

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

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

**ANNOUNCEMENTS**

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

**TENTATIVE AGENDA ADOPTION**

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

Item 4. G. - Addition of Resolution urging the State of North Carolina to acquire Chimney Rock Park.

Item 6. F. - Addition of water and sewer request from Two Rivers Community School.

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

VOTE:           Aye - All  
                      Nay - None

**CONSENT AGENDA ADOPTION**

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

Minutes:           July 12, 2006 - Special Meeting  
                              July 19, 2006 - Special Meeting  
                              July 20, 2006 - Regular Meeting

Tax Releases: May & June 2006

**MAY, 2006**

| <b>TAXPAYER</b>                               | <b>YEAR</b> | <b>AMOUNT</b> | <b>DESCRIPTION</b>            |
|-----------------------------------------------|-------------|---------------|-------------------------------|
| ALCARAZ CABALLERO, JOSE ANTONI                | 2005        | \$10.73       | TURN IN TAG                   |
| DENTON, ROBERT EDWARD                         | 2005        | 16.80         | TURN IN TAG                   |
| FANKHAUSER, GABE                              | 2005        | 9.88          | REDUCED DUE TO PURCHASE PRICE |
| GREEN, TUNJII A<br>HUNT, ROCKY JAMES          | 2005        | 18.21         | SOLD VEHICLE<br>TURNED IN TAG |
| GREENE, ROBERT FRANCIS<br>GREENE, MARY EVELYN | 2005        | 27.76         | INCORRECT SITUS               |
| JONES, JOHN T<br>JONES, NANCY R               | 2005        | 51.36         | INCORRECT SITUS               |
| KEPLAR, RANDY ALAN                            | 2005        | 5.66          | SOLD VEHICLE                  |

|                              |      |                 |                                |
|------------------------------|------|-----------------|--------------------------------|
| KEPLAR, MARY POTTER          |      |                 | TURNED IN TAG                  |
| LYONS, ARCHIE DEAN JR        | 2005 | 6.00            | LOST ADJ CODE<br>VAL=300       |
| MILLER, HAROLD GENE          | 2005 | 70.00           | INCORRECT SITUS                |
| MOUNTAIN LUMBER CO. OF BOONE | 2005 | 69.67           | INCORRECT SITUS                |
| MOUNTAIN LUMBER COMPANY      | 2005 | 79.33           | INCORRECT SITUS                |
| PRICE, REBA RAKES            | 2005 | 86.68           | INCORRECT SITUS                |
| SMITH, MICHAEL DOUGLAS       | 2005 | 14.52           | TURN IN TAG                    |
| THAYER, CHELSEA WILSON       | 2005 | 29.88           | LIVES IN<br>MITCHELL<br>COUNTY |
| THOMSON, SETH ASHLEY         | 2005 | 24.56           | DOUBLE BILLS                   |
|                              |      |                 |                                |
| <b>TOTAL</b>                 |      | <b>\$521.04</b> |                                |

JUNE, 2006

| TAXPAYER                                 | YEAR | AMOUNT          | DESCRIPTION                            |
|------------------------------------------|------|-----------------|----------------------------------------|
| MORETZ, ROY                              | 2005 | \$4.40          | CANNOT LOCATE BOAT<br>ON WILDLIFE FILE |
| TAYLOR, RUSSELL C<br>SYKES, CHARLES L JR | 2005 | 148.24          | INCORRECT SITUS                        |
| HEDRICK, DAROLD LEE                      | 2005 | 36.04           | TURN IN TAG                            |
| PHILLIPS, JOHNNY PAUL JR                 | 2005 | 118.45          | INCORRECT SITUS                        |
| SCHRUM, EVAN MICHAEL                     | 2005 | 2.69            | SOLD VEHICLE TURNED<br>IN THE TAG      |
| DILLON, KEITH DOUGLAS                    | 2005 | 4.83            | TURN IN TAG                            |
| LACHMAN, ERICA ANN                       | 2005 | 5.99            | TURN IN TAG                            |
| WHITLEY, ADAM ALERON                     | 2005 | 41.94           | TURN IN TAG                            |
| WINCKELMANN, ROBERT<br>JOSEPH            | 2005 | 10.60           | TURN IN TAG                            |
| COLVARD, TRAVIS R                        | 2005 | 37.78           | TURN IN TAG                            |
| CONTACT GRAPHICS INC                     | 2005 | 114.76          | BUSINESS CLOSED;<br>EQUIP. SOLD        |
| YOUNCE, BECKY EDMISTEN                   | 2005 | 24.96           | SOLD VEHICLE TURNED<br>IN TAG          |
| QUINN, PATRICIA P                        | 2005 | 2.44            | ADJ FOR BILL OF SALE                   |
| GREENE, STEVEN P                         | 2004 | 6.76            | ADJ VALUE DUE TO<br>INCORRECT CODE     |
|                                          |      |                 |                                        |
| <b>TOTAL</b>                             |      | <b>\$559.88</b> |                                        |

Tax Refunds: May & June 2006

MAY, 2006

| TAXPAYER                    | YEAR | AMOUNT         | DESCRIPTION                   |
|-----------------------------|------|----------------|-------------------------------|
| COUNCILL, JAMES EDWARD      | 2005 | \$3.02         | SOLD VEHICLE<br>TURNED IN TAG |
| HAWKINSON, MARTHA<br>WALTER | 2005 | 23.94          | TURN IN TAG                   |
| OROAKE, ANNE KATHERINE      | 2005 | 14.41          | TURN IN TAG                   |
|                             |      |                |                               |
|                             |      |                |                               |
| <b>TOTAL</b>                |      | <b>\$41.37</b> |                               |

JUNE, 2006

| TAXPAYER              | YEAR | AMOUNT  | DESCRIPTION |
|-----------------------|------|---------|-------------|
| WULF, CHRISTINA       | 2005 | \$11.68 | TURN IN TAG |
| PARRY, MATTHEW ROBERT | 2005 | 16.75   | TURN IN TAG |
|                       |      |         |             |
| TOTAL                 |      | \$28.43 |             |

Announcement of Proclamation: Daughters of the American Revolution

PROCLAMATION

WHEREAS, September 17, 2006 marks the two hundred nineteenth anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

WHEREAS, it is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary; and to the patriotic celebration which will commemorate the occasion; and

WHEREAS, Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through September 23 as Constitution Week;

NOW, THEREFORE I, LORETTA CLAWSON, by virtue of the authority vested in me as Mayor of the Town of Boone, North Carolina, do hereby proclaim the week of September 17 through 23 as CONSTITUTION WEEK, and ask our citizens to reaffirm the ideals of the Framers of the constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties remembering that lost rights may never be regained.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the Town of Boone to be affixed the 13<sup>th</sup> day of September of the year of our Lord two thousand and six.

MAYOR

ATTEST:

DEPUTY TOWN CLERK

Adoption of Resolution: Disposal of Property

RESOLUTION AUTHORIZING THE DISPOSITION OF CERTAIN  
PERSONAL PROPERTY BY PRIVATE SALE

WHEREAS, the Town Council of the Town of Boone desires to dispose of certain surplus property of the Town;

NOW, THEREFORE BE IT RESOLVED by the Town Council that:

- 1. The following described property is hereby declared to be surplus to the needs of the Town:

SNAP-ON MT 2500 SCANNER - Asset # 2618

- 2. The Public Works Director is authorized to dispose of the described property by private sale at a negotiated price.
- 3. The minimum price to be accepted for the property is \$1,000.00.

4. The Town Clerk shall publish notice summarizing this resolution in accordance with G.S. 160A-267.
5. The sale may be consummated not earlier than 10 days from the date of publication.

Adopted this the 17<sup>th</sup> day of August, 2006.

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Mayor

ATTEST:

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Town Clerk

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

Adoption of Agreement Renewal: GDS Contract. Contract will now expire on August 31, 2009.

