

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL JULY
19, 2011**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m. on Tuesday, July 19, 2011 in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Andy Ball, Rennie Brantz, Jamie Leigh and Stephen Phillips. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Town Clerk Freida Van Allen, Fire Chief Jimmy Isaacs, Police Chief Dana Crawford, Human Resources Director Peri Moretz, Planning Director Bill Bailey, Public Utilities Director Rick Miller, Public Services Director Blake Brown, Planner Jane Shook and Assistant to the Manager Jim Byrne.

TENTATIVE AGENDA ADOPTION

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

- Move Closed Session from Thursday night to Tuesday night.
- Addition to Closed Session - Legal Advice - Potential Lawsuit over water and sewer code.
- Addition to Closed Session - Possible Property Acquisition (NCGS 143-318.11a5). Council agreed to limit discussion on this item to one hour.
- Addition to Closed Session - Legal Advice- Zoning Issues.
- Move Item 7.H. Adoption of Ordinance-Initiate Civil Action Against ADR Capital Management, Inc. to Thursday night as Item 14.D.

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

VOTE:Aye-All
Nay-None

CONSENT AGENDA ADOPTION

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

- June 8, 2011 - Special Meeting.
- June 13, 2011 - Special Joint Hearing.
- June 16, 2011 - Special Meeting.
- June 21 & 23, 2011 - Regular Meeting.
- June 23, 2011 - Special Joint Hearing.

Tax Releases & Refunds: June, 2011.

**TAX REFUNDS
JUNE 2011**

Taxpayer	Year	Amount	Description
HALLMAN, ANNE SPEED	2010	1.80	TURN IN TAG
		1.80	

**TAX RELEASES
JUNE 2011**

Taxpayer	Year	Amount	Description
BOEDEFELD, STEVEN EDWARD BOEDEFELD, JENNIFER DAWN	2010	8.88	ADJ FOR SALE PRICE
FLOYD, TONI W	2010	53.76	TURN IN TAG
MILTON, JEAN ESTER	2010	1.58	CLERICAL ERROR
MCCARTHY, TIMOTHY MARK	2010	2.53	TURN IN TAG
		66.75	

VOTE:Aye-All
Nay-None

PUBLIC HEARING ON PEDESTRIAN PLAN

Mayor Clawson opened the public hearing at 6:35 p.m. Public Works Director Blake Brown introduced Jason Reyes of Alta Greenways. Mr. Reyes said the latest version of the pedestrian plan is on the web at www.greenways.com/boone. Mr. Reyes said he hopes Council will adopt the plan next month and that he will mail to Council a revised copy of the DRAFT plan before the August meeting. Council member Mason thanked Mr. Reyes for the detail provided in the plan. Mr. Reyes thanked the pedestrian planning committee and the Public Works department for all their help with the plan. There being no public comment, Mayor Clawson closed the public hearing at 6:39 p.m.

ONGOING DISCUSSION ON TABLE OF PERMISSIBLE USES

Planning Director Bill Bailey relayed that the Planning Commission members discussed the table of permitted uses for the RA zones at their last meeting. Planning Director Bailey suggested that the Planning Commission review the accessory and temporary use tables and the supplementary use regulations at its next meeting. Mr. Bailey also pointed out that while editing the UDO the use of plain English will be used instead of the usual planning jargon. Council agreed that plain English will be easier for people to read and understand. After little discussion, on a motion by Council member Brantz, seconded by Council member Mason, Council moved to reiterate the use of plain English when rewriting the UDO and to have the Planning Commission review the accessory and temporary use tables and the supplementary use regulations at its next meeting.

VOTE:Aye-All
Nay-None

DISCUSSION OF UPCOMING ZONING CASES

Planning Director Bill Bailey presented the following cases that will be discussed at the August 1, 2011 Quarterly Public Hearing:

1. Case 20110120 - Orchard at Park Street (formerly Cedar Ridge) Conditional District Rezoning from R4, R1 and R1A to R3.
2. Town initiated zoning for the Helen Yount property in conjunction with an annexation request based on water and sewer allocation. Town Staff recommends that Council consider viewshed R-3, RA zoning for the property and possible watershed.
3. Case 20110320 Mountaineer Crossing Conditional District Rezoning from B3, R3 and Watauga County jurisdiction to B3, R3 and RA.

On a motion by Council member Ball, seconded by Council member Phillips, Council moved to send these cases to the August 1, 2011 Quarterly Public Hearing.

VOTE:Aye-All
Nay-None

P & I MONTHLY STATUS REPORT

Planning and Inspections Director Bill Bailey presented the Planning and Inspections Monthly Report (**permanently on file in the July 2011 Town Council packet.**)

UPDATE ON NEW RIVER PROJECT

Assistant to the Manager Jim Byrne said the project will be for the restoration of the river banks from the covered bridge to the second bridge, about 4,000 feet. Mr. Byrne said the Town is pursuing grant opportunities to cover the one million dollar match that is required for the project. Mr. George Santucci, Executive Director for the National Committee for the New River, reported that he has met with the ASU Physical Plant and Recreation Department since the Greenway and ballfields must be relocated. Mr. Santucci said at this point the project is about \$200,000 short but that the National Committee for the New River has applied for a \$250,000 grant from the Clean Water Management program for additional funding. Mr. Santucci said he would know by September 1, 2011 if that grant will be awarded.

UPDATE ON MUTUAL AID AGREEMENTS

Police Chief Dana Crawford said that he met with the Town Manager and Town Attorney as directed by Council and decided that the mutual aid agreement meets or exceeds the attorney general recommendations for mutual aid agreements. Council discussed at length the response process with Watauga County and ASU. No further action was taken on this matter.

APPROVAL OF GRANT APPLICATION - BICYCLE FRIENDLY COMMUNITY DESIGNATION

Public Services Director Blake Brown asked Council members if there were any changes they would like to make to the grant application before final submission. Council member Phillips pointed out a few typographical errors. Council member Brantz asked if the bicycle advisory committee is a Town committee. Council member Mason said the alternative transportation committee serves in that capacity. Council member Mason commended the committee, staff and Craig Scheffler for compiling the information for the grant application. On a motion by Council member Ball, seconded by Council member Phillips, Council moved to approve the bicycle friendly community designation grant application (**permanently on file in the July 2011 Town Council packet.**)

VOTE:Aye-All
Nay-None

APPROVAL OF NCDOT BRIDGE INSPECTION CONTRACT

Public Services Director Blake Brown said the NC Department of Transportation provides bridge inspections for the Town at a cost of \$520 per bridge. On a motion by Council member Brantz, seconded by Council member Ball, Council moved to adopt the following bridge inspection contract:

North Carolina
Watauga County

North Carolina Department of Transportation and the Town of Boone
Municipal Agreement
Inspection of Bridges on the Municipal Street System
F.A. Project BRZ-NBIS (17)

