions or omissions. The actual amount of such loss or damage and/or the actual cost to the town of repairs shall be added to the customer's bill; and if not timely paid, service to the customer and any adjunct customer may be discontinued by the town.

(J) By applying for and accepting service from the town, the customer and adjunct customer agree to hold the town harmless from liability for any damages that may occur due to a temporary discontinuance or interruption of service by the town for emergency reasons, whether or not the customer or adjunct customer receives prior notification of the discontinuance or interruption.

'50.115 Meter Reading - Billing - Collecting.

(A) Meters will be read, weather and other considerations permitting, and bills shall be rendered monthly, but the town reserves the right to vary the dates or length of the period between meter readings and covered in the customer's bill.

(B) Charges for water and sewer will be figured in accordance with the town's published rate schedule then in effect, in ' 50.460, based on the amount of water consumed or estimated, and actual or estimated sewer use for the period covered by the meter readings.

(C) Charges for service commence when the meter is installed and the connection made, whether any water is immediately used or not.

(D) A separate bill, including appropriate base charges, will be issued for each separate meter even if more than one meter is in the same customer's name.

(E) Bills are due when rendered and become delinquent 20 days following the date of the bill. Bills not paid prior to the delinquent date are subject to the late fee currently in effect and subject the customer and any adjunct customer to an immediate termination of service.

(F) A claimed failure to receive a bill does not prevent a bill from becoming delinquent or relieve the customer from timely payment, late charges or the other town remedies contained in this subchapter.

(G) At the request of a customer and deposit of the actual cost of testing, the town will test a customer's meter. If the meter is found to register use more than 10% higher than the correct volume, no charge for the testing will be made and the customer's deposit for the test will be refunded. If testing indicates that the meter registers use within 10% higher of the actual use or less, the deposit shall be retained.

(H) If the seal of a meter is broken, other than by the town's representative, or if the meter fails to register correctly or is stopped for any cause, the customer shall be required to pay a bill for each period for which no reliable meter reading was made in an amount estimated from the record of the customer's previous 12 bills for which use was reliably measured, if available, and/or from other appropriate data.

(Ord. passed 6-21-2011)

' 50.116 INVOLUNTARY DISCONTINUANCE OF SERVICE.

(A) The town reserves the right to discontinue or interrupt service temporarily to make emergency repairs, due to an insufficient supply of water or treatment capacity or due to any other cause which threatens the safe and effective delivery of service to the town's customers. In that event, the town will make a good faith effort, as practical, to notify affected customers before service is discontinued or interrupted. A customer has the responsibility to notify adjunct customers using the customer's meter of such discontinuation or interruption.

(B) The town will discontinue residential service in which the water and/or sewer bill is delinquent. The town may lock or remove the meter any time service is discontinued.

(C) The town will discontinue service to any commercial establishment, unit or property in which the water and sewer bill is delinquent. The town may lock or remove the meter any time service is discontinued.

(D) In addition to discontinuance of service for non-payment, the town may suspend service to prevent fraud or abuse by a customer or adjunct customer or for any violation by the customer or adjunct customer to comply with the provisions of this code.

(E) The town reserves the right, upon action by the Town Council, to discontinue its water and/or sewer service to any customer whose property is outside the corporate limits of the town, upon giving a minimum 60-day written notice of its intent to terminate water and/or sewer service.

(F) Upon discontinuance of service for non-payment, any deposit made by the customer or an adjunct customer on the unpaid account or any other account shall be applied by the town to the account relating to the discontinued service. If the deposit on the account in question exceeds the arrearage, any surplus will be refunded to the customer or adjunct customer, whichever has made the deposit, and if there are multiple deposits, any refund shall be prorated in proportion to the relative amounts of the deposits which have been applied. If the deposit(s) is not sufficient to pay the arrearage in full, the town may proceed to collect the balance from the customer or any other user of the system in the usual way provided by law for the collection of debts. If a deposit from a second account is applied to the delinquency on an unpaid account, the customer will be required to supplement the deposit on the second account to the level required by ' 50.460 in order to maintain service on the second account.

(G) The Town shall make a good faith effort to notify affected customers before service is discontinued or interrupted as provided in subsection A. However, every customer and every adjunct customer, by making application for service, agrees to hold the town harmless from

liability for any damages that may occur due to discontinuance or interruption of service for any of the above mentioned causes.

(Ord. passed 6-21-2011)

' 50.117 PROCEDURES FOR DISCONTINUATION OF SERVICE OR DENIAL OF SERVICE AND CUSTOMER-S APPEAL RIGHTS.

(A) Before the town cuts off a customer's or adjunct customer's water or sewer service, the town will send the customer or adjunct customer a notice explaining the basis for the action, the date service will be terminated and the customer's or adjunct customer's appeal rights. The notice to a customer may be included in the monthly bill for water or sewer service. If an applicant for service as a customer or adjunct customer is denied service, the applicant may request a hearing in writing within five days and these procedures shall apply. An adjunct customer shall have no appeal rights under this section to challenge a threatened disconnection of a customer's service, even if the adjunct customer's services will also be terminated as a result of the action.

(B) Within five days of the date of mailing of a disconnection notice or within ten days of the date of mailing of the bill containing the stated disconnection information, if the information is included with the normal monthly bill, the customer or adjunct customer may request in writing a hearing to either dispute the circumstances for which disconnection is threatened or, if the customer believes the bill is in error, the customer can request a hearing to dispute the amount of the bill.

(C) If the customer or adjunct customer files a timely request for a hearing, prior to disconnecting service, the town will conduct a hearing on the request, presided over by a town employee or other disinterested person, as designated by the Town Manager, who was not involved in the original decision to discontinue service.