Approval of Homecoming Parades - WHS & ASU

Adoption of Resolution: Chimney Rock Park

**RESOLUTION URGING THE STATE OF NORTH CAROLINA  
TO ACQUIRE CHIMNEY ROCK PARK**

**Whereas**, Chimney Rock Park, a 1,000 acre privately held natural preserve in Rutherford County, North Carolina, has been offered for sale; and

**Whereas**, this extraordinary parcel has been well maintained and has benefitted from, the sound ecological practices employed by the same family for 104 years; and

**Whereas**, the Park is home to numerous state and federally listed rare species; and

**Whereas**, the Park has contributed to the local and state economy by hosting 200,000 to 250,000 visitors annually, the great majority of those being out of area tourists; and

**Whereas**, Chimney Rock Park is situated in Rutherford County which in 2005 had the third highest unemployment rate in North Carolina out of 100 counties (USDA Economic Research Service); and

**Whereas**, Chimney Rock Park being operated as a tourist destination has traditionally employed 60 full and part-time individuals; and

**Whereas**, Rutherford County ranked 26<sup>th</sup> in tourism impact out of the state's 100 counties generating tourism revenues of over 118 million dollars; and

**Whereas**, the Asheville Citizen-Times has stated "Losing Chimney Rock Park to private development would severely harm the economy of Hickory Nut Gorge and be a sad end to a remarkable legacy of family stewardship" (Citizen-Times 7/21/2006); and

**Whereas**, the North Carolina Division of Parks and Recreation, the legislators of Rutherford County, the General Assembly and Governor Easley have shown the desire, foresight and commitment to establish a state park in Hickory Nut Gorge; and

**Whereas**, the 1,000 acre Chimney Rock Park would be an addition of inestimable value to a new state park and such has been previously recognized by the North Carolina Division of Parks and Recreation and state officials; now

**Therefore, be it resolved** that the Boone Town Council does hereby strongly urge and encourage the State of North Carolina through its various agencies, divisions, and legislative bodies, to do all that is possible and necessary to acquire Chimney Rock Park and add that acreage to the planned Hickory Nut Gorge State Park for the benefit of all citizens of and visitors to this state for generations to come.

Adopted this 17th day of August, 2006.

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Loretta Clawson, Mayor

ATTEST:

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Freida Van Allen, Town Clerk

**(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 4)**

VOTE:   Aye - All  
          Nay - None

**PRESENTATION OF PAY STUDY RESULTS - JOHN MAXWELL, SPRINGSTED, INC.**

John Maxwell, of Springsted, Inc., presented highlights of the pay study(**copy permanently on file**) performed for the Town of Boone. He began by commending the Town Council for the competitive pay plan already in place. Mr. Maxwell suggested further study on such issues as staffing within the Development Services Department and the need for succession planning. Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved to adopt the results of the pay plan study submitted by John Maxwell of Springsted, Inc.

VOTE:       Aye - All  
              Nay - None

**ADOPTION OF ZONING AMENDMENTS**

Development Services Director John Spear presented **Case 20060435: The Boone Town Council has initiated a text amendments to UDO Article XVIII to establish guidelines and regulations regarding the temporary use of inflatable signs.** Mr. Spear indicated that the Planning Commission recommends approval of this application. Upon a motion by Council member Brantz, seconded by Council member Mason, Council moved that the application is consistent with all of the objectives and policies for growth and development contained in the 2006 Boone Comprehensive Plan.

VOTE:   Aye- All  
          Nay - None

Upon a motion by Council member Brantz, seconded by Council member Pepin, Council moved that the application is both reasonable and in the public interest.

VOTE:   Aye - All  
          Nay - None

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

**PROPOSED AMENDMENTS**

Section 324.           Signs Which Do Not Require a Permit

[a] No permit is necessary for these signs, provided they are not prohibited as defined in Section 326 and provided that they comply with the conditions described herein.

[8] Temporary Signs, other than Agricultural Signs, Community Event Signs, **inflatable signs** and Farmer's Market Signs.

Section 326. Prohibited Signs

[a] The following signs are prohibited:

8. Inflatable Signs, **other than those permitted under the Temporary Sign Regulations of Section 338.**

Section 338. Temporary Sign Regulations

[a] Temporary signs must conform to all regulations of this section not otherwise superseded by this Article. No type of temporary sign, other than an agricultural sign whose placement is approved by the North Carolina Department of Transportation, may be placed in the public right-of-way. Temporary signs, other than agricultural signs, **inflatable signs** and community event signs, shall not be required to obtain a sign permit.

**[9] Inflatable signs may be temporarily displayed in a B-3 zoning district subject to the following conditions:**

**[a] Only one inflatable sign may be displayed per tax parcel, and no more than one inflatable sign per business or event, even if the business or event is located on multiple tax parcels.**

**[b] An inflatable sign may be displayed for a period of seven [7] continuous days, an interval of thirty (30) days shall separate each event for which the sign is displayed. In addition the inflatable sign may be displayed for no more than three (3) separate events in any calendar year.**

**[c] Any inflatable sign must be set back and away from any pedestrian or vehicular right of way, any utility poles, above ground utility lines and any other hazardous structure, at least the vertical distance from the ground to the top of the sign when it is displayed at its maximum height, plus ten (10) feet.**

**[d] An inflatable sign may not obstruct visibility for vehicular traffic.**

**[e] Any inflatable sign must be secured to the ground in conformity with the manufacturer's specifications.**

**[f] No inflatable sign may be displayed in such a way that the top of the sign is more than twenty-five (25) feet above the ground level.**

**[g] Inflatable signs shall not be illuminated.**

**[h] No inflatable sign may exceed 400 cubic feet when fully inflated.**

**[i] The applicant shall submit a certification that the inflatable sign will be erected and displayed in conformance with this Section 338[9] and the manufacturer's specifications.**

VOTE: Aye - All  
Nay - None

Council member Mason directed the Development Services staff and the Town Attorney to further study the use of smaller-sized balloons.

Development Services Director John Spear presented **Case 20060341: The Boone Town Council has initiated text amendments to UDO Articles II, X, XI, XIX, and XX to address large scale retail land uses.** Mr. Spear indicated that the Planning Commission recommends denial of this application because the text amendment is not consistent with all of the objectives and policies for growth and development of the 2006 Boone Comprehensive Plan. Council member Mason stated she disagrees with the Planning Commission's recommendation due to public comments supportive of this measure and for the following reasons:

- Economic impact - the Town should be proactive in attracting more diverse businesses that provide higher wages for employees.
- Tourism - the Town is committed to protecting small businesses.
- The economic ramifications of large-scale retail businesses going out-of-business.
- The effect on the local labor force, such as affordable housing and transportation issues.
- Traffic congestion, stress on infrastructure, and the effect on the character of the community.
- Parking issues.
- The issue of the reuse of abandoned big-box retail buildings.

Council member Mason stated she would support this text amendment with some modifications, specifically the requirement for projected impact studies. Council member Spann agreed with Council member Mason's statement but informed the Council that he had been asked by the Watauga County Board of Commission Chair to take further time to study this issue. He further stated the Commission Chair requested that the matter be tabled until the September meeting so that the Commission could have the opportunity to submit information to the Council for consideration. Council member Pepin stated that the 150,000 square footage allowance is a generous amount and should not present a problem for construction under this limit. Council member Wilcox stated that waiting a month longer to make a decision would not be detrimental to the community as no large-scale projects are pending. Council member Spann moved to table the consideration of this case until the September meeting. Council member Wilcox seconded the motion.

VOTE:           Aye - 2 (Spann, Wilcox)  
                       Nay - 3 (Mason, Pepin, Brantz)

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

VOTE:           Aye - All  
                       Nay - None

Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved that the application is both reasonable and in the public interest for the following reason: The proposed amendment is designed to promote and protect public health, safety, and welfare by ensuring the impacts created by the development of large-scale retail land uses are fully considered and any adverse impacts are effectively mitigated.