THIS AGREEMENT is made and entered into on the last date executed below, by and between the Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the Department, and the Town of Boone, a municipal corporation hereinafter referred to as the Municipality;

Witnesseth:

WHEREAS, 23 U.S.C. 144, Sections 1101, 1114 and 1805 of the Safe, Accountable, Flexible, Efficient Transportation

Equity Act – A legacy for Users (SAFETEA – LU), which require that federal funds be available for certain specified Federal-Aid Highway Bridge Replacement and Rehabilitation program; and

WHEREAS, The Highway Bridge Replacement and Rehabilitation portion of the law requires that all structures defined as bridges located on public roads must be inspected on a cycle, not to exceed two years in accordance with National Bridge Inspection Standards (NBIS); and

WHEREAS, the Municipality has requested the Department or a Consultant retained by the Department to inspect and analyze all public bridges located on its Municipal Street System in compliance with the National Bridge Inspection Standards; and

WHEREAS, The Department and the Municipality are authorized to enter into an agreement for such work under the provisions of G.S. 136-18(12), G.S. 136-41.3, and G.S. 136-66.1; and

WHEREAS, the Appropriate Official of the Municipality has approved the herein above referenced inspections and analysis and has agreed to participate in certain costs thereof in the manner and to the extent as hereinafter set out.

NOW, THEREFORE, the Department and the Municipality agree as follows:

1. The Department or a Consulting Engineering firm retained by the Department shall inspect, load rate, and prepare the necessary inspection reports for all bridges on the Municipal Street System in accordance with the National Bridge Inspection Standards.

2. All work shall be done in compliance with the following documents.

National Bridge Inspection Standards (23 CFR, Chapter 1 Part 650)

AASHTO Manual for Bridge Evaluation-2008 including all Interim Revisions.

Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges – December, 1988.

3. The municipality shall furnish all data in the possession of the Municipality that can be released that will help the Department of its Consultant in the accomplishment of the work including but not limited to appropriate municipal maps showing the location of the bridges, plans for the bridges when available, and prior inspection reports.

4. During the inspection process, some repairs may be discovered that require immediate attention or repair, or a regulatory sign may be missing, damaged, or incorrect. A. Critical Finding Notice, Priority Maintenance Notice or Regulatory Sign Notice will be issued in these cases. It is required that the Municipality resolve or notify the Department of their plans to resolve Priority Maintenance Notices and Regulatory Sign Notices within thirty (30) days of issuance. Critical Findings require a response within seven (7) days of notice.

5. The municipality shall designate a responsible Municipal official with whom the Department or its Consultant will coordinate the work.

6. It is understood by the parties hereto that the Federal Highway Administration, through the Department, is to participate in the costs of the work to the extent of eighty (80) percent of actual costs, subject to compliance with all applicable federal policy and procedural rules and regulations. All costs not participated in by the Federal Highway Administration shall be borne by the Municipality.

7. Upon completion of the bridge inspection, and load rating work, the Department shall invoice the Municipality for accumulated project costs not participated in by the Federal Highway Administration. Upon FHWA final audit, the Department shall invoice/refund the Municipality any differences in the amount previously invoiced and the actual costs not participated in by the Federal Highway Administration. Reimbursement shall be made by the Municipality within sixty (60) days of the invoice date. After the due date, a late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23 and G.S. 105-241.21

(I). It is anticipated that the cost to the municipality will be approximately \$520 per structure. The actual cost is based on the work being performed therefore, the final invoice amount will not be known until the work is complete.

8. In the event the Municipality fails for any reason to pay the Department in accordance with the provisions for payment hereinabove provided, the Municipality hereby authorizes the Department to withhold so much of the Municipality's share of funds allocated to said Municipality by the General Statutes of North Carolina, Section 136-41.I, until such a time as the Department has received payment in full.

9. It is the policy of the Department not to enter into any Agreement with another party that has been debarred by any government agency (Federal or State). The Municipality certifies, by signature of this Agreement, that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by a Federal or State Department Agency.

10. This Agreement shall have an effective term of ten (10) years beginning when executed by the State Highway Administrator and ending on the same date ten (10) years later, subject to the following termination conditions:

a. At any time either party may cancel the Agreement with a thirty (30) day written notice to the opposite party. On behalf of the Municipality, this Agreement may be canceled by the City Manager and/or his designee.

b. Upon the effective date of the cancellation, neither party shall owe any obligations under this Agreement except that all obligations performed under this Agreement, including but not limited to invoicing, record retention, and payment for work performed prior to the effective date of cancellation, shall remain in effect.

By Executive Order 24, issued by Governor Perdue, and N.C. G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

IT IS UNDERSTOOD AND AGREED that the approval of the work by the Department is subject to the conditions of this agreement, and that no expenditure of funds on the part of the Department will be made until the terms of this agreement have complied with on the part of the Municipality.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

VOTE: Aye-All

Nay-None

ADOPTION OF LEASE AGREEMENT - CAROLINA WEST WIRELESS

Town Manager Greg Young said this lease expired in February and that the new lease includes increased rent fees and two more phones. On a motion by Council member Brantz, seconded by Council member Ball, Council moved to adopt the following lease:

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF WATAUGA

THIS LEASE AGREEMENT is made this the **19th** day of July, 2011, by and between the **Town of Boone**, hereinafter referred to as "**Lessor**" and **North Carolina RSA 3 Cellular Telephone Company, Inc., d/b/a/ Carolina West Wireless**, a NC corporation, hereinafter referred to as "**Lessee**".

1. **Leased Premises.** The **Lessor** hereby leases to the **Lessee** the telecommunications equipment room on the 2nd floor of the **Lessor's** Public Works Department located at 321 East King Street, Boone, NC 28607. The **Lessor** shall allow the **Lessee** 24 hours - 7 days a week access to the leased premises. Only employees, technicians, or subcontractors of

the **Lessee** shall be given access to the leased premises.

2. **Term.** The term of this Lease shall be **three years**, commencing on **February 1, 2011**.

3. **Rent.** The rent for the above described premises shall be **\$7,000.00** for the first year, and shall be due upon execution of this lease agreement. The annual rent shall increase each year by 5%, and shall be due on the first day of each subsequent year.

4. **Cellular Phones.** The **Lessee** shall provide the **Lessor** with free phones and phone service for thirty-four (34) cellular phones identified by service phone numbers set forth on **Exhibit "A"** attached hereto and made a part hereof. **Lessor** has the right to purchase additional rate plans to any or all of the lines at the **Lessor** expense for those additional features.

5. **Repairs.** The **Lessee** shall make all repairs necessary to keep the leased premises in good condition. This includes repairs for any and all damage caused by the **Lessee**, its agents and/or invitees. However, this does not include repairs for ordinary wear and tear of the premises, which shall be the responsibility and obligation of the **Lessor**. The **Lessee** shall maintain its equipment in accordance with good engineering practices, and in a manner which will not interfere with the **Lessor's** normal governmental operations. Upon vacation of the leased premises, the **Lessee** shall surrender the leased space in the building and on the rooftop in substantially the same and in as good a condition as when this lease commenced, except for ordinary wear and tear.