(D) The hearing will be conducted within three business days of the town's receipt of the request and may be held by telephone or at the request of the customer and option of the town, in person. The hearing may not be delayed in the case of non-payment of a bill or a dispute as to the amount of a bill unless the customer pays the town a deposit equal to the amount of the disputed bill.

(E) At the hearing, the customer or adjunct customer will be given an opportunity to present the facts and other matters which the customer or adjunct customer maintains should prevent the disconnection of service. The customer or adjunct customer may be represented by an attorney, shall have the opportunity to examine any documents relied upon by the town in disconnecting service and shall be given the opportunity to cross-examine any witnesses who testify against the customer or adjunct customer. Within 24 hours following the hearing, the town employee or other disinterested person conducting the hearing will issue a decision affirming the action by the town, reversing the action by the town or modifying the action by the town by allowing any past due amount to be paid in monthly payments totally no more than four. The decision may be communicated to the customer or adjunct customer verbally or in writing, but, if verbally, will be followed within five days by a written communication setting out the decision.

(F) The decision by the town employee or other disinterested person conducting the hearing shall constitute the final decision by the town.

(1) If the decision upholds the town's determination that facts exist which justify the discontinuation of service, unless the customer or adjunct customer makes immediate payment of all amounts for service incurred through the date of the decision, service may be disconnected as soon as the decision is made and an attempt to communicate the decision to the customer or

adjunct customer is made by contacting the customer or adjunct customer at the telephone number or e-mail address provided by the customer for that purpose at the hearing.

(2) If the employee or other disinterested person conducting the hearing concludes that the discontinuation of service is justified, but circumstances beyond the control of the customer or adjunct customer exist which make unfair a demand for immediate full payment of all amounts for service incurred through the date of the decision and that the customer should be entitled to pay the delinquent or disputed amount in monthly payments totaling no more than four, should any monthly payment be themselves delinquent, discontinuation of service may occur without further process.

(3) If the employee or other disinterested person conducting the hearing determines that the town's action or charges were in error, the customer's account shall be adjusted appropriately.

(G) Pursuit of the aforesaid appeal shall not prevent a customer from seeking an adjustment in a bill by the Town Manager or Town Council in amounts authorized by this chapter, but the requests shall not stay a discontinuation of services unless they are requested prior to the hearing provided in this section.

(H) The procedures provided by this section are available to an adjunct customer only with regard to a discontinuation of service or denial of application which is specific to the adjunct customer and not to actions relating to the customer whose meter through which the adjunct customer receives service, even if the result of a discontinuation of service to the customer or denial of an application for service by a customer affects the ability of the adjunct customer to receive service.

(Ord. passed 6-21-2011)

' 50.118 SERVICE TERMINATION.

Disconnection of water or sewer service shall be effected only by authorized agents of the town or by persons specifically authorized to do so.

(Ord. passed 6-21-2011)

' 50.119 REINSTATEMENT OF SERVICE.

(A) No person other than a duly authorized agent or employee of the town may cause or allow a reconnection of water and/or sewer service.

(B) (1) Before service will be reinstated after it has been disconnected for non-payment of outstanding charges, the customer shall be required to make full payment of all charges owing the town.

(2) In addition, the customer shall also increase the deposit with the town to an amount equal to two times the average monthly bill in the previous 12 months or the average monthly bill for the full period of service if service has been in effect for less than 12 months.

(3) If a customer with a delinquent account files for bankruptcy protection and duly notifies the town of the filing, pending final action by the bankruptcy court, no demand will be made for payment of delinquencies incurred prior to the bankruptcy filing.

(4) However, any delinquencies for service provided after the bankruptcy filing shall result in a discontinuation of service and the town shall require a deposit equal to two times the

average monthly bill in the previous 12 months or the average monthly bill for the full period of service if service has been in effect for less than 12 months, before service will be reinstated.

(C) Service will not be reinstated after it has been disconnected for fraud or misconduct on the part of the customer or adjunct customer, such as engaging in one or more of the acts identified in ' 50.119, without the approval of the Town Council.

(D) Service to a customer or adjunct customer whose service has been discontinued will not be reinstated until the customer pays the reconnection fee authorized in ' 50.460.

VOTE: Aye – All
 Nay – None

AWARDING OF BID – TOWN OF BOONE DEMOLITION PROJECTS

Public Works Director Blake Brown stated that three bids have been received by the Town in regard to demolition of the Powder Horn Theater and structures on the site of the old Humane Society animal shelter located next to the Town Waste Water Treatment Plant. He outlined the bids as follows:

- Travis Wilson Construction Inc.: Animal Shelter - \$18,220
 Powder Horn Theater - \$16,132
- E. Luke Greene Co., Inc.: Animal Shelter - \$27,000
 Powder Horn Theater - \$13,000
- John Greene Trucking Animal Shelter - \$18,000
 Powder Horn Theater - \$8,000.

Mr. Brown noted that the bid from E. Luke Greene Co., Inc. includes landfill disposal charges, whereas the other two bids do not include those charges. He requested that the Council authorize the Town Manager to negotiate with E. Luke Greene Company to issue bids that do not include the landfill charges. Upon a motion by Council Member Brantz, seconded by Council Member Scherlen, Council moved to allow the Town Manager to negotiate the bid from E. Luke Greene, Co., Inc. so that the charges for landfill disposal fees are not included for demolition of the Powder Horn Theater and the old animal shelter site.

VOTE: Aye – All
 Nay – None

SCHEDULE CASES FOR AUGUST QUARTERLY PUBLIC HEARING

Planning Director Bill Bailey presented the following cases for consideration to be scheduled on the August Quarterly Public Hearing agenda:

- **Case 20120396** – Temporary Classrooms
- **Case 20120** – Off-Premise Signs
- **Case 20120** – Hospitality House and First Baptist Church General Use Map Amendment
- **Case 20120394** – Lowes Home Center and Innkeepers of Boone General Use Map Amendment
- **Case 20120403** – Clawson/Greene Multi-Family Development Conditional District Map Amendment.