VOTE:           Aye - All  
                       Nay - None

Upon a motion by Council member Mason, seconded by Council member Pepin, Council moved to adopt the following text amendment with the deletion of the language in Section 195 [d] [2] [3] and Section 195 [a] [3]:

## **PROPOSED AMENDMENTS**

The following definitions will be removed Business, Convenience; Business, General; Business, Neighborhood; Business, Wholesale.

### **Article II Basic Definitions and Interpretations**

#### **Section 15. Definitions of Basic Terms**

*Convenience Store:* A retail business with primary emphasis placed on providing the public a convenient location to quickly purchase a variety of consumable products including gasoline.

*Large Scale Retail:* A retail business having a gross floor area of 25,000 square feet or more in which goods or merchandise is offered for sale to the general public or to members and in which services incidental to the sale of those goods may be provided.

*Outdoor Display:* The display and sale of products outside of a fully enclosed structure including, but not limited to, garden supplies, clothing, toys, furniture, equipment, agricultural products, building and landscape materials, food and beverages.

*Outdoor Storage:* The storage of products outside of a fully enclosed structure which are not intended for sale directly from that location including, but not limited to, equipment, materials, containers, crates and pallettes.

*Wholesale Sales:* A business in which goods or merchandise is offered for sale in quantity usually for resale.

Article X Permissible Uses

Section 165. Table of Permissible Uses

|                                                                           |  |  |  |  |  |  |  |  |  |  |   |   |    |   |
|---------------------------------------------------------------------------|--|--|--|--|--|--|--|--|--|--|---|---|----|---|
|                                                                           |  |  |  |  |  |  |  |  |  |  |   |   |    |   |
| R-                                                                        |  |  |  |  |  |  |  |  |  |  |   |   |    |   |
| R-                                                                        |  |  |  |  |  |  |  |  |  |  |   |   |    |   |
| R                                                                         |  |  |  |  |  |  |  |  |  |  |   |   |    |   |
| R-                                                                        |  |  |  |  |  |  |  |  |  |  |   |   |    |   |
| R-                                                                        |  |  |  |  |  |  |  |  |  |  |   |   |    |   |
| R-                                                                        |  |  |  |  |  |  |  |  |  |  |   |   |    |   |
| O /                                                                       |  |  |  |  |  |  |  |  |  |  |   |   |    |   |
| B-                                                                        |  |  |  |  |  |  |  |  |  |  |   |   |    |   |
| B-                                                                        |  |  |  |  |  |  |  |  |  |  |   |   |    |   |
| B-                                                                        |  |  |  |  |  |  |  |  |  |  |   |   |    |   |
| U-                                                                        |  |  |  |  |  |  |  |  |  |  |   |   |    |   |
| M-                                                                        |  |  |  |  |  |  |  |  |  |  |   |   |    |   |
| 1                                                                         |  |  |  |  |  |  |  |  |  |  |   |   |    |   |
| 2.0 SALES AND RENTAL OF GOODS, MERCHANDISE AND EQUIPMENT                  |  |  |  |  |  |  |  |  |  |  |   |   |    |   |
| 2.100 Commercial Retail                                                   |  |  |  |  |  |  |  |  |  |  |   |   |    |   |
| 2.110 No storage or display of goods outside fully enclosed building      |  |  |  |  |  |  |  |  |  |  | Z | Z | Z  |   |
| 2.120 Storage or display of goods outside fully enclosed building allowed |  |  |  |  |  |  |  |  |  |  |   |   | Z  |   |
| 2.200 Commercial Wholesale                                                |  |  |  |  |  |  |  |  |  |  |   |   |    |   |
| 2.210 No storage or display of goods outside fully enclosed building      |  |  |  |  |  |  |  |  |  |  |   |   | ZS | Z |
| 2.220 Storage or display of goods outside fully enclosed building allowed |  |  |  |  |  |  |  |  |  |  |   |   | ZS | Z |
| 2.300 Convenience stores                                                  |  |  |  |  |  |  |  |  |  |  |   | S | Z  |   |
| 2.400 Large Scale Retail                                                  |  |  |  |  |  |  |  |  |  |  |   |   | S  |   |

Article XI Supplementary Use Regulations

Section 195. Supplementary Regulations for Large Scale Retail (Land Use 2.400)

[a] Purpose: The purpose for creating the large scale retail land use classification (2.400) shall be to set forth the appropriate locations within the town’s planning jurisdiction where large scale retail uses may be established and to provide for certain development standards which apply to the development of such uses. Specifically, this section has been established for the following reasons:

[1] Very large scale retail uses, those exceeding 150,000 square feet, require a large amount of land to accommodate the both structural footprint and the associated parking these uses demand. Within the Town of Boone’s Primary Growth Area, there are few parcels of land which can accommodate this type of use.

[2] Large scale retail uses generate significant traffic impacts due to the automobile oriented nature of the use. In conjunction, these automobile oriented uses negatively impact air quality, water quality and levels of service on already congested roadways within Boone’s planning jurisdiction.

[3] Large scale retail uses create a significant impact on Boone’s unique community character and sense of place as a high country small town.

[4] Large scale retail uses lack the flexibility for reuse increasing the potential of visual and economic blight which occurs in areas where these stores are vacated.

**[b]** Applicability: The requirements in this section apply to the following:

[1] Any newly created large scale retail either by proposed expansion or new construction; and

[2] Any new large scale retail tenant within existing development.

**[c]** Large scale retail shall not exceed a gross floor area of 150,000 square feet.

**[d]** Large scale retail uses having a gross floor area ranging between 25,000 and 150,000 square feet shall provide a Community Impact Analysis. This assessment shall be prepared by an independent consultant, qualified by education and experience, chosen by the developer and approved by the Town, and shall include projected impacts on public services and infrastructure. The analysis shall be submitted for review by the permit issuing authority in conjunction with the required Special Use Permit Application. The permit issuing authority shall review the projected impacts determined by the analysis and may utilize the information in their deliberations concerning the issuance or denial of a Special Use permit in accordance with the provisions of Section 69 of this ordinance.

**[e]** Outdoor Display area associated with large scale retail use shall not exceed 10% of the gross floor area of the structure. All areas utilized for outdoor display shall be clearly indicated on all permit applications. Outdoor display must be located in areas specifically designed for outdoor sales and is prohibited in or on designated exterior walkways, parking areas, driveways, and landscape areas.

**Article XIX Parking**

**Section 346. Number of Parking Spaces Required**

| Use   | Parking Requirement                                                                      |
|-------|------------------------------------------------------------------------------------------|
| 2.110 | 1 space per 300 square feet of gross floor area.                                         |
| 2.120 |                                                                                          |
| 2.210 | 1 space per 400 square feet of gross floor area.                                         |
| 2.220 | 1 space per 400 square feet of gross floor area.                                         |
| 2.300 | 1 space per 250 square feet of gross floor area.                                         |
| 2.400 | 1 space per 300 feet of gross floor area plus<br>1 space per 300 feet of outdoor display |

**Article XX Landscape Standards**

**Section 363. Buffer and Screen Requirements**

[e] Screening of Dumpsters, Loading Docks, Outdoor Storage Areas, and Utility Structures:

[3] Outdoor storage areas shall be located along the side or the rear of the principle structure and screened so that the visual impacts are fully contained and out of view from adjacent properties and public streets. Screening material may include fence, wall or landscaping so long as materials are architecturally compatible with the principle building(s) on site and will provide an opaque screen. All areas utilized for outdoor storage shall be clearly indicated on all permit applications. Outdoor storage must be located in areas specifically designed for outdoor storage and is prohibited in or on designated exterior walkways, parking areas, driveways, and landscape areas.