6. **Assignment or Subletting.** The **Lessee** shall not assign nor sublease the leased premises without the prior written consent of the **Lessor**.

7. **Alterations.** The **Lessee** may erect antennas, without the use of a tower, on the rooftop of said building, and shall be responsible for the installation, maintenance and repair of said antennas. A "tower" for the purposes of this agreement shall be defined as any structure over fifteen feet in height. The **Lessee** shall be responsible for repairing any damage it causes to the roof of the **Lessor's** building. The **Lessee** may place communication equipment in the leased premises and shall be responsible for the installation, maintenance and repair of said equipment. The **Lessee** shall be solely responsible for the cost of the installation, maintenance and repair of the antennas and equipment. The **Lessee** shall not make any other alterations, additions or improvements to the above described premises without the prior written consent of the **Lessor**. All equipment installed by the **Lessee** shall remain the property of the **Lessee**.

8. **Utilities.** The **Lessor** shall be responsible for paying the water, sewer and electric utilities. The **Lessor** shall provide heating and air conditioning at no expense to the **Lessee**.

9. **Insurance.** The **Lessee** shall be responsible for providing and maintaining insurance coverage, in the minimum amount of \$2,000,000 per occurrence, against loss, destruction, or other damage to all its personal property located on the premises, and providing liability coverage protecting both **Lessee** and **Lessor** arising from personal injury or property damage caused by **Lessee's** use of the premises. The **Lessor** shall provide and maintain insurance coverage against loss, theft, destruction or damage to the building structure, but shall not be responsible for any theft of property contained within the leased premises.

10. **Destruction of Premises.** If said premises are destroyed by fire or other cause, this Lease shall be terminated.

11. **Security Deposit.** A security deposit shall not be required.

12. **Inspection of Premises.** The **Lessor** may enter the premises at any reasonable time upon giving prior notice for the purpose of inspecting said premises.

13. **Use of Property.** The **Lessee** shall not use or knowingly permit any part of the leased premises to be used for any purpose which violates any law.

14. **Default.** If the **Lessee** defaults in the payment of rent or in the performance of any of the conditions of this Lease, the **Lessor** may give the **Lessee** written notice of default. If the **Lessee** does not cure any default within ten (10) days after the receipt of notice thereof, the **Lessor** may terminate this Lease. On the date specified in the notice, this Lease shall terminate and the **Lessee** shall at once quit and surrender the premises to the **Lessor**. If this Lease is terminated by the **Lessor**, it may thereafter resume possession of the premises by any lawful means and remove the **Lessee** and any other occupants and their property.

15. **Indemnity.** The **Lessee** shall indemnify and hold harmless the **Lessor** from any and all claims, actions, damages and liability associated with personal injury and/or damage to property arising out of any occurrence in, upon or at the leased premises, or associated with any act or omission of the **Lessee**, its agents, employees or invitees. In the event that the **Lessor** is made a party to any litigation brought against the **Lessee** or by reason of the **Lessee's** use or occupancy of the leased premises, the **Lessee** shall defend, protect and hold harmless the **Lessor** from any and all liability that may result therefrom.

16. **Modification of Lease.** This Lease Agreement contains all of the terms and conditions agreed to by the **Lessor** and the **Lessee** concerning the Lease of the above described premises. There are no oral terms or conditions agreed to by the parties hereto which are not contained in this written agreement. There shall be no modification of this Lease Agreement unless the modification is in writing and signed by both parties.

17. **Termination of Lease.** Either party may terminate this Lease by providing ninety (90) days prior written notice. If the **Lessee** terminates this lease prior to the end of the lease term, the **Lessee** shall forfeit any lease payment made. If the **Lessor** terminates this lease prior to the end of the lease term, the **Lessor** shall refund to the **Lessee** a prorated portion of any lease payment made, based upon application of a factor with the number of days of possession during the payment period, as the numerator, and the total number of days for full payment period at the denominator, multiplied by the amount of the full rental payment made. At the termination of this Lease, **Lessee** shall not remove any property from the premises without advance notice and permission from **Lessor**. Following its vacation of the premises, should **Lessee** leave any property on the premises, it shall be deemed abandoned, and **Lessor** shall have the right to dispose of the property as it sees fit, at the expense of **Lessee**.

18. **Property Taxes.** The **Lessee** shall be responsible for paying the property taxes, if any, on its personal property.

19. **Right to Reentry.** **Lessee** shall be responsible for obtaining, at its sole expense, all permits, licenses and other permissions which may be necessary for any action or pursuit undertaken by **Lessee**. **Lessor** reserves, for itself, its agents, employees and assigns, the right to reenter the property to inspect, maintain and repair its property on the premises, and for such other purposes as may be reasonably necessary to discharge its responsibilities to protect the health, safety and welfare of the citizens of Boone.

19. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of North Carolina. All provisions of this agreement are material to this Agreement.

IN WITNESS WHEREOF, the **Lessor** and **Lessee** have executed this Lease 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

MONTHLY WATER USE STATUS REPORT

Public Utilities Director Rick Miller presented the monthly water-use status report. **(Permanently on file in the July 2011 Boone Town Council packet.)**

CLOSED SESSION

On a motion by Council member Brantz, seconded by Council member Ball, Council moved to enter Closed Session at 7:31 p.m. pursuant to NCGS 143-318.11a)3)5) in order to discuss legal advice-stormwater issues, raw water intake, proposed mediation, zoning issues, potential lawsuit over water and sewer code and possible property acquisition.

VOTE:Aye-All

Nay-None

On a motion by Council member Ball, seconded by Council member Brantz, Council moved to exit closed session at 10:54 p.m., and to continue closed session on Thursday, July 21, 2011.

VOTE:Aye-All

Nay-None

RECESS

On a motion by Council member Brantz, seconded by Council member Phillips, Council moved to recess at 10:55 p.m. until Thursday, July 21, 2011 at 6:30 p.m.

VOTE:Aye-All

Nay-None

CALL TO RECONVENE

A recessed meeting from Tuesday, July 19, 2011 was called to order at 6:30 p.m., Thursday, July 21, 2011 in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Stephen Phillips, Jamie Leigh, Rennie Brantz, and Andy Ball. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Deputy Town Clerk Kimberly Brown, Assistant to the Town Manager Jim Byrne, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, Human Resources Director Peri Moretz, Planning Director Bill Bailey, Urban Design Specialist Brian Johnson, and Building Inspector Todd Miller.

ANNOUNCEMENTS

Mayor Clawson stated that any persons wishing to address the Council should sign in to speak during the Public Comment period.

TENTATIVE AGENDA ADOPTION

Town Manager Greg Young stated that there were no changes to the agenda. Upon a motion by Council member Ball, seconded by Council member Mason, Council moved to adopt the agenda, as presented.