Upon a motion by Council Member Ball, seconded by Council Member Scherlen, Council moved to place the aforementioned cases on the August Quarterly Public Hearing agenda.

VOTE: Aye – All
 Nay – None

Mayor Clawson declared a break at 8:12 p.m. Council reconvened at 8:28 p.m.

APPROVAL OF SIGN CAMPAIGN – MOVE RIGHT FOR SIRENS AND LIGHTS CAMPAIGN

Planning Director Bill Bailey presented a request for Council’s approval of the “Move Right for Sirens and Lights Campaign” sign placement throughout the Town’s planning jurisdiction. He explained that the Boone Fire and Police Departments are publicizing this campaign by placing signage at numerous locations within the Town’s planning jurisdiction beginning in the last week of July. Furthermore, Mr. Bailey explained that the signage is allowed under Article 18 Section 325[a][1] of the UDO. Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved to approve the request.

VOTE: Aye – All
 Nay – None

PRESENTATION OF P&I MONTHLY REPORT

Planning Director Bill Bailey presented the P & I Monthly report. **(Permanently on file in the July 2012 Town Council Packet.)**

APPROVAL OF ENCROACHMENT AGREEMENT – NCDENR DSCA PROGRAM

Public Works Director Blake Brown presented a request for an encroachment agreement from the NC Department of Environment and Natural Resources DSCA Program for the placement of a monitoring well to be located on Wood Circle in the Town’s right-of-way. Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to approve an encroachment agreement between the Town of Boone and NCDENR DSCA Program for a monitoring well to be located on Wood Circle. **(Copy of encroachment agreement permanently on file in the Public Works Department.)**

VOTE: Aye – All
 Nay – None

APPROVAL OF ENCROACHMENT AGREEMENT – MOUNTAIN OIL INCORPORATED

Public Works Director Blake Brown presented a request for an encroachment agreement from Mountain Oil, Incorporated, for the placement of a monitoring well to be located on Farthing Street in the Town’s right-of-way. Upon a motion by Council Member Brantz, seconded by Council Member Scherlen, Council moved to approve an encroachment agreement between the Town of Boone and Mountain Oil, Incorporated, for a monitoring well to be located on Farthing Street. **(Copy of encroachment agreement permanently on file in the Public Works Department.)**

VOTE: Aye – All
 Nay – None

PRESENTATION OF MONTHLY NOISE REPORT

Police Chief Dana Crawford presented a noise report for the period of June 1, 2012 through June 30, 2012. **(Copy of report permanently on file in the July 2012 Town Council meeting packet.)**

MONTHLY WATER USES STATUS REPORT

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

RECESS MEETING

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to recess the meeting at 8:54 p.m. until Thursday, July 19, 2012, at 6:30 p.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE: Aye – All
 Nay – None

CALL TO RECONVENE

A recessed meeting from July 17, 2012 was called to order at 6:30 p.m., Thursday, July 19, 2012, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Jamie Leigh, Lynne Mason, Andy Ball, Rennie Brantz, and Allan Scherlen. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Town Clerk Kimberly Brown, Police Chief Dana Crawford, Police Lieutenant Danny Houck, Fire Chief Jimmy Isaacs, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Planning Director Bill Bailey, and Downtown Development Coordinator Pilar Fotta.

ANNOUNCEMENTS

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

TENTATIVE AGENDA ADOPTION

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

1. Addition of Item 12.M. – Reconsideration of Action on Adoption of Water & Sewer Amendment.

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

VOTE: Aye – All
 Nay – None

PUBLIC COMMENT

Terry Taylor, of Grand Boulevard, voiced his concern with the number of complaints called in during the time the new ordinance has been in place. He asked that the Council consider a lower decibel level.

Judy Humphrey, of Grand Boulevard, stated that she likes to listen to “rock and roll” music but can still hear music from one certain venue, even with the windows closed.

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Clawson announced the following vacancies:

Historic Preservation Commission – One (1) position: Trent Margrif submitted his resignation from this board effective immediately. His term expires June 30, 2014.

BOARD APPOINTMENTS

Affordable Housing Task Force

There were no applications submitted for the vacant positions.

Board of Adjustment

Council Member Mason nominated Web Alexander to serve as an alternate resident position on the Board of Adjustment. With no other nominations, Mayor Clawson called for a vote on the nomination.

VOTE: Aye – All
 Nay – None His

term will expire June 30, 2015.

Community Appearance Commission

There were no applications submitted for this position.

Downtown Boone Development Association Board

Council Member Leigh nominated Sherri Moretz to serve on the DBDA Board. Council Member Brantz nominated Brad Harmon to serve. With no other nominations, Mayor Clawson called for a vote on the nominations.

Sherri Moretz: VOTE: Aye – All
 Nay – None

Brad Harmon: VOTE: Aye – 4 (Scherlen, Mason, Ball, Brantz)
 Nay – 1 (Leigh)

Greenway, Parks & Gardens Committee

Council Member Mason nominated Judith Phoenix and Randall Gonzalez for reappointment. Council Member Ball nominated Ane Gade for reappointment. With no other nominations, Mayor Clawson called for a vote on the nominations.

VOTE: Aye – All
 Nay – None

Terms expire July 31, 2015.

Outside Agency Funding Committee

There were no applications submitted for this position.

Planning Commission

Council Member Mason nominated Bunk Spann for reappointment as a resident position on the Planning Commission. With no other nominations, Mayor Clawson called for a vote on the nomination.