VOTE:           Aye - All  
                      Nay - None

Development Services Director John Spear presented **Case 20060447: The Boone Town Council has initiated text amendments to UDO Article X which would allow agricultural uses in the B-3 zoning district.**

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

VOTE:           Aye - All  
                      Nay - None

Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved that the application is both reasonable and in the public interest because it promotes the expansion of greenspace.

VOTE:           Aye - All  
                      Nay - None

Upon a motion by Council member Mason, seconded by Council member Wilcox, Council moved to adopt the following text amendment and to consider a requirement for a special-use permit at the next public hearing in November.

**PROPOSED TEXT**  
Section 165

|                                                                | R-1 | R-1A | R R | R-2 | R-3 | R-4 | R-A | MH | O / I | B-1 | B-2 | B-3 | U-1 | M-1 |
|----------------------------------------------------------------|-----|------|-----|-----|-----|-----|-----|----|-------|-----|-----|-----|-----|-----|
| Uses Description                                               |     |      |     |     |     |     |     |    |       |     |     |     |     |     |
| 12.0 SERVICES AND ENTERPRISES RELATED TO ANIMALS               |     |      |     |     |     |     |     |    |       |     |     |     |     |     |
| 12.100 Veterinarian                                            |     |      |     |     |     |     | S   |    | Z     |     |     | Z   | Z   |     |
| 12.200 Kennel                                                  |     |      |     |     |     |     | S   |    |       |     |     | S   |     | Z   |
|                                                                |     |      |     |     |     |     |     |    |       |     |     |     |     |     |
| 13.0 EMERGENCY SERVICE OPERATIONS                              | S   | S    | S   | S   | S   | S   | S   | S  | S     | S   | S   | S   | Z   | S   |
|                                                                |     |      |     |     |     |     |     |    |       |     |     |     |     |     |
| 14.0 AGRICULTURAL, SILVICULTURAL, MINING, QUARRYING OPERATIONS |     |      |     |     |     |     |     |    |       |     |     |     |     |     |
| 14.100 Agricultural operations, farming                        |     |      |     |     |     |     |     |    |       |     |     |     |     |     |
| 14.110 Excluding livestock                                     | Z   | Z    | Z   | Z   |     |     | Z   |    |       |     |     | Z   |     | Z   |

|                            |  |  |  |  |  |  |   |  |  |  |  |  |  |  |
|----------------------------|--|--|--|--|--|--|---|--|--|--|--|--|--|--|
| 14.120 Including livestock |  |  |  |  |  |  | Z |  |  |  |  |  |  |  |
|----------------------------|--|--|--|--|--|--|---|--|--|--|--|--|--|--|

VOTE:           Aye - All

Nay - None

Development Services Director John Spear presented **Case 20060426: The Town of Boone has initiated text amendments to UDO Article XVI relating to the approval process of grading and erosion control plans and to provide consistency with G.S. 113A-57(2).** Upon a motion by Council member Pepin, seconded by Council member Brantz, Council moved to adopt the following text amendment:

**Section 274. Plan Approval Required**

[a] Town review and approval of both a site specific “Grading Plan,” and a site specific “Soil Erosion and Sediment Control Plan,” is required when land-disturbing activity is proposed; with the exception of single family and two family projects of less than twenty one thousand, seven hundred eighty (21,780) square feet (0.5 acre) or commercial site improvements that involve no more than two thousand five hundred (2,500) square feet of land disturbing activity.

The following land-disturbing activities contemplated as part of the principal land-disturbing activity characterized above, should be included in the submission for grading and soil erosion plan approval, when not already covered by a valid existing plan approval:

- [1] Access and Haul Roads: Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity and are subject to the requirements of this ordinance which pertain to road building.
- [2] Borrow and Waste Areas: When the applicant conducting the land-disturbing activity is also the responsible party conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by the Department of Human Resources, Division of Health Services, shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the applicant conducting the land-disturbing activity is not the responsible party for obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

~~The property owner shall apply for plan approval on the form(s) furnished by the Development Services Department. The application form for plan approvals of land-disturbing activity requires a zoning permit which indicates the requirement for these plan approvals, as specified in Article IV, Section 61, [a].~~ **Approval of the “Grading Plan” and “Soil Erosion and Sediment Control Plan” shall be completed as part of the zoning approval process. “Grading Plans” will not be approved unless part of a development project submitted through the zoning approval process.**

~~[b] Fees for plan approval may be established or amended from time to time by resolution of the Town Council.~~

~~[c] All plan approvals shall be valid for one year from the date of issuance, provided the conditions of its approval have not changed. Any land-disturbing activity not completed within one year of issuance of an approved plan, shall be required to reapply on a yearly basis by the anniversary date.~~

**Section 275. Administrative Procedures for Plan Approval**

[a] ~~Three (3) copies of the “Grading Plan” and/or “Soil Erosion and Sediment Control Plan,” plus two (2) copies of the supporting documentation for such plan(s), shall be submitted for review with the plan approval application form to the Development Services Department. The “Grading Plan” and “Soil Erosion and Sediment Control Plan” along with all supporting calculations shall be submitted with the Zoning Permit application. The entire submittal “Grading Plan”~~

**and “Soil Erosion Control Plan” with supporting calculations** shall be designated collectively throughout this section as the Plan, or Plan(s).

[1] The Plan(s) shall be prepared by, and shall bear the seal and signature of a licensed professional engineer, landscape architect, surveyor, or architect competent to perform all aspects of the design.

[2] The Soil Erosion and Sediment Control Plan approval application form shall be accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or their attorney in fact. The statement shall include the financially responsible person’s principal place of business, addresses (mailing and street), plus each land owner’s or their registered agent’s address.

[a] The administrator may require the property owner or the financially responsible party to provide a security deposit to ensure compliance with the soil erosion and sediment control provisions (Article XVI, Part II) of the ordinance.

1. The applicant may, prior to commencing any land-disturbing activity, be required to file with the town an improvement security in the form of an escrow account, surety bond, irrevocable letter of credit, or other undertaking satisfactory to the Town Attorney, in an amount deemed sufficient by the Development Services Department, to cover all costs of protection or other improvements required to establish protective cover on the site in conformity with this ordinance. Such security shall remain in force until the improvements are completed in accordance with the approved plan and said improvements are finally inspected and approved.

2. Upon completion of improvements required by this ordinance, written notice thereof shall be given by the applicant to the Development Services Department and the department shall cause an inspection of the improvements to be made and, if approved, shall within thirty (30) days of the date of notice authorize in writing the release of the security given provided that the improvements have been made in accordance with the approved plan and this ordinance.

[b] Supporting documentation shall be considered an integral part of the Plan(s) submittal. The applicant shall include general supporting documentation such as; location map, and written specifications governing work performance and materials, for either plan submitted. Although specific Plan(s) content will vary to meet the needs of particular site requirements, following is some typical forms of specific supporting documentation:

1. Grading Plan: Site specific soils investigation (if performed), detail drawings and cross-section of earthwork, construction details for retaining structures, and whatever other narrative statements necessary to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this ordinance. More specialized documentation may include such items as; design calculations for temporary excavation support, calculations for temporary surface water diversion, dewatering methods with provisions for handling extracted water, importation of fill material (quantity and type), description of rock excavation techniques (blasting) with protection or monitoring of neighboring properties and structures, etc.

2. Soil Erosion and Sediment Control Plan: Computations and assumptions sufficient to support the design of sediment control structures, erosion control practices, and velocity control measures. Construction details and sequencing for sedimentation and erosion control measures. Selected types of ground cover with their conditions and procedures for installation. Architectural and engineering drawings, and maps to convey this information. Whatever other narrative statements necessary to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this ordinance.

[c] The Development Services Department shall review the Plan(s) for completeness and for compliance with the requirements of this ordinance. Incomplete or nonconforming Plan(s) will be returned to the applicant prior to review with an explanation of issues requiring resolution before plan review can be initiated.