VOTE: Aye - All

Nay - None

PUBLIC COMMENT

There was no one present to speak during public comment.

PUBLIC HEARING - PROPOSED NOISE ORDINANCE

Mayor Clawson opened a public hearing at 6:32 p.m. to hear public comment on proposed changes to the noise ordinance. Town Attorney Sam Furgiuele explained the proposed changes to the ordinance. Council member Ball requested that regulations for permitting for residential properties be considered at some point in the future. After lengthy discussion, the following changes were suggested:

\$ Changing the time in section §93.02(D)(3) from 10:00 p.m. until **11:00 p.m.**

\$ Changing the time period in sections §93.05 (E)(1) and (2) from thirty six (36) months to **twenty-four (24) months.**

With no further testimony, Mayor Clawson closed the public hearing at 7:16 p.m.

ADOPTION OF CODE AMENDMENT - NOISE ORDINANCE

Upon a motion by Council member Mason, seconded by Council member Ball, Council moved to adopt the following code amendment to the noise ordinance as modified and with the understanding that future changes may be made regarding non-commercial uses:

CHAPTER 93: NOISE CONTROL

Section

93.01 Statement of policy

93.02 Examples of noises prohibited and not prohibited

93.03 Vicarious responsibility

93.04 Responsibility of all persons present

93.05 Noise permits

96.06 Enforcement

93.99 Penalties

§ 93.01 STATEMENT OF POLICY.

It shall be unlawful for any person, firm, corporation or other entity to make, allow, or cause to be made any excessive, unreasonable or unusually loud noise, or any noise which is intended to annoy or disturb another person, or would reasonably be expected to annoy or disturb a reasonable person. It is the policy of the Town of Boone to maintain a peaceful community at all times, but in particular and recognizing that certain noises are generated by the expected and acceptable economic and recreational activity of a vibrant community, to ensure that time periods during which many of the residents are customarily at rest or have an expectation of peaceful enjoyment of their residences shall not be disturbed by unacceptable noise.

§ 93.02 EXAMPLES OF NOISES PROHIBITED AND NOT PROHIBITED.

The following acts and noises, among others, are declared to be examples of loud and disturbing acts and noises which violate this chapter and acts and noises which generally do not violate this Chapter. Said enumerations shall not be deemed to be exclusive, but instead are listed as examples of the types of noises prohibited and allowed, by category. They include:

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

(B) *Noises Prohibited at All Times: The following noises and activities are prohibited at all times:*

- (1)** *Horns, signaling devices, sirens, etc.* The sounding of any horn or signal device on any automobile, motorcycle, bus, or other vehicle, except as a danger signal, so as to create any unreasonably loud or harsh sound, or the sounding of such device repeatedly or for an unreasonable period of time, or the use of any siren upon any vehicle, other than a *bona fide* police, fire or other emergency vehicle or equipment.
- (2)** *Radios, phonographs, etc.* The outdoor use, operation, or playing without a noise permit, of any television set, radio, phonograph, musical instrument or sound amplifying device or other machine or device for the production or reproduction of sound, in such manner or at a volume which would or does annoy or disturb a person of reasonable sensibilities within his or her temporary or usual place of abode or place of employment.
- (3)** *Yelling, shouting, etc.* Frequent, constant, or continual yelling or shouting, in such manner or at such volume which would or does annoy or disturb a person of reasonable sensibilities within his or her temporary or usual place of abode or place of employment.
- (4)** *Animals.* Frequent, constant, or continual noise from any animal, such as the continual, frequent, chronic and intermittent, or uncontrolled barking of a dog outside, at a level or for a period which would or does annoy or disturb a person of reasonable sensibilities within his or her temporary or usual place of abode or place of employment.
- (5)** *Vehicles.* The use of any motorized vehicle so out of repair, so loaded, altered or operated in such manner as to create grating, grinding, rattling or other noise which would or does annoy or disturb a person of reasonable sensibilities within his or her temporary or usual place of abode or place of employment, or the operation of a motorized vehicle with a defective, altered, non- or reduced functioning, or missing muffler.
- (6)** *Loading, unloading, opening boxes.* The creation of an unusual level of noise in connection with loading or unloading any vehicle or the opening and destruction of boxes, bales, crates, and other containers at a noise level which would or does annoy or disturb a person of reasonable sensibilities within his or her temporary or usual place of abode or place of

employment.

- (7) **Alarms.** Car, home and similar types of alarms which are activated and not discontinued promptly after the person in control of the alarm is advised or discovers that the alarm has been activated, unless the alarm is allowed to continue because said person believes that a crime is being committed.
- (C) **Noises and Activities Prohibited Between 10:00 p.m. and 6:00 a.m.** In addition to the noises prohibited pursuant to § 93.02(A) and § 93.02(B), the following noises and activities are prohibited between 10:00 p.m. and 6:00 a.m.:
- (1) **Outdoor use of radios, phonographs, etc.** Except as otherwise allowed under this Chapter, the outdoor use, operation, or playing of any television set, radio, musical instrument, phonograph, or sound amplifying device or other machine or device for the production or reproduction of sound.
 - (2) **Indoor use of musical instruments, sound amplification, etc.** Except as otherwise allowed under this Chapter, the indoor use, operation or playing of a musical instrument or sound amplifying device at such volume or in such manner as to be audible within another person's temporary or usual place of abode.
 - (3) **Yelling, shouting, etc.** Yelling, shouting, whistling, or singing outdoors at a volume which is audible within another person's temporary or usual place of abode.
 - (4) **Parties.** Noise from parties or gatherings of people, including but not limited to the noise from conversation(s), many voices speaking at once, drunken conversation, yelling, shouting, singing, music, breaking glass, or fireworks, which is audible within another person's temporary or usual place of abode. For purposes of this paragraph, a "party" is considered any gathering of people, whether at a fixed location or otherwise, for social interaction.
 - (5) **Fireworks.** The use of fireworks which produce sound audible within another person's temporary or usual place of abode.
 - (6) **Vehicles.** The prolonged idling or running of a motor vehicle, for a period of time exceeding what is reasonably needed to "warm" a vehicle's engine before use and audible within another person's temporary or usual place of abode.
 - (7) **Loading, unloading, opening boxes.** The noise in connection with loading or unloading of any commercial vehicle audible within another person's temporary or usual place of abode.
 - (8) **Construction activity.** Construction activity audible within another person's temporary or usual place of abode, unless conducted by a governmental entity or its contractor and specifically authorized by the Boone Town Council following general notice to the public and a public hearing. For purposes of the notice required by this section and all subsequent sections, it shall be sufficient that the specific topic of the public hearing is included in the agenda of the meeting during which it is to take place and the agenda, with the item listed, is posted in advance of the meeting on the Town's official website.
 - (9) **Compression release engine brakes or air brakes (aka "Jake Brakes").** The noise in connection with the release of compression release engine brakes, sometimes referred to as air brakes or "Jake Brakes," is prohibited.
- (D) **Noises and Activities which do not Generally Violate this Chapter.** The

following noises and activities do not generally violate this Chapter:

- (1) ***Town and Town-Arranged Vehicles.*** The normal and customary sounds from Town vehicles and vehicles arranged by the Town, engaged in activities related to the discharge of critical Town duties, such as snow removal, repair of burst water lines, responding to fires, responding to vehicle accidents, and the like, will not be considered noises or activities which violate this Chapter, but picking up solid waste and recycling, construction and non-routine maintenance activities are exempt only if conducted between the hours of 6:00 a.m. and 10:00 p.m., unless explicitly authorized by the Town Council following general notice to the public and a public hearing.
- (2) ***Community Events.*** The normal and customary sounds emanating from a community event conducted by a governmental entity, school, church, or similar non-commercial entity will not be considered noises or activities which violate this Chapter, so long as the event with which the noise is associated begins no earlier than 6:00 a.m. and ends no later than 10:00 p.m., or the event is specifically authorized in advance by the Boone Town Council, following general notice to the public and a public hearing, upon a finding that such event provides a benefit to the public which exceeds the potential detrimental effects of the noise it may generate.
- (3) ***Sporting Events Associated with Watauga High School or Appalachian State University.*** The normal and customary sounds emanating from a sporting event held on the campus and associated with Watauga High School or Appalachian State University will not be considered noises or activities which violate this Chapter, so long as the event with which the noise is associated does not begin prior to 6:00 a.m. and has been scheduled to end by 11:00 p.m., even if due to unexpected delays, overtime periods and the like, the event extends past 11:00 p.m.
- (4) ***Remote Vehicle Entry or Key.*** The use of a remote vehicle entry or key causing an audible “beep” when used simply to lock or unlock a vehicle prior to or following the reasonable use of the vehicle shall not be considered an excessive, unreasonable or unusually loud noise.
- (5) ***Ordinary Use of Power Tools.*** The ordinary use of noise causing tools, such as a lawnmower, “weed eater,” circular saw, chain saw, and the like, if used between the hours of 8:00 a.m. and dusk, shall not be considered an excessive, unreasonable or unusually loud noise so long as the tool is being used for a legitimate maintenance or construction purpose associated with the property upon which it is utilized, and the person using such tool takes all practical steps to minimize its noise disturbing impacts on others.

§ 93.03 VICARIOUS RESPONSIBILITY.

- (A) **Responsibility of Person with Legal Right to Possession.** The person with the legal right to possession of a premises shall be responsible and liable for the actions of his or her guests at the premises when such actions violate this chapter.
- (B) **Landlord’s Responsibility.** Unless the owner of the premises where an action in violation of this chapter occurs has provided in a lease that an offending tenants at such premises shall refrain from activities which violate this ordinance, the owner of the premises shall also be responsible and liable for the actions of his or her tenants and their guests at the premises when such actions violate this chapter. This section, however, shall in no way relieve an owner’s guests or a tenant or a tenant’s guests from liability for any violations of this chapter.

§ 93.04 RESPONSIBILITY OF ALL PERSONS PRESENT.

In those instances where the violating noise prohibited under § 93.02 is the result of the actions of a group of persons, such as a late night party, all persons present shall be liable for the appropriate civil penalties, whether or not they individually created the offending noise.

§ 93.05 NOISE PERMITS.

(A) Application for Permit. An establishment located in a general business district which as part of its business activities presents live performances of music, may apply for a noise permit. If issued, such permit shall authorize the outdoor performance of music at the business location until 11:00 p.m., and the indoor performance of music until 2:00 a.m. Such permit is conditioned upon the following:

- (1)** The payment of a fee in the amount of \$1,000.00, in advance, the amount estimated to represent the additional expense for police services resulting from a permit;
- (2)** The provision of a name and address of an individual or individuals with the ability to control and if necessary discontinue any performance, with contact number(s) operational at all times during each performance;
- (3)** The applicant's signed statement expressing a willingness to cooperate with the Town of Boone Police Department in controlling the sound emanating from any single performance, and if necessary, discontinue any performance which creates an unreasonable disturbance; and
- (4)** Non-disqualification of the establishment or applicant for a permit.

(B) Term of Permit. Unless revoked prior to its expiration, a permit issued under this section will be valid for one year from the date of issuance.

(C) Responsibilities of Permittee.

- (1)** The permittee shall maintain the permit on site, in the possession of a person designated by the permittee to discharge its responsibilities under this section, and shall make the permit available for inspection on demand by an officer of the Boone Police Department.
- (2)** The permittee shall be responsible for minimizing the adverse effects the noise from each performance may have upon the community and residents for whom the performance may be audible from their residences.
- (3)** After 10:00 p.m., the permittee shall insure that all windows and doors remain closed, except for normal ingress and egress, so that the sounds emanating from an indoor performance are mitigated.
- (4)** The permittee shall cooperate with the Police Department in placing or rearranging the location of musicians and amplification equipment in such manner as to minimize any disturbance caused by the performance.
- (5)** If over fifty people attend any outdoor performance, the permittee shall provide adequate private security for the purpose of crowd control.

(D) Revocation of Permit.

A permit will be revoked if, over the course of any rolling twelve month period, any of the following occur:

- (1)** On three or more occasions, a call by a police officer to the number provided at the time of application, following a complaint concerning the noise emanating from the establishment, is unanswered or not returned within five minutes;

- (2) On two or more occasions, following a complaint concerning the noise emanating from the establishment, the permittee is found to be in violation of one or more of the provisions of 93.05(C);
- (3) On three or more occasions, the person designated by the permittee to discharge its responsibilities under this section cannot produce the permit for inspection on demand by an officer of the Boone Police Department;
- (4) On three or more occasions, the Boone Police Department receives multiple complaints from separate residents concerning the level of noise emanating from the establishment, and upon inspection, an officer of the Boone Police Department concludes that the noise is at such volume as to annoy or disturb a reasonable person within his or her temporary or usual place of abode; or
- (5) Collectively on three or more occasions, outdoor music is continued at the establishment after 11:00 p.m. or indoor music is continued at the establishment after 2:00 a.m.

(E) Disqualification for Permit.

- (1) Any establishment which has suffered a revocation of a noise permit within the prior twenty-four (24) months shall be disqualified from being issued another permit.
- (2) Any person who has been the applicant for a noise permit for an establishment which has suffered a revocation of a noise permit within the prior twenty-four (24) months shall be disqualified from being issued another permit.
- (3) Any person who has been personally cited for violation of this Chapter within the prior twelve months, or two or more times within the prior twenty-four months, shall be disqualified from being issued a permit on behalf of any establishment.

(F) Hearing to Challenge Revocation or Disqualification of Permit.