VOTE: Aye – All
 Nay – None

His term expires June 30, 2016.

Tree Board

There were no applications received for this position.

Water Study Committee

There were no applications received for this position.

ADDITIONS TO COMPOSITION OF CULTURAL RESOURCES BOARD

Council Member Leigh suggested that two council members be appointed to serve as liaisons to the Cultural Resources Board. She volunteered to serve as a liaison to this board as did Council Member Brantz. She also suggested that the Council appoint two members of the town staff to provide assistance to the board: Public Works Superintendent Eric Gustaveson and Downtown Coordinator Pilar Fotta. Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to appoint Council Members Leigh and Brantz to serve as ex-officio, non-voting members to the Cultural Resources Board and appointed Public Works Superintendent Eric Gustaveson and Downtown Coordinator Pilar Fotta to provide staff assistance to the board.

VOTE: Aye – All
 Nay – None

CULTURAL RESOURCES COMMITTEE ISSUES

Council Member Leigh informed the council that the Cultural Resources Steering Committee is meeting on Friday, July 20, 2012, at 1 p.m. in the Administrative Conference Room. She requested that the Council schedule a special meeting to discuss issues for consideration by the Cultural Resources Board. Upon a motion by Council Member Brantz, seconded by Council Member Leigh, Council moved to schedule a special meeting on Thursday, August 16, 2012, at 7 p.m. in the Council Chambers.

VOTE: Aye – All
 Nay - None

DISCUSSION AND POSSIBLE RECONSIDERATION OF RECENTLY-PROPOSED PARKING RATE INCREASE

Council Member Leigh requested that Council reconsider the parking increase that was adopted with the budget ordinance at the June regular meeting. She stated that increased fees could be detrimental to small businesses. Council discussed parking fee issues within the downtown businesses. Town Manager Greg Young stated that the DBDA is reviewing the issue of parking in the downtown area. Upon a motion by Council Member Leigh, seconded by Council Member Ball, Council moved to reduce the increase in parking rates to approximately 10% instead of 30%, to make the rate increase retroactive to be effective July 1, 2012, and to refund money for businesses or persons who have already paid the increased fee.

VOTE: Aye – All
 Nay – None

REQUEST FOR UPDATE ON DOWNTOWN SIDEWALK IMPROVEMENTS AND LIGHTING ADDITIONS

Council Member Leigh asked Public Works Director Blake Brown to update the Council on sidewalk improvements and the possibility of lighting on the north side of King Street. Mr. Brown stated that to increase the sidewalk from five feet in width to seven feet from the Mast General Store to Boone Bagelry and to install lights along that section would cost approximately \$290,000. He explained that would include installation of brick in-lay for the sidewalks and adding underground conduit under the sidewalks. Council Member Mason stated that the Council should also consider lighting and sidewalk improvements to the section of King Street from Water Street to Straight Street. Council Member Leigh asked about the status of installing brick in-lay on the four corners of sidewalk at the intersection of King and Depot Streets. Mr. Brown stated that could be accomplished with current funds and possibly through a partnership with the DBDA. It was the consensus of the Council to ask the DBDA to consider the possibility of partnering on some of the improvements to the downtown.

DISCUSSION OF UNSAFE/DIFFICULT SIDEWALK SEGMENT IN DOWNTOWN BOONE

Council Member Leigh pointed out that an unsafe situation exists with a section of sidewalk around the corner from the Mast Store. She voiced her concern that this segment of sidewalk could be especially dangerous for persons with disabilities. Public Works Director Blake Brown stated that the two parking spaces next to this section can be converted into a parking space that is van accessible for persons with wheelchairs or walkers. Upon a motion by Council Member Leigh, seconded by Council Member Brantz, Council moved to direct the Public Works department to revamp the section of sidewalk that includes the corner past the Mast Store and to make necessary adjustments to the parking spaces to make it van accessible.

VOTE: Aye – All
 Nay – None

Mr. Brown also suggested that “pocket parks” can be considered when redoing the sidewalk and integrated into the sidewalk plan.

REQUEST RENEWAL OF DBDA ANNUAL CONTRACT FOR FY2012-2013

Downtown Development Coordinator Pilar Fotta appeared before the Council to request renewal of the DBDA contract for Fiscal Year 2012/2013. Upon a motion by Council Member Brantz, seconded by Council Member Scherlen, Council moved to approve the following contract:

**STATE OF NORTH CAROLINA
COUNTY OF WATAUGA**

AGREEMENT BETWEEN
TOWN OF BOONE
AND THE DOWNTOWN BOONE DEVELOPMENT ASSOCIATION, INC.

THIS AGREEMENT (A Agreement) is entered into this 19th day of July, 2012, by and between the TOWN OF BOONE, a North Carolina municipality (hereafter referred to as A the Town) and the DOWNTOWN BOONE DEVELOPMENT ASSOCIATION, INC., a North Carolina non-profit membership corporation (hereafter referred to as A the DBDA), collectively referred to as A the Parties.