[d] Within thirty (30) days of receipt of application for Plan(s) approval, the Development Services Department shall take action on the Plan(s). Failure to respond within thirty (30) days of receipt of the plan(s) will constitute approval of the Plan(s).

1. The Development Services Department shall forward a copy of the Plan(s) to the Watauga Soil and Water Conservation District who, within twenty (20) days of receipt of the plan(s), will review the Plan(s) and submit its comments and recommendations to the Development Services Department. Failure of the Soil and Water Conservation District to submit its comments and recommendations within twenty (20) days, shall not delay final action on the Plan(s). The Development Services Department is solely responsible for Plan(s) review and will incorporate review comments and recommendations from the Soil and Water Conservation District into its examination of the Plan(s) application.
- ~~f~~[d] Approval or denial of the proposed Plan(s) shall be in writing. In the case of denial, the reasons for denial shall be clearly stated. The applicant may appeal the decision of the Development Services Department to the Board of Adjustment as provided in Article V of this ordinance. A condition of Plan(s) approval will be the right to physical inspection of the land-disturbing activity.
- [f] The Development Services Department shall take action on revisions to Plan(s) which have been previously denied, within fifteen (15) days of receipt of the revised Plan(s) application for approval. Failure to respond within fifteen (15) days of receipt of the revised Plan(s) will constitute approval of the revised Plan(s).
- ~~g~~[e] Application for amendment of a Plan(s) in written and graphic form may be made at any time by repeating the filing process outlined above in Subsections [a] through ~~f~~[d]. Until such time as any amendment is approved by the Development Services Department, it shall be unlawful to deviate from the approved Plan(s).
1. In cases of any proposed amendment to Plan(s) for a tract with greater than two (2) acres of disturbed area, the Development Services Department shall notify the Soil and Water Conservation District of any proposed amendment prior to approving any such amendment, using the process described in Section 275 [d] [1].
- ~~h~~[f] In the enforcement of this ordinance the Development Services Department may perform random independent inspections of the land-disturbing activity to ensure compliance with the approved Plan(s). Discovery of substandard and non-conforming work will invoke the procedures outlined in Section 277.
1. No person shall willfully resist, delay, or obstruct the Development Services Department, or its duly appointed agent, that is inspecting or attempting to inspect a land-disturbing activity.

## **Section 290. Soil Erosion Control Design Standards**

[a] Any land disturbing activity that includes alteration of existing topographic slope grades or natural ground cover shall conform to the soil erosion and sediment control design standards in Subsections [b] through [d].

[b] Erosion and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed as to provide protection from the calculated maximum peak rate of runoff from the ten (10) year storm. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service, *National Engineering Field Manual for Conservation Practice*, the *North Carolina Erosion and Sediment Control Planning and Design Manual*, or other acceptable calculation procedures.

[c] Erosion and sediment control measures must accomplish the following mandatory standards when land-disturbing activity is undertaken on a tract:

- [1] Containment: Installation of sufficient sedimentation and erosion control devices and practices to retain the sediment generated by the land disturbing activity within the boundaries of the tract during construction and upon completion of development.
- [2] Buffer Zone: 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. 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. If the slope perpendicular to the stream measured from the top of the stream bank is 3H:1V or steeper a detailed erosion control plan and calculations sufficient to support the proposed buffer width must be submitted for town review. A temporary and minimal disturbance may be permitted if the applicant submits documentation

that there is no reasonable alternative. The temporary and minimal disturbance shall be limited to a maximum of ten percent of the total length of the buffer zone within the tract to be distributed such that there is not more than 50 linear feet of disturbance in each 1000 linear feet of buffer zone.

- ~~[3] Graded Slopes and Fills: The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within fifteen (15) working days or thirty (30) calendar days of completion of any phase of grading, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion.~~
- ~~[4] Ground Cover: Within fifteen (15) working days or ninety (90) calendar days following completion of land disturbing activity, whichever period is shorter, the applicant shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion through, and after, completion of construction. For areas disturbed in the construction of any designed road, (all drainage ditches, side slopes, cut slopes, fill slopes, shoulders, etc.) a permanent ground cover shall be installed immediately upon completion of final grade.~~
- [3] **Ground Cover: Groundcover (temporary or permanent depending on phase of grading) that is sufficient to restrain erosion must be placed on all disturbed areas within 21 calendar days of completion of any phase of grading. Specifications for groundcover must be listed on the erosion control plan and should be consistent with the NCDENR *Erosion and Sedimentation Control Planning and Design Manual*.**
- [d] Land-disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided.

VOTE:           Aye - All  
                      Nay - None

Development Services Director John Spear presented **Case 20060427: The Town of Boone has initiated text amendments to UDO Article IV regarding the expiration of zoning vested rights to provide consistency with G.S. 160A-385.1(d)(6).** Upon a motion by Council member Brantz, seconded by Council member Mason, Council moved to adopt the following text amendment:

**TEXT AMENDMENT**

Section 79[g][1]

At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been issued **filed**, or

VOTE:           Aye - All  
                      Nay - None

Development Services Director John Spear presented **Case 20060458: The Town of Boone Residential Occupancy Task Force has initiated text amendments to UDO Articles VII and IX for more effective enforcement of residential occupancy controls.** Upon a motion by Council member Pepin, seconded by Council member Mason, Council moved that the application is consistent with all of the objectives and policies for growth and development contained in the 2006 Boone Comprehensive Plan.

VOTE:           Aye - All  
                      Nay - None

Upon a motion by Council member Pepin, seconded by Council member Mason, Council moved that the application is both reasonable and in the public interest because it is for the protection of R-1 neighborhoods.

VOTE:           Aye - All  
                      Nay - None

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

## **Article VII   Enforcement and Review**

### **Section 128.   Violations**

[a]       Whenever by the provisions of this ordinance, as duly interpreted and/or applied by the staff of the Town’s Development Services Department, or the Boone Board of Adjustment, or the Boone Town Council, as the case may be, the performance, avoidance or cessation of any act is required, the performance of any act is prohibited, or whenever any regulation, condition, or limitation is imposed on the use of any land, or on the erection, alteration, or the use of a structure, a failure to comply with such provision, regulation, condition or limitation shall constitute a violation of this Ordinance.

### **Section 129.   Complaints Regarding Violations**

[a]       Whenever the administrator receives a written, signed complaint from one or more persons alleging a violation of this ordinance, he shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions have been or will be taken.

**[b]       Investigations of possible occupancy violation may be initiated by the submission of a “Neighborhood Occupancy Concern” form, to be furnished by the administrator and signed by the person submitting the form. The person submitting the form may do so for him or herself, or may submit it as a representative of a neighborhood organization or group from the neighborhood in question.**

### **Section 130.    Persons Liable**

[a]       The owner, tenant, or occupant of any land or structure, or part thereof, or other person who possesses a cognizable interest in the real or personal property in question, who participates in, assists, directs, causes, allows, maintains, or is otherwise responsible for any situation that is contrary to the requirements of this ordinance shall be liable for violations of this Ordinance.

**[b]       In order to avoid being charged with one of more penalties for an occupancy violation, the owner of rental property which is leased for a period of certain duration must:**

- [1]       include a provision in the lease of the property which authorizes the owner to terminate the lease early if the tenants violate the occupancy or zoning rules of the Town; and**
- [2]       take prompt action to terminate the lease and/or tenancy of the tenants of the property when an occupancy violation has been confirmed by the administrator.**

### **Section 159.   Neighborhood Conservation Districts**

**[a]** The Neighborhood Conservation Districts are established as “overlay” districts, meaning that these districts are overlaid upon other districts and the land so encumbered may be used in a manner permitted in the underlying district only if and to the extent such use is also permitted in the applicable overlay district.