Any person or establishment denied a permit, or any establishment whose permit has been revoked, may within five days of the denial or revocation, request a hearing before the Boone Town Council by written request delivered to the Town Clerk. The hearing shall be conducted at the next regular meeting of the Town Council for which an agenda has not yet been published. The Town Attorney shall conduct the hearing on behalf of the Town Council, and the hearing shall be conducted in a *quasi-judicial* manner. A police officer with personal knowledge of the grounds asserted for revocation or denial of the permit shall appear and testify. Any interested person may present testimony or evidence at the hearing. If the Town Council concludes that the criteria for the revocation of the permit did not exist at the time of revocation and do not currently exist, or that the criteria for denial of the permit or disqualification for the permit did not exist at the time of the denial or disqualification and do not currently exist, by majority vote it may direct the reinstatement or issuance of the permit, as appropriate.

§ 93.06 ENFORCEMENT.

(A) Enforcement of § 93.02(A). § 93.02(A) shall be enforced following the receipt of a complaint, either oral or written.

(B) Enforcement of remainder of chapter. Except as to those provisions explicitly requiring that one or more complaints be received, the remaining provisions of this chapter may be enforced as the result of the receipt of a complaint or as the result of the observations of any police officer.

(C) A violator shall be issued a written warning or written notice of the violation stating the amount of the civil penalty, as provided herein. Any civil penalty must be paid within

thirty days after the receipt of said notice. If the violator does not pay the penalty within thirty days, the Town may recover such penalty and all subsequently accruing penalties in a civil action. In the event that it is necessary for the Town to institute a civil action to collect one or more civil penalties, the violator shall be responsible for all court costs and attorney's fees incurred by the Town.

§ 93.99 PENALTY.

(A) Violation of § 93.02(A) or 93.02(B)(7). Violation of § 93.02(A) or 93.02(B)(7) shall subject the offender, and any person liable pursuant to § 93.04 or § 93.03(A), to a civil penalty in the amount of \$100.00 for the first offense. A second violation in any rolling twelve month period shall subject the offender and any person liable pursuant to § 93.04 or § 93.03(A) to a civil penalty in the amount of \$200.00, and each subsequent violation in any rolling twelve month period shall result in the assessment of a \$500.00 civil penalty to the offender and any person liable pursuant to § 93.03(A) or § 93.04. A person committing a third violation of this section during any rolling twelve month period shall also be guilty of a Class 3 misdemeanor and shall be fined not more than five hundred dollars (\$500.00), in accordance with N.C. Gen. Stat. § 14-4, in addition to the civil penalties imposed.

(B) Violation of § 93.02(B), except 93.02(B)(7). Violation of § 93.02(B), except 93.02(B)(7), shall first subject the offender and any person liable pursuant to § 93.03(A) or § 93.04 to a written warning, the issuance of which shall be recorded and maintained by the Boone Police Department. A second violation in any rolling twelve month period shall subject the offender and any person liable pursuant to § 93.03(A) or § 93.04 to a civil penalty in the amount of \$100.00, a third violation to a civil penalty in the amount of \$200.00, and each subsequent violation in any rolling twelve month period shall result in the assessment of a \$500.00 civil penalty to the offender and any person liable pursuant to § 93.03(A) or § 93.04. A person committing a fourth violation of this section during any rolling twelve month period shall also be guilty of a Class 3 misdemeanor and shall be fined not more than five hundred dollars (\$500.00), in accordance with N.C. Gen. Stat. § 14-4, in addition to the civil penalties imposed.

(C) Violation of § 93.02(C). Violation of § 93.02(C) shall subject the offender and any person liable pursuant to § 93.03(A) or § 93.04 to a civil penalty in the amount of \$100.00 for the first offense. A second violation in any rolling twelve month period shall subject the offender and any person liable pursuant to § 93.03(A) or § 93.04 to a civil penalty in the amount of \$200.00, and each subsequent violation in any rolling twelve month period shall result in the assessment of a \$500.00 civil penalty to the offender and any person liable pursuant to § 93.03(A) or § 93.04. A person committing a third violation of this section during any rolling twelve month period shall also be guilty of a Class 3 misdemeanor and shall be fined not more than five hundred dollars (\$500.00), in accordance with N.C. Gen. Stat. § 14-4, in addition to the civil penalties imposed.

(D) Vicarious Liability pursuant to § 93.03(B). Any person liable pursuant to § 93.03(B) shall first receive a written notice of the violation which has occurred on the property. Subsequent violations shall sequentially subject the owner of the premises to civil penalties equal to the civil penalties as for first, second and subsequent violations by a perpetrator of a violation.

(E) Violation of § 93.05(C). Violation of § 93.05(C) shall subject the establishment and the person designated by the permittee to discharge its responsibilities under § 93.05 to a civil penalty in the amount of \$100.00 for the first offense. A second violation in any rolling twelve month period shall subject the establishment and the person designated by the permittee to discharge its responsibilities under § 93.05 to a civil penalty in the amount of \$200.00, and each subsequent violation in any rolling twelve month period shall result in the assessment of a \$500.00 civil penalty upon the establishment and the person designated by the permittee to discharge its responsibilities under § 93.05.

VOTE: Aye - All
Nay - None

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Clawson announced the following board vacancies:

Tree Board - Removal of Zachary Ollis from this board due to job responsibilities.

BOARD APPOINTMENT - AFFORDABLE HOUSING TASK FORCE

There were no applications submitted for this vacancy.

BOARD APPOINTMENT - BOARD OF ADJUSTMENT

Mayor Clawson noted the following positions open on the Board of Adjustment: one resident position, two alternate resident positions, one ETJ position, and two alternate ETJ positions. She stated that applications had been received from Dr. Harvard Ayers, Dr. Robert Goddard, Ms. Denise Lockett, and Mr. James Milner. Council member Mason nominated Denise Lockett for the resident position. Council member Phillips nominated James Milner for the resident position. There being no other nominations, Mayor Clawson called for a vote:

Denise Lockett:	Aye - 4 (Leigh, Mason, Ball, Brantz)
	Nay - 1 (Phillips)
James Milner:	Aye - 1 (Phillips)
	Nay - 4 (Leigh, Mason, Ball, Brantz)

Dr. Harvard Ayers was nominated for an ETJ regular position by Council member Ball. With no other nominations, Dr. Ayers was unanimously appointed to serve an ETJ regular position. Council member Mason nominated Dr. Robert Goddard for an ETJ alternate position. With no other nominations, Dr. Goddard was unanimously appointed to serve an ETJ alternate position.

BOARD APPOINTMENT - COMMUNITY APPEARANCE COMMISSION

Mayor Clawson noted that there are four open positions on the Community Appearance Commission and that two applications had been received. Council member Mason nominated Emily Stallings to fill one of the vacant positions on this board. Council member Phillips nominated Brian Williams to serve on the Community Appearance Commission. With no other nominations, Emily Stallings and Brian Williams were unanimously appointed to serve on the Community Appearance Commission.