W I T N E S S E T H:

THAT, WHEREAS, the Town is a municipal corporation organized pursuant to the laws of the State of North Carolina and located in Watauga County, North Carolina; and

WHEREAS, the Town has established a Municipal Service District pursuant to N.C. Gen. Stat. ' 160A-535, et seq., (hereafter, the AMSD") from which it collects a Municipal Service District tax the authorized purposes of which are identified under State law; and

WHEREAS, pursuant to N.C. Gen. Stat. ' 160A-536(d), the Town is authorized to enter into contracts to administer, in whole or in part, the Municipal Service District tax; and

WHEREAS, the Town is a participant in the North Carolina Main Street Program administered by the North Carolina Department of Commerce (hereafter, "the Main Street Program"); and

WHEREAS, the DBDA is a North Carolina Non-Profit Corporation, duly organized pursuant to the laws of the State of North Carolina and authorized by law to enter into Agreements for the purposes for which it was created, including the promotion, encouragement and assistance in the revitalization and economic health and stability of the Town's Municipal Service District (the AMSD); and

WHEREAS, the parties wish to confirm their Agreement concerning the expenditure of MSD funds, governance of the DBDA, and required and permitted activities of the DBDA with those funds in writing;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration passing from each party to the other, the receipt of which is hereby respectively acknowledged by each of the parties hereto, the parties agree and contract as follows:

1. **Term**: The term of this Agreement shall be one year, commencing on July 1, 2012 and ending June 30, 2013. No continuation or renewal of the Agreement shall be inferred following its expiration, nor shall any further commitment by either party exist without specific action by each of the parties to authorize, create and adopt a new contract, except as to those duties created by this Agreement.

2. **Consideration**: In consideration of the DBDA's performance of the duties and responsibilities set out herein, the Town will make available to the DBDA the 2012-2013 MSD tax revenues, as those revenues become available (hereafter, "MSD funds"). Each party recognizes and confirms that all MSD funds are derived from MSD taxes and are subject to all relevant restrictions for MSD tax funds set out in the North Carolina General Statutes. Should the Agreement be terminated or end before all funds have been paid, the Town shall reimburse the DBDA or pay from MSD funds for any outstanding expenses committed by the DBDA pursuant to this Agreement.

3. **Governance**: Beginning with the 2011 annual meeting of the membership of the DBDA, one half of the members of the Board of Directors shall be elected by the membership of the DBDA, and one-half of the members shall be appointed by the Boone Town Council. Service of the new board shall begin at the first meeting of the directors following the annual meeting of the members. Should the Town Council also appoint one or more of its members as liaison to the DBDA, the DBDA board of directors shall include them in their meetings and deliberations, but they shall be considered as *ex officio*, non-voting members of the Board.

4. **Administration**: The parties acknowledge that the executive director of the DBDA is a Town employee, subject to the Town's Personnel Policy and working under the supervision of the Town manager or his designee.

5. **Appropriate Uses of MSD Funds**: MSD funds shall be used solely for purposes authorized by this Agreement, but the DBDA may expend funds from other sources for other purposes so long as: (1) they are accounted for using methods which satisfactorily assure their proper use; (2) no MSD funds are committed, either directly or indirectly, to support any activities which are not appropriate for the use of MSD funds; and (3) such other funds are expended in accordance with pertinent law and the DBDA's own by-laws. MSD funds will not be authorized for sign or facade grants until a policy is developed and recommended by the DBDA, and adopted by the Town Council, which ensures comprehensive notice of the availability of such grants and which contains criteria for determining which proposed facade or sign improvements or replacements benefit the MSD as a whole and not simply the individual property owner or business.

6. Recommendations by DBDA to Town Council: The DBDA will make recommendations to the Town Council for its consideration, to ensure that:

- A.** To the extent feasible and taking into consideration the limits of the DBDA's ability to know all changes which take place within the MSD, the DBDA's website is updated at least quarterly and MSD directory signage is updated at least annually.
- B.** Regular office hours for public and membership access to the DBDA director or her designee are maintained in accordance with the hours reflected on the DBDA website, subject to the review and approval of the Town Manager (who must oversee the hours of employees and Town's compliance with wage and hour laws, etc.)
- C.** MSD funds are used to benefit only the MSD area, are used to benefit the entire range of stakeholder categories (i.e. including service providers and other non-retail establishments) and all MSD locations (e.g. less traveled streets and outer boundary edges), and prohibiting the use of MSD funds, in whole or in part, to promote businesses or activities outside the MSD.
- D.** At least 30% of MSD funds are utilized for tangible improvements to the MSD, such as streetscape improvements.
- E.** Remaining MSD funds are utilized, if desirable, to create, coordinate and administer District revitalization projects which provide for services or functions, such as additional garbage pick up, which are in addition to or to a greater extent than those provided or maintained by the Town for the entire town, to support any duly adopted plan by the Town aimed at improving the MSD, which is specifically authorized herein, or for such other activities which benefit the MSD, work toward its revitalization or preservation, or otherwise enhance the MSD area and help the businesses of the MSD thrive.

Such recommendations shall address activities such as:

- 1. Promotional and developmental activities, such as sponsoring festivals and markets in the MSD, promoting business investment in the MSD, helping to coordinate public and private actions in the MSD, and developing and issuing publications on the MSD designed to improve the economic well-being of the MSD;
- 2. Administration of any MSD revitalization project specifically requested by the Town;
- 3. Creation, maintenance and administration of a clearinghouse for information concerning the availability of properties within the MSD for purchase or rent, by creating, maintaining and administering a repository of such information to which MSD property owners may contribute, as they may wish, and which shall be in a format which will make it broadly available to the public and to persons potentially interested in investment in the MSD;
- 4. Its participation in activities, and the maintenance and submission of all information requested or required by or of the Town, or by the North Carolina Department of Commerce in order for the Town to continue to participate in good standing in the North Carolina Main Street Program

and for the Town to derive all available benefits from its continued participation in the Main Street program;

7. **Commitments by DBDA:** The DBDA agrees that:

- A. Should the DBDA hire employees with non-MSD funds, it will maintain and provide to the Town Manager a comprehensive personnel policy which addresses and ensures the proper performance by non-Town staff for expenditure of funds, and which includes procedures for the supervision of staff and the discipline of staff, with personnel actions up to and including dismissal authorized.
- B. No later than thirty days after its receipt, or September 1, 2012, whichever is earlier, it will provide the Town Manager and Town Council a full copy of any audit which it obtains, and that should it obtain an audit, it shall be prepared by an independent auditing firm having no conflicts of interest and selected by the DBDA board of directors after a general solicitation to appropriate accounting firms in the region, including an Audited Income Statement with detailed expense categories, not just one generic Adowntown redevelopment@ expense item. The audit must disclose itemized expenditures by funding source.
- C. At least five days before each meeting of the DBDA board of directors, it will post on its website and provide notice, in accordance with its duly adopted by-laws, of the meeting to its membership, Board members, Town Council members and Town Manager, along with an agenda and a copy of the draft minutes from the previous meeting.
- D. It will provide the Town Manager with a copy of the organization's Form 990 promptly after it is prepared.
- E. It will maintain a written policy which requires that a fund accounting system is created and maintained which ensures that any non-MSD funds are used only in accordance with State law and this contract, to the extent applicable.
- F. It will maintain written policies ensuring that non-MSD funds are properly used in accordance with its own by-laws and in accordance with applicable law.
- G. It will report to the Town Council the duly adopted, collective views of its full membership and its Board of Directors as to those actions and policies which the Town may consider within the District to improve the District's economic well-being.

8. **Activities to Serve entire Municipal Service District without Charge:** All activities of the DBDA with MSD funds shall be undertaken in such manner, insofar as possible, as to provide benefits to and throughout the entire District.

9. **Compliance with Laws:** The DBDA shall comply with all pertinent federal, State, county and Town laws, regulations and ordinances, including but not limited to all North Carolina and federal laws relating to the operation of non-profit membership corporations, those laws which govern the conduct of the annual meetings of its membership and the selection of its directors and officers. In addition, and not by way of exclusion, in any and all its actions and activities, the DBDA shall comply with and hereby certifies its compliance with the Americans with Disabilities Act, as amended, and Title VII of the Civil Rights Act of 1964, as amended, and should it hire employees of its own, the Fair Labor Standards Act, as amended, the Occupational and Health Safety Act, as amended, the North Carolina Employment Security Act,

as amended, and the North Carolina Worker's Compensation Act, as amended, to the extent each such law applies to the DBDA or any of its activities.

10. Compliance with its By-laws and Organizational Reporting to the Town: The DBDA will operate and act in accordance with its duly adopted by-laws, including but not limited to the provisions which govern the conduct of the annual meetings of its membership, the notice and quorum requirements for meetings of its board of directors, the selection of its directors and officers, and its prohibition against legislative advocacy. The DBDA shall seasonably provide the Town with its current by-laws and a roster of its current board of directors and officers, including their names, addresses, terms, and class of membership, and it shall seasonably notify and provide a copy to the Town of any changes in its by-laws or in its board of directors or officers. The DBDA shall invite and include in its membership all property owners in the MSD and it shall provide a mechanism or opportunity for all businesses and residents within the MSD to be represented in the DBDA or have their voices heard as policies are formulated and recommended. Should the DBDA's corporate status be revoked by the North Carolina Secretary of State, or should the DBDA's non-profit status be revoked by the United States Internal Revenue Service or otherwise, the DBDA shall immediately notify the Town, and this Agreement shall immediately terminate and it shall have no claim to the commitment of any remaining MSD funds.

11. Reporting on its Activities: At least quarterly during the term of the Agreement, and at such additional times as may be requested by the Town, the DBDA shall report to the Town Council on its activities. Said report shall include at a minimum descriptions of activities of the DBDA which have been undertaken since the prior report and those activities which are planned for the future.

12. Financial Responsibilities: The DBDA shall develop and recommend to the Town Council a proposed budget for the expenditure of MSD funds. The DBDA must set aside in its proposed budget an amount sufficient to pay, at a minimum, one-half of the salary and fringe benefits of the executive director of the DBDA. It shall present the proposed budget to the Town Council for its consideration by a date designated by the Town Manager which gives the Town Finance Director an adequate opportunity to review and evaluate the proposal, and the Town Council an adequate opportunity to review the recommendation and propose such changes as it may determine are desirable. Should the Town Council be unwilling to accept the proposal of the DBDA in any material way, an effort shall be undertaken for the parties to discuss their differences before a final budget is approved by the Town. In addition to providing the annual audit, as required by Paragraph 7(B), the DBDA shall maintain its financial accounts for non-MSD funds, and shall operate in accordance with generally accepted accounting principles. Financial information shall be maintained and provided, if requested, in a form acceptable to the Town and shall include, among other things, a detailed accounting for all funds from all non-MSD sources received or collected by the DBDA during the reporting period. In addition, the DBDA shall provide such records, verification of the expenditure of the funds, and other such information as requested by the Town. Should the DBDA at any time be advised by a funding, taxing or other governmental entity, or by its accountants, of any misappropriation of funds from any source or of any malfeasance or misfeasance, it shall immediately report such advice to the Town. Should the DBDA itself discover or determine any wrong doing, misappropriation, malfeasance or misfeasance, it shall immediately report such matter to the Town. The DBDA will notify the Town in writing within five days if any member of its staff is charged with or convicted of any crime involving malfeasance or misfeasance, or dishonesty in the use or handling of any DBDA funds, whatever the source, or if the DBDA itself is accused of any wrongdoing. Should the DBDA become aware of or suspicious of any embezzlement, malfeasance or misfeasance by an employee, agent, officer, director or other person connected with DBDA, of any of the DBDA's funds, whether from this grant or elsewhere, whatever the

source, it hereby commits that it will promptly report to and notify the appropriate law enforcement agency of such act, omission or suspicion.