**[b]** The purpose and intent for creating Neighborhood Conservation Districts is:

- [1] To promote public health, safety and welfare;
- [2] To stabilize and maintain a suitable low-density living environment for family life; and
- [3] To maintain and preserve the value of existing property.

**[c]** The following Neighborhood Conservation Districts are hereby established:

**Blanwood Drive:** The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map and include all or portions of Oak Street, Windy Drive, Horn in the West Drive and Skyview Drive.

**Forrest Hills Drive:** The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map.

**Grand Boulevard:** The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map.

**Grandview Heights:** The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map and include all or portions of West Grandview Heights, Russell Drive and Poplar Grove Road.

**Stadium Drive:** The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map and include all or portions of Hemlock Drive, Ferncliff Road, Tanglewood, Hawthorne Lane, Hope Drive, and Spring Street.

**[d]** The requirements of all rental property within Neighborhood Conservation Districts shall be as follows:

- [1] All tenants of rental property must complete and file a Residential Parking Registration Form with the administrator. Tenants must provide personal identification, vehicle registration, and proof of residency within a designated Neighborhood Conservation District.
- [2] Tenants meeting eligibility requirements will be issued parking stickers for their vehicle(s) for the appropriate neighborhood district which must be permanently attached to eligible vehicles. Annual renewal and nominal fees are required.
- [3] No more than two unrelated persons per dwelling unit will be issued parking stickers.
- [4] Owners of rental property residing more than (50) miles from Boone must designate **in writing** a local managing agent residing within Watauga County that will be responsible for all matters concerning occupancy of such rental property, **and must provide the administrator with the agent’s name, address and telephone number.**
- [5] Owners or local managing agents of rental property must notify tenants of applicable Neighborhood Conservation District requirements.

VOTE:           Aye - All  
                    Nay - None

Development Services Director John Spear presented **Case 20060477: The Town of Boone has initiated text amendments to UDO Article VII for more effective enforcement of the sign ordinance.** Mr. Spear indicated that the Planning Commission recommends approval of the application. Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved that the application is consistent with all of the objectives and policies for growth and development contained in the 2006 Boone Comprehensive Plan.

VOTE:           Aye - All  
                    Nay - None

Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved that the application is both reasonable and in the public interest because it promotes the quality of life for Boone's citizens.

VOTE:           Aye - All  
                    Nay - None

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

#### Article VII   Enforcement and Review

##### **Section 128.   Violations**

**[a]**     Whenever by the provisions of this ordinance, as duly interpreted and/or applied by the staff of the Town's Development Services Department, or the Boone Board of Adjustment, or the Boone Town Council, as the case may be, the performance, avoidance or cessation of any act is required, the performance of any act is prohibited, or whenever any regulation, condition, or limitation is imposed on the use of any land, or on the erection, alteration, or the use of a structure, a failure to comply with such provision, regulation, condition or limitation shall constitute a violation of this Ordinance.

##### **Section 129.   Complaints Regarding Violations**

**[a]**     Whenever the administrator receives a written, signed complaint from one or more persons alleging a violation of this ordinance, he shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions have been or will be taken.

##### **Section 130.   Persons Liable**

**[a]**     The owner, tenant, or occupant of any land or structure, or part thereof, or other person who possesses a cognizable interest in the real or personal property in question, who participates in, assists, directs, causes, allows, maintains, or is otherwise responsible for any situation that is contrary to the requirements of this ordinance shall be liable for violations of this Ordinance.

##### **Section 131. Procedures Upon Discovery of Violations**

**[a]**     If the administrator finds that any provision, regulation, condition or limitation of this ordinance is being or has been violated, **unless the person to be charged with the violation is a repeat violator of Article XVIII, Signs**, he or she shall first attempt to contact the person(s) liable, by telephone or in person, to advise the person(s) liable of the violation, and to discuss what steps the person(s) liable will take to correct the violation. **Other than in the case of violations of**

**the provisions, regulations, conditions or limitations created under Article XVIII, “Signs”,** When, in the sole judgment of the administrator, the violation can be corrected within five business days of this discussion, and the person liable expresses his or her intent to correct the violation within that time period, the administrator may suspend any further enforcement action, to allow the person(s) liable to correct the violation. **In the case of violations of Article XVIII, except in the case of a repeat violator, when, in the sole judgment of the administrator, the violation can be corrected within twenty-four (24) hours of this discussion, and the person liable expresses his or her intent to correct the violation within that time period, the administrator may suspend any further enforcement action, to allow the person(s) liable to correct the violation. In circumstances where the violator is proceeding in good faith to remove the offending signs, but is unable to meet the aforementioned twenty- four (24) deadline due to the practicalities of sign removal or other circumstances beyond the control of the violator, the administrator may afford the violator additional time.**

**[b]** If the administrator finds that any provision of this ordinance is being or has been violated, and he or she is unable to contact the person(s) liable by telephone or in person because the person’s telephone number is not listed in the local telephone directory reasonably accessible to staff and it cannot be obtained through directory assistance for Boone, and/or the person(s) whereabouts are unknown to the administrator, he shall deliver a written notice of by certified mail, return receipt requested, to the person(s) liable for such violation, addressed to the address on file at the office of the Watauga County Tax Administrator, in the case of the owner of real property in question, or to such other address as the person(s) liable has provided to the administrator, if any, or to the address of the real property in question, or to such other address as the administrator may reasonably believe will provide actual notice of the violation to the person(s) liable. The failure of the person liable to claim or accept a notice sent by certified mail, return receipt requested, from the administrator, shall not prevent further action under this article, but will be presumed to have been received three days after the notice is deposited in the United States Mail, with proper postage affixed, addressed in compliance with this paragraph.

**[c] Other than in the case of provisions, regulations or limitations created under Article XVIII, “Signs”** If the administrator finds that any provision, regulation, condition or limitation of this ordinance is being or has been violated, and he or she believes that the violation can not be corrected within five business days, or when the administrator, pursuant to subparagraph [a], above, has afforded the person(s) liable a five business day period to correct the violation, but the violation has not been fully corrected within that time period, he or she shall deliver a written notice of violation by hand delivery, or by certified mail, return receipt requested, to the person(s) liable for such violation, addressed to the address on file at the office of the Watauga County Tax Administrator, in the case of the owner of real property in question, or to such other address as the person(s) liable has provided to the administrator, if any, or to the address of the real property in question, or to such other address as the administrator may reasonably believe will provide actual notice of the violation to the person(s) liable. **In the case of violations of Article XVIII, when the person(s) in question is (are) a repeat violator(s), or when, in the sole judgment of the administrator, the violation can not be corrected within twenty-four (24) hours of the discussion referred to in subparagraph [a] above, or when the administrator is unable to contact the person(s) liable, or when the administrator, pursuant to subparagraph [a], above, has afforded the person(s) liable a twenty-four (24) hour period to correct the violation, but the violation has not been fully corrected within that time period, he or she shall deliver a written notice of violation by hand delivery or by certified mail, return receipt requested, to the person(s) liable for such violation, addressed to the address on file at the office of the Watauga County Tax Administrator, in the case of the owner of real property in question, or to such other address as the person(s) liable has provided to the administrator, if any, or to the address of the real property in question, or to such other address as the administrator may reasonably believe will provide actual notice of the violation to the person(s) liable.** The failure of the person liable to claim or accept a notice sent by certified mail, return receipt requested, from the administrator, shall not prevent further action under this article, but will be presumed to have been received three days after the notice is deposited in the United States Mail, with proper postage affixed, addressed in compliance with this paragraph.