BOARD APPOINTMENT - DBDA BOARD OF DIRECTORS

Interim DBDA Director Pilar Fotta announced the list of recommendations that will be considered at the annual DBDA Board meeting in August:

1. Bob Meier-Business Owner, Doe Ridge Pottery
2. Jason Berry-Business Owner, Footsloggers
3. Greg Lovins-ASU
4. Dempsey Wilcox-Property Owner
5. Sam Ratchford-Business Owner, Vidalia Restaurant
6. Andy Stallings-Property Owner

It was the consensus of the Council to delay appointment of members to the new DBDA Board of Directors until after the August annual DBDA meeting. It was suggested that representation from the Howard Street area and some type of service business could achieve more balance on the new board. It was the consensus of the Council to place this matter on the August regular agenda.

BOARD APPOINTMENT - GREENWAY, PARKS & GARDENS COMMITTEE

Mayor Clawson noted that there are seven open positions on the Greenway, Parks & Gardens Committee and that three applications have been received. Council member Ball nominated Stephen Poulos and Joan Hearn for reappointment and Brian Allenduff for a position on the Greenway Committee. Upon a motion by Council member Ball, seconded by Council member Brantz, Council moved to reappoint Stephen Poulos and Joan Hearn to the Greenway Committee with terms ending July 31, 2014 and to appoint Brian Allenduff to take the position vacated by Susan Tumbleston with a term ending on July 31, 2014.

VOTE:Aye - All
Nay - None

BOARD APPOINTMENT - HISTORIC PRESERVATION COMMISSION

There were no applications submitted for the vacancy.

BOARD APPOINTMENT - OUTSIDE AGENCY FUNDING COMMITTEE

There were no applications submitted for the vacancy.

BOARD APPOINTMENT - PLANNING COMMISSION

Mayor Clawson noted the following vacancies on the Planning Commission: two resident positions, one ASU student position, and one ETJ position. She stated that applications had been received from Jay Vincent, John Barnes, Candice Brown, and Brett Scantlin. Council member Ball nominated Brett Scantlin for a resident position. Council member Mason nominated Candice Brown for a resident position. With no other nominations, Mayor Clawson called for a vote on the nominees:

Brett Scantlin: Aye - All
Nay - None

Candice Brown: Aye - 4 (Phillips, Mason, Ball, Brantz)
Nay - 1 (Leigh)

Council member Leigh explained that she feels that the resident positions should be reserved for persons who are not short-term residents of the area and who have a greater stake in the issues of the community. Council member Ball nominated John Barnes for the ASU position. With no other nominations, John Barnes was unanimously appointed to the Planning Commission as the ASU representative. Council member Leigh nominated Jay Vincent for an ETJ position. With no other nominations, Jay Vince was unanimously appointed as an ETJ representative on the Planning Commission.

BOARD APPOINTMENT - TREE BOARD

There were no applications submitted for the vacancy.

BOARD APPOINTMENT - WATER STUDY COMMITTEE

There were no applications submitted for the vacancies.

ADOPTION OF ORDINANCE - INITIATE CIVIL ACTION AGAINST ADR CAPITAL MANAGEMENT INC.

Attorney Joe Delk, representing ADR Capital Management Inc., appeared before the Council to request that this matter be deferred 30 days to allow for an erosion control measure to be implemented. Planning Director Bill Bailey stated that the plans submitted by ADR Capital Management have been reviewed and that the department will work with the applicant to expedite the permit. Town Attorney Sam Furguele noted that the penalties for the violation will have to be addressed. Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved to defer action on this agenda item until the next regular meeting in August.

VOTE:Aye - All
Nay - None

Upon a motion by Council member Mason, seconded by Council member Ball, Council moved to amend the agenda to hear item 17.A. with a 15-minute time limit after the requested appearances and before the water and sewer requests.

VOTE:Aye - All
Nay - All

REQUESTED APPEARANCES - ERIC WOOLRIDGE

Eric Woolridge, Director of Tourism Planning with the Watauga County TDA, and Billy Ralph Winkler, chair of the Southern Appalachian Historical Association, appeared before the Council to request funding in the amount of \$30,000 in order to begin a Horn in the West Capital Campaign, which is planned for in four phases. Mr. Woolridge explained that the money would be used for the first phase of the project which includes the planning portion of the capital plan. Additionally, the first phase of the plan includes the creation of a master plan for Horn in the West, as well as logo design, website development, a promotional video, and donor outreach information. Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved to table the request to allow the Town Manager to meet with Eric Woolridge and Billy Ralph Winkler to further discuss the proposal and to allow for the Boone TDA Board to discuss the issue.

VOTE:Aye - All
Nay - None

Mayor Clawson declared a break at 8:20 p.m. Council reconvened at 8:31 p.m.

REQUESTED APPEARANCES - BRIAN MUELLER

Brian Mueller appeared before the Council to request a text amendment to the UDO to allow for minor modifications to Conditional Use projects more than once a year. He explained that he received approval for conditional use zoning on March 15, 2011 and that one of the conditions of the project includes a two-story duplex with business use on the lower level and residence on the second level. He further explained that he has been approached by a local environmental firm wishing to build offices on the B-3 portion of the property and that he has to wait one year until he is allowed to request a modification of the permit. Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved to direct the Planning Staff and Town Attorney to draft a UDO text amendment that will allow for minor modifications of conditional use projects to permit minor changes within the first year and for the proposed amendment be put on the August agenda.

VOTE:Aye - All
Nay - None

REQUESTED APPEARANCES - CAREY MAPLE

Carey Maple appeared before the Council to request permission for signs advertising her local seasonal business, Wee-Cycle Children's Consignment Sale. She stated that the sale will take place at the location on George Wilson Road and that proceeds from the sale go directly back into the community. Upon a motion by Council member Mason, seconded by Council member Ball, Council moved to approve the request for temporary signage for the Wee-Cycle Children's Consignment Sale pursuant to UDO Section 338[a][1](b)(5) and contingent upon the receipt of a letter of support from one of the non-profit group as listed from that section.

VOTE:Aye - All
Nay - None

Before deliberating on the quasi-judicial requests, Town Attorney Sam Furguele questioned the members of the Council on whether or not they had had contact with any of the applicants regarding the requests. All Council members stated that they had not had any significant contact with any of the applicants for any of the requests.