13. Maintenance of Records: All records of the DBDA shall be available for inspection by the Town Manager or the Town Manager's designee. The DBDA agrees that records of its past use of MSD funds and of all disbursements of any funds will be maintained by it for a period of no less than seven years, and upon request such books and records will be made available to the Town or its representative for inspection. The DBDA shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement, and the accounting methods shall be satisfactory to the Town. Upon request, the DBDA will turn over ~~its~~ all financial records governing the use of MSD funds to the Town for storage and eventual destruction.

14. Indemnity: The DBDA shall indemnify and reimburse the Town for any misuse by it of funds which results in the assertion of liability against the Town. The DBDA hereby releases, acquits and forever discharges the Town, its agents, officers and employees, from any claims, demands, costs, loss of services, expenses, compensation, liabilities and obligations, suits at law or equity, including claims or suits for contribution and/or indemnity of whatever nature and all consequential damages resulting from or on account of its use of non-MSD funds, and it hereby agrees to indemnify and defend the Town from any claims brought as a result of its use or misuse of said funds.

15. Insurance: The DBDA confirms that it maintains sufficient liability insurance coverage to satisfactorily compensate any person for injury to a person or property caused by the operation of DBDA's programs and/or services paid in whole or part with non-MSD funds. The DBDA agrees that should the Town determine, in its sole discretion, that the DBDA does not maintain adequate liability insurance to satisfactorily protect itself and its participants, it will promptly increase its coverage to a level determined necessary by the Town.

16. Lobbying: The DBDA will use no funds for purposes of local, state, or legislative advocacy or lobbying, or to attempt to influence the legislative process at the local, State, or federal level. Likewise, no funds will be used to carry on any religious or political activities, or to attempt to influence the outcome of any public election.

17. Default: If the DBDA defaults in the performance of any of its duties under this Agreement, all of which are deemed material, the Town may terminate the Agreement after affording the DBDA prior notice ~~of an~~ and a reasonable opportunity to cure its default. On the date specified in any such notice of default for the DBDA to cure its default, should the default not be cured, this Agreement shall terminate. In the event of repeated violation of this Agreement, the Town may elect to terminate the Agreement without any further chance to cure the violation. Should this Agreement be terminated prior to the full expenditure of MSD funds for the fiscal year, the DBDA shall have no claim to the commitment of remaining funds.

18. Modification of Agreement. Merger: This Agreement contains all of the terms and conditions agreed upon by the Town and the DBDA. All discussions between them have been merged into this Agreement, and there are no oral terms or conditions agreed upon by the parties hereto which are not contained in this written Agreement. There shall be no modification of this Agreement unless the modification is in writing and signed by both parties.

19. Waiver: The Town's failure to strictly enforce any of its rights under this Agreement shall not constitute a waiver of such rights, and the parties agree that this provision may itself not be waived by the conduct of the parties, but only by a written instrument executed by each.

20. Relationship of Parties: Each party shall be considered an independent contractor in relation to the other, and neither shall be construed to be an agent or representative of the other

party except as agreed upon by both parties and approved by the Boone Town Council. Therefore, neither party shall have any liability to a third party for the acts or omissions of the other party. In addition, neither party nor any of its employees, agents, or contractors shall be deemed to be employees or agents of the other party. Neither party nor any of that party's employees, agents or contractors shall be entitled to compensation for services, worker's compensation, or employee benefits from the other party by virtue of this Agreement or actions taken in furtherance of the Agreement.

21. Assignments: The DBDA shall not assign any of its duties under this Agreement or its right to compensation from the Town to any other person or entity without the written consent of the Town, but the Town shall have no responsibility, express or implied, to approve any proposed assignment.

22. 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 which is wholly 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.

23. Partial Invalidity: If any term, covenant, condition or provision of this Agreement shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law. Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

24. Headings and Construction of Agreement: The headings used in this Agreement have been prepared for the convenience of reference only and shall not control, affect the meaning, or be taken as an interpretation of any provisions of this Agreement. This Agreement has been prepared on the basis of mutual understanding of the parties and shall not be construed against either party by reason of such party being the drafter hereof.

25. Entirety of Agreement: 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, and that no other Agreement, statement, or promise not contained in this Agreement shall be valid or binding.

26. Governing Law and Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, and venue of any dispute between the parties shall be in Watauga County, North Carolina.

27. Execution: Each party represents and warrants to the other that all necessary authorizations and approvals required for execution and performance of this Agreement have been given and obtained, and that the undersigned individual is duly authorized to execute this Agreement and bind the party for which it signs.

28. Notices: All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested; to the following addresses:

If to the Town, to: Greg Young
 Town Manager
 Town of Boone
 P.O. Drawer 192
 Boone, NC 28607

If to the DBDA, to: President
 The Downtown Boone Development Association, Inc.
 PO Box 362 DTS
 Boone, NC 28607

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

VOTE: Aye – All
 Nay – None

PROPOSAL FROM GLAVE AND HOLMES ARCHITECTURE FOR HOWARD STREET IMPROVEMENT CONCEPTS

Downtown Coordinator Pilar Fotta presented a proposal for Howard Street Improvement Concepts from Glave and Holmes Architecture, who designed the Wall Street project in Asheville. She stated that the proposal would not require any easements, deeds, or right-of-way acquisitions. She explained that this proposal would be a low-build option and would cost approximately \$5,900 for the conceptual drawings. Ms. Fotta stressed that this proposal would be pedestrian and bicycle-friendly. Council agreed that the original proposal for the improvements for Howard Street were expensive.

DBDA RECOMMENDATIONS – IMPROVEMENTS/PARTNERSHIPS IN THE MSD

Downtown Development Coordinator Pilar Fotta stated that the DBDA is willing to partner with the Town to make improvements to the downtown. Council Member Mason asked that the DBDA be informed of the Town’s plans for brick in-lay sidewalk at the intersection of King and Depot Street and sidewalk improvements and light installation on the north side of King Street from Boone Bagelry to the Mast Store.