**[d] Other than in the case of violations of provisions, regulations, conditions or limitations created under Article XVIII, “Signs,”** which shall impose penalties upon the person (s) liable which begin accruing on the date of the notice of violation, **In the notice of**

violation, the administrator may afford the person(s) liable a period of up to ten additional days from the date of the notice to discontinue the violation and up to thirty days from the date of the notice to correct the violation before penalties are imposed. The decision by the administrator as to whether such periods should be allowed and the length of the aforesaid periods which shall be allowed the person(s) liable shall be solely within the discretion of the administrator, but shall be based upon the administrator's application of the relevant considerations, including the following:

- [1] The seriousness of the violation;
- [2] The damage which may occur by any delay in enforcement;
- [3] The effect of the violation, if any, on neighboring property owners or occupiers of neighboring property, or other citizens of the Town;
- [4] Whether or not the person(s) liable is a repeat violator;
- [5] Whether the violation can be discontinued within a period of ten days or less and corrected within a period of thirty days or less;
- [6] Whether the violation is of such nature that the person liable may circumvent enforcement of the ordinance by temporary correction of a violation followed by re-institution of the violation; and
- [7] Such other factors as the administrator determines reasonably require immediate enforcement, or conversely, allow some minimal delay in enforcement.

The foregoing factors are not exclusive, and the applicability of, or response to any one individual factor shall not bind the decision of the administrator, which should base his or her decision on a determination of what action is in the best interests of the Town.

**[e]** The notice of violation shall state the following:

- [1] The nature of the violation and paragraphs, sections or chapters of the ordinance which have been violated;
- [2] The amount of time, if any, within which the person(s) liable may correct the violation and avoid further enforcement action and penalty;
- [3] The steps the person(s) liable must take to correct the violation;
- [4] The date civil penalties, pursuant to Section 132 or Section 133 of this Article, as applicable, will begin to accrue and the amount of such penalties;
- [5] The action which the administrator intends to take if the violation is not corrected, including the initiation of criminal charges, if the initiation of criminal charges is anticipated or the administrator intends to seek the authority of the Boone Town Council to initiate criminal charges; and
- [6] The right of the person(s) liable to appeal the decision of the administrator to the Board of Adjustment.

**[f]** Notwithstanding the requirement of this section for a written notice of violation, when the administrator determines that a delay in enforcement would seriously threaten the effective enforcement of the Ordinance or that such delay may pose a danger to the public health, safety, or welfare, the administrator may undertake enforcement pursuant to Section 132 without prior written notice. In such cases the administrator shall send a notice of violation as soon as practicable.

VOTE:           Aye - All  
                      Nay - None

**ADOPTION OF CODE AMENDMENT - PROHIBITING BLIGHTED PROPERTIES**

Development Services Director John Spear stated the goal of the proposed ordinance is to prevent vacant buildings from becoming a blighting factor by requiring a reasonable level of maintenance of both the building and the grounds. He further stated that this ordinance is intended to address commercial and residential buildings which have not risen to the level of condemnation under the North Carolina State Building Code and are not subject to the requirements of the Minimum Housing Code. Mr. Spear indicated that this draft has been reviewed and recommended for approval by the Community Appearance Commission. Upon a motion by Council member Brantz, seconded by Council member Spann, Council moved to approve the following code amendment:

**Chapter 154: Regulation of Vacant Buildings**

|                |                                                                 |
|----------------|-----------------------------------------------------------------|
| Section 154.01 | Declaration of Policy                                           |
| Section 154.02 | Definitions                                                     |
| Section 154.03 | Prohibition against Creating or Maintaining Blighted Properties |
| Section 154.04 | Prohibited Lease Provisions                                     |
| Section 154.05 | Enforcement                                                     |
| Section 154.06 | Penalties                                                       |

**§ Section 154.01 Declaration of Policy**

The Town Council finds that there exists within the town a large number of real properties which contain vacant buildings which are poorly maintained. It is further found that these poorly maintained vacant buildings are a major cause and source of blight in residential and non-residential areas. It is further found that the existence of vacant and blighted buildings adversely affects the economic wellbeing of the town and is inimical to the health, safety and welfare of town citizens thereby constituting a nuisance dangerous or prejudicial to the public health or public safety. It is further found that many of the vacant and blighted buildings can be rehabilitated and used to provide decent, safe facilities for the use(s) in which the buildings were originally constructed and such rehabilitation and reuse would eliminate, remedy and prevent the adverse conditions described. It is further found that the abatement of vacant and blighted buildings is a benefit to the health, safety and welfare of the citizens of the town.

**§ Section 154.02 Definitions**

For the purposes of this chapter, the following terms shall have the meanings respectively ascribed as follows:

**Blighted properties:** Any vacant building, or any vacant portion of a building that is a separate unit, where it has been determined by the town the building is neglected or otherwise poorly maintained. The following factors may be considered in determining whether a building is poorly maintained: missing or boarded windows or doors; collapsing or missing walls, roof or floors; siding that is seriously damaged or missing; faulty or damaged foundation or other structural components, or the exterior of the building fails to meet the standards set forth below:

- A. The exterior and all areas exposed to public view shall be kept free from deterioration and shall be in good state of repair. The surrounding property shall be maintained so that the building and property reflect a reasonable level of maintenance in keeping with the standards of the community and not constitute a blighting factor for town citizens. Such maintenance of the building exterior and property shall include, without limitation, the following:
  - \$ All building surfaces shall be maintained free of broken glass, crumbling stone or brick, peeling paint or other finish material utilized to prevent deterioration of materials susceptible to decay, graffiti or other condition reflective to overall deterioration or inadequate maintenance.

§ The maintenance and appearance of the grounds and yards of premises shall be such that they reflect the level of upkeep of surrounding properties. This shall include but not be limited to dead or severely overgrown trees and shrubs, dilapidated or abandoned materials or equipment, deteriorating sidewalks, parking areas, and other site improvements.

**Vacant building:** Any building or a portion thereof which is without a resident or occupant or which is not being put to a lawful use for a period of (60) days or longer.

### **§ Section 154.03 Prohibition against Creating or Maintaining Blighted Properties**

Any owner of real property in the town shall not cause or allow blighted properties to be created, nor shall any owner allow the continued existence of blighted properties.

### **§ Section 154.04 Prohibited Lease Provisions**

Any lease provision contained in any lease or other instrument entered after the effective date of the ordinance, which prevents or seeks to prevent a landlord from immediately terminating the lease when the tenant has vacated the leased premises, is hereby declared to be against public policy and null and void, irrespective of the tenant's willingness to continue to pay monthly rent following vacation of the premises.

Any lease provision contained in any lease or other instrument entered after the effective date of this ordinance which prevents, seeks to prevent, or limits a landlord from leasing the premises to any other person or entity after termination of the tenant's tenancy, is hereby declared to be against public policy and null and void.

### **§ Section 154.05 Enforcement**

The Chief Building Code official or his designee shall perform periodic inspections, subject to Town Council's directions, for vacant buildings within Boone's planning jurisdiction which may constitute a violation of this section. In exercising this power, building code officials shall have a right to enter on any premises at all reasonable hours for the purposes of inspection upon presentation of proper credentials.

When a building code official finds a blighted property in violation of this section, it shall be his duty to issue and cause to be served upon the property owner a complaint stating the conditions present which have resulted in this action and containing a notice that a hearing will be held before the code official in the Development Services office not less than 10 days nor more than 30 days after serving of such a complaint. Such complaints shall be served upon owners either personally or by certified mail, return receipt requested. The failure of the property owner to accept or claim a complaint sent by certified mail shall not prevent further action under this article, but will be presumed to have been received three days after the complaint is deposited in the United States mail. The hearing shall provide the owner a right to file an answer to the complaint and to appear in person to give testimony at the place and time fixed in the complaint.

If, after such notice and hearing, the inspector determines that a vacant building constitutes a blighted property in violation of this section, he shall state his findings in a written notice of violation. Such notice shall be served upon owners either personally or by certified mail, return receipt requested, and contain a written order to cause such property to be repaired, improved or demolished as necessary to abate the violation within a specified time period, not to exceed 60 days. The failure of the property owner to accept or claim a notice of violation sent by certified mail shall not prevent further action under this article, but will be presumed to have been received three days after the notice is deposited in the United States mail.