REQUESTED APPEARANCES - JOSEPH C. DELK, III

Town Attorney opened a public hearing at 8:59 to hear sworn testimony regarding a Notice of Appeal for two violations issued by the Town of Boone Building Inspector regarding property located at 784 Blowing Rock Road. Attorney Joe Delk, representing A.M.P. Enterprises,

presented a plan for the property (**Delk Exhibit A, copy permanently on file in the Clerk's office**) which includes the demolition of all the structures on the property, the restoration of Kraut Creek to its original location, and possible construction of a new Hampton Inn Hotel and an Olive Garden Restaurant. He further requested a time extension to allow the applicant to bring the property into compliance. William Mosely, representing Olive Garden Restaurants and being duly sworn, stated that Olive Garden is very much interested in locating a restaurant in Boone and that this site meets the requirements of the restaurant chain. Damon Malletere, being duly sworn, stated that according to the franchise agreement with Hampton Inns, he must rebuild or risk losing the franchise for the hotel chain. Mr. Delk proposed the installation of a chain-link fence to secure the property until further plans can be considered. Building Inspector Todd Miller, being duly sworn, stated that he believes the installation of a security fence will satisfy the intent of the state statute. Ashok Patel, vice-president of A.M.P. Enterprises and being duly sworn, stated that he is in the process of securing permission from four banks which hold liens against the property for the demolition of the structures. Derek Goddard of Blue Ridge Environmental Consultants, being duly sworn, stated that obtaining the proper permits for demolition and relocating the creek will require some time. He stated that it would be more cost effective to be able to demolish all of the structures at one time. Planning Director Bill Bailey, being duly sworn, stated that it would be easier to obtain a demolition permit for the restaurant structure than the buildings that are located on the creek. Town Manager Greg Young suggested that it would be informative for the applicant to construct a list of what actions need to be taken and the time-frame for such and present it to the Council. With no further testimony, Mr. Furguele closed the public hearing at 9:41 p.m. Upon a motion by Council member Mason, seconded by Council member Phillips, Council moved that the appeal will remain pending the securing of the property; that the order of Building Inspector Todd Miller be modified to make the property safe and secure and to provide the applicant a 30-day extension until August 10, 2011 to secure the property; to request that the applicant appear before the Council at the October 2011 regular meeting to provide an update for the demolition and restoration permits and to inform the Council of what actions are needed and the time frames necessary to accomplish them; and to consider further action at that time.

VOTE:Aye - All
Nay - None

Mayor Clawson declared a break at 9:52 p.m. Council reconvened at 9:56 p.m.

WATER & SEWER REQUESTS - JOHN WINKLER

Town Attorney Sam Furguele opened a public hearing at 9:56 to hear sworn testimony from Jason Gaston on a request for water and sewer service to property located at the corner of Highway 321 and Clement Street. Mr. Jason Gaston of Valor Engineering testified that he was speaking on behalf of John Winkler. Mr. Gaston said this mixed use project will be located at the corner of the Blowing Rock Road and Clement Street and after several appearances before Council, Mr. Winkler is still awaiting changes to the UDO regarding density requirements. He noted a correction to the information presented in the meeting packet that the project will have 130 bedrooms not 150 as stated in the staff report. With no other testimony, Mr. Furguele closed the public hearing at 10:01 p.m. Upon a motion by Council member Brantz, seconded by Council member Leigh, Council moved to table this request until the September 2011 regular meeting.

VOTE:Aye - All
Nay - None

WATER & SEWER REQUEST - DREW TAYLOR

Town Attorney Sam Furguele opened a public hearing at 10:02 to hear sworn testimony from Drew Taylor, Public Utilities Director Rick Miller, and Planning Director Bill Bailey on a request for water and sewer service to property located at 285 Old Bristol Road. Mr. Taylor, speaking as the property owner, explained the request for a multi-family complex of six units with twenty-four bedrooms. He stated that the water amount requested is for 3,428 gallons per day. Mr. Taylor stated that he had previously had a water allocation for this property but had to relinquish it when financing for the project did not occur. Public Utilities Director Rick Miller stated that this request would be considered a connection, not an extension, and that the property

is located in the secondary pressure zone. He also noted that the previous allocation for this property was added back to the allocation pool upon relinquishment by the property owner. Mr. Taylor stated that the permit for conditional zoning is valid through January 2013. Planning Director Bill Bailey affirmed that information. With no other testimony, Mr. Furguele closed the public hearing at 10:08 p.m. Upon a motion by Council member Mason, seconded by Council member Ball, Council moved to grant a request for water and sewer service in the amount of 3,428 gallons per day for property located at 285 Old Bristol Road.

VOTE:Aye - All
Nay - None

WATER & SEWER REQUEST - NEW LIFE FELLOWSHIP CHURCH

Town Attorney Sam Furguele opened a public hearing at 10:09 p.m. to hear sworn testimony from Diane Kincaid and David Ramsey, P.E. on a request for water and sewer service to property located on Old Highway 421 South. Dyan Kinkade, of the New Life Fellowship Church, explained the request for water and sewer service in the amount of 375 gallons per day. She explained that the church is planning to expand to include a day-care operation for twenty-three children and two staff members. She entered into evidence a copy of the original survey of the property (**New Life Fellowship Church Exhibit A, copy permanently on file in the Clerk's office**) and pointed out the location of the current septic system. Ms. Kinkade stated that the size of the property does not allow for expansion of the current septic system. She stated that she has tried to secure easements with adjacent property owners to expand the system but has not been successful. David Ramsey stated that he has not had time to ask an attorney to review any potential easements needed for a possible expansion of town utility lines. Ms. Kinkade stressed the need for child care businesses especially in that area of the county. With no other testimony, Mr. Furguele closed the public hearing at 10:20 p.m. Upon a motion by Council member Leigh, seconded by Council member Mason, Council moved to grant the request for 375 gallons per day made by New Life Fellowship Church for property located on Old Highway 421 South contingent upon payment of all costs associated with the extension of water and sewer lines by the applicant.

VOTE:Aye - All
Nay - None

WATER & SEWER REQUEST - TWO RIVERS COMMUNITY SCHOOL

Town Attorney Sam Furguele opened a public hearing at 10:24 p.m. to hear sworn testimony from Lynwood Brown and Public Utilities Director Rick Miller on a request for water and sewer service to property located on Archie Carroll Road. Mr. Brown explained the request as an expansion of the school to include four classrooms instead of eight as originally planned. He noted that this would decrease the amount of water to 552 gallons per day. Public Utilities Director Rick Miller gave some background on the original extension of water to this area through a CDBG grant. With no other testimony offered, Mr. Furguele closed the public hearing at 10:34 p.m. Upon a motion by Council member Ball, seconded by Council member Brantz, Council moved to grant the request from Two Rivers Community School for 552 gallons per day for property located on Archie Carroll Road.

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

CLOSED SESSION

On a motion by Council member Brantz, seconded by Council member Ball, Council moved to enter into Closed Session at 10:38 p.m., pursuant to N.C.G.S. §143-318.11a)3)5) in order to discuss possible property acquisition and legal advice on proposed mediation.

VOTE:Aye-Aye
Nay-None

On a motion by Council member Brantz, seconded by Council member Mason, Council moved to exit Closed Session at 12:34 a.m.

VOTE:Aye - All
Nay - None

ADJOURNMENT

On a motion by Council member Mason, seconded by Council member Brantz, Council moved to adjourn the meeting at 12:35 a.m.

VOTE:Aye - All
Nay - None

Town Clerk

Mayor

Deputy Town Clerk