UPDATE ON PROPOSED HOUSING STUDY ANALYSIS

Council Members Leigh and Mason requested that this matter be directed to the Affordable Housing Task Force for consideration and recommendation. Town Manager Greg Young presented information from the NC Housing Finance Agency and suggested this information could be incorporated in the study. Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved to direct the Affordable Housing Task Force to review this information and make a recommendation to the Council.

VOTE: Aye – All
 Nay – None

UPDATE ON HOWARD STREET PROJECT

Upon a motion by Council Member Mason, seconded by Council Member Scherlen, Council moved to enter into a contract with Glave & Holmes Architecture for a conceptual proposal for Howard Street in the amount of \$6,500.

VOTE: Aye – All
 Nay - None

W& S CODE AMENDMENT

Town Attorney Sam Furgiuele asked the Council to reconsider the vote on the amendments made to the Water and Sewer Code at the Tuesday meeting and to adopt the amendments effective immediately except for the changes in billing. He stated that the Public Utilities staff will present the Council with comparison information on single meters versus units individually metered. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to reconsider the vote on the adoption of amendments to the Water and Sewer Code.

VOTE: Aye – All
 Nay – None

Upon a motion by Council Member Mason, seconded by Council Member Scherlen, Council moved to adopt the amendments to the Water and Sewer Code as presented with the exception of the implementation of an increase in base rates which will become effective October 1, 2012.

VOTE: Aye – All
 Nay – None

REQUESTED APPEARANCES – BILLY G. COMBS

Billy Combs appeared before the Council to request a rezoning of the Northridge Circle neighborhood from R-3, Multi-Family to R-1, Single-Family. Furthermore, he requested that the Town initiate this rezoning. Mr. Combs stated that everyone he was able to contact in the neighborhood is agreeable to this change. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to direct the Planning Staff to initiate a map amendment for the Northridge Circle neighborhood from R-3, Multi-Family to R-1, Single-Family.

VOTE: Aye – All
 Nay - None

REQUESTED APPEARANCES – MONICA CARUSO

Molly Westmoreland, Director of Libraries for the Appalachian Regional Library system, presented a power-point presentation clarifying the classification of the Watauga County Library in regard to funding from the Town. **(Copy of power-point presentation permanently on file in the July meeting information file.)** Council Member Leigh inquired as to if each of the counties involved appointed a county commissioner to serve on the regional board. Ms. Westmoreland stated that two commissioners from each county board serve as liaisons. Additionally, Council Member Leigh asked if any other municipality in the region contributed funding to the libraries. Ms. Westmoreland indicated that both Wilkesboro and North Wilkesboro have contributed funding in the past.

CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to enter Closed Session at 8:07 p.m. pursuant to NCGS 143-318-11a(3)(5)(6) to hear the following items:

- A. Legal Advice – To consult with the Town Attorney in order to preserve the attorney/client privilege between the attorney and the Town Council to consider and give instruction concerning the handling of Hellbender, et al. v. the Town of Boone.
- B. Legal Advice – To consult with the Town Attorney in order to preserve the attorney/client privilege between the attorney and the Town Council and to instruct Town staff and the Town Attorney concerning the positions to be taken by or on behalf of the Town in negotiating the price and other material terms of a proposed contract for the acquisition of easements in real property related to the proposed raw water intake.
- C. Legal Advice – To consult with the Town Attorney in order to preserve the attorney/client privilege between the attorney and the Town Council and to instruct Town staff and the Town Attorney concerning the positions to be taken by or on behalf of the Town in negotiating the price and other material terms of a proposed contract for the acquisition of real property and easements in real property related to the proposed Chestnut Street connector.
- D. Legal Advice – To consult with the Town Attorney in order to preserve the attorney/client privilege between the attorney and the Town Council and to instruct Town staff and the Town Attorney concerning the positions to be taken by or on behalf of the Town in negotiating the price and other material terms of the sublease between the Watauga County Farmer’s Market and the Southern Appalachian Historical Association.
- E. Legal Advice – To consult with the Town Attorney in order to preserve the attorney/client privilege between the attorney and the Town Council and to instruct the Town Attorney concerning the positions to be taken by or on behalf of the Town in handling a possible claim or judicial action relating to interference with an easement owned by the Town which runs from U.S. Highway 321 to Horn in the West Park.
- F. Personnel – To consider the qualifications, conditions of appointment, and conditions of initial employment of the Cultural Resources Director.
- G. Legal Advice – To consult with the Town Attorney in order to preserve the attorney/client privilege between the attorney and the Town Council and to consider and give instructions concerning legal options regarding Highway 421 lights.
- H. Legal Advice – To consult with the Town Attorney in order to preserve the attorney/client privilege between the attorney and the Town Council and to consider and give instructions concerning the handling of the Town’s claim against Bentley Taylor LLC and the proposal by Bentley Taylor LLC.

Upon a motion by Council Member Ball, seconded by Council Member Scherlen, Council moved to exit Closed Session at 12:14 a.m.

POSSIBLE ACTION FOLLOWING CLOSED SESSION

Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to abate the existing fines for Bentley Taylor LLC related to the culvert violation.

VOTE: Aye – All
 Nay - None

DISCUSSION OF TOWN NOISE ORDINANCE

No action was taken on this matter.

ADJOURNMENT

Upon a motion by Council Member Brantz, seconded by Council Member Leigh, Council moved to adjourn the meeting at 12:17 a.m.

VOTE: Aye – All
 Nay – None

Kimberly S. Brown, Town Clerk

Loretta Clawson, Mayor