Any owner who is aggrieved with the code official's decision may file an appeal to the town council by giving notice of appeal in writing to the code official and to the town clerk within 10 days following issuance of the notice of violation. The town council shall hear and render a

decision in an appeal within a reasonable time period. The town council may affirm, modify and affirm, or revoke the order.

It shall be unlawful for the owner of any building to fail, neglect, or refuse to repair, improve or demolish blighted properties upon order of the code official duly made and served as herein provided, within the time period specified in the notice of violation.

#### **§ Section 154.06 Penalties**

Any act constituting a violation of this chapter shall subject the offender to a civil penalty in the amount of \$100.00. Each day that the violation continues shall constitute separate violation of this section. If the offender fails to pay such penalty, the penalty, along with court costs and attorneys fees incurred by the town, may be recovered by the town in a civil action in the nature of a debt. This chapter may also be enforced by any civil action instituted by the town to prevent, restrain, correct or abate a violation of this chapter. If such action is taken by the town, the town shall be entitled to recover all expenses, including court costs and attorneys fees incurred.

VOTE:           Aye - All  
                      Nay - None

#### **PLANNING COMMISSION APPOINTMENTS**

Development Services Director John Spear noted that the Planning Commission has one vacant position and two un-filled terms that need to be filled. He indicated that three applications have been submitted for Council's consideration. Upon a motion by Council member Brantz, seconded by Council member Mason, Council moved to appoint the following persons to the Planning Commission:

- Elizabeth Aycock for a four-year term expiring June 30, 2010
- Patrick Heavner for the remainder of Paul Welsh's term expiring on June 30, 2007
- Eric Woolridge for the remainder of Matt Robinson's term expiring on June 30, 2009

VOTE:           Aye - All  
                      Nay - None

#### **COMMUNITY APPEARANCE COMMISSION APPOINTMENTS**

Development Services John Spear noted that there is a vacant position on the Community Appearance Commission and that Council has received two applications from Yogi Collins and Bob de Camara for consideration. Upon a motion by Council member Spann, seconded by Council member Mason, Council moved to appoint Yogi Collins to the Community Appearance Commission for a three-year term ending on June 30, 2009.

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

Council expressed its appreciation for Mr. de Camara's willingness to serve and its desire to utilize his willingness for any future opportunities.

#### **STATUS REPORT - WHEEL LOCK COMMITTEE**

Upon a motion by Council member Spann, seconded by Council member Brantz, Council moved to amend the agenda to place this item under closed session to seek legal advice from the Town Attorney.

VOTE:           Aye - All

**MONTHLY WATER USE STATUS REPORT**

Public Utilities Director Rick Miller presented the following status report:

As requested by Town Council, staff and I have compiled the following information concerning water use for the month of July. The Water Treatment Plant recorded a maximum daily demand of 1.992 million gallons on Tuesday, July 4, 2006. The average daily demand was 1.739 million gallons for the entire month. If all allocated projects were online and utilizing the amounts of water calculated, the total for the month would be 2.272 million gallons for the maximum daily demand and 2.019 million gallons for the average daily demand.

Attached you will find a chart that depicts a comparison of the maximum daily demands for the month of July since 1995. Included is an average trend line that illustrates the extent the maximum daily demand has increased during the last twelve years. Also, I have attached an additional tracking chart that compares our water usage with past months and years for your use.

As adopted in Ordinance 05-01, the Town of Boone Council has appropriated for 25,000 gallons per day usage for year 2006 for allocation to customers. Council chose to allocate 16,441 gallons from 2006 leaving a balance of 8,559 gallons for allocation. Eight previously approved allocations did not contact us within the one year period and did not acquire all necessary permits as required in Ordinance 05-01, plus one project was denied an extension of their allocation by the Boone Town Council and at the last meeting an applicant withdrew a request to extend the water allocation. The total water allotment remaining for the year 2006 has not broken the sixty percent threshold. All future water service requests in excess of 3000 gallons per day usage will be forwarded to Town Council as required in Ordinance 05-01. Since the last Town Council Meeting, the Utilities Department has approved two projects that subtracted 270 gallons per day from the 2006 allotment.

As you can see in the attached “Approved Water Connections” chart, the Public Utilities Department now has 20,686 gallons per day remaining for allotment in 2006. Also, be reminded that all calculations are based on 60% of the North Carolina Discharge Rate Schedule.

|                   |        |                 |                            |        |                 |                   |
|-------------------|--------|-----------------|----------------------------|--------|-----------------|-------------------|
|                   |        |                 | Approved Water Connections |        |                 |                   |
|                   |        |                 | 2006                       |        |                 |                   |
| Staff Approve d   | Date   | Projected Usage | Council Approved           | Date   | Projected Usage | Remaining Gallons |
|                   |        |                 |                            |        |                 | 25000             |
|                   |        | 4165            | John Cook                  | May-05 | 8038            | 16962             |
|                   |        |                 | CataCorner Investments     | Jul-05 | 7296            | 9666              |
|                   |        |                 | CAT Tractor                | Oct-05 | 1107            | 8559              |
|                   |        |                 | 2005 Balance Carry Over    | Jan-06 | 228             | 8787              |
| **Relinquished    |        | Previously      | Approved Allocations       | Feb-06 | 16965           | 25752             |
| Bob Young         | Feb-06 | 450             |                            |        |                 | 25302             |
| Sarvos Properties | Feb-06 | 2100            |                            |        |                 | 23202             |
| William Klein     | Feb-06 | 540             |                            |        |                 | 22662             |
| Andy Garrett      | Feb-06 | 90              |                            |        |                 | 22572             |
| Charles Ulerey    | Feb-06 | 2985            |                            |        |                 | 19587             |
| Eric              | Feb-   | 540             |                            |        |                 | 19047             |

|                 |        |      |                        |        |      |       |
|-----------------|--------|------|------------------------|--------|------|-------|
| Woolridge       | 06     |      |                        |        |      |       |
| Ray Howell      | Feb-06 | 104  |                        |        |      | 18943 |
|                 |        |      | Lynhill Daycare        | Mar-06 | 693  | 18250 |
| Gene Jensen     | Mar-06 | 180  |                        |        |      | 18070 |
| BREMCO          | Mar-06 | 15   |                        |        |      | 18055 |
| Mels Diner      | Mar-06 | 360  |                        |        |      | 17695 |
| Raymond Verling | Mar-06 | 430  |                        |        |      | 17265 |
| Jeff Nichols    | Mar-06 | 180  |                        |        |      | 17085 |
|                 |        |      | VIA LLC/Ed Street Co.  | Apr-05 | 5000 | 22085 |
| ECR Software    | Apr-06 | 81   |                        |        |      | 22004 |
| S&T Enterprises | Apr-06 | 360  |                        |        |      | 21644 |
|                 |        |      | CC Bear Development    | Apr-06 | 6344 | 15300 |
| Watauga County  | Apr-06 | 15   |                        |        |      | 15285 |
| TOB ABC Store   | May-06 | 62   |                        |        |      | 15223 |
| A-Z Enterprises | May-06 | 45   |                        |        |      | 15178 |
| Boone Mall      | May-06 | 1518 |                        |        |      | 13660 |
|                 |        |      | CataCorner Investments | Jul-05 | 7296 | 20956 |
| Elaine Gray     | Jul-06 | 90   |                        |        |      | 20866 |
| Pete Beckman    | Jul-06 | 180  |                        |        |      | 20686 |

**ADOPTION OF BUDGET AMENDMENTS**

Finance Director Amy Davis presented the budget amendments. Upon a motion by Council member Pepin, seconded by Council member Spann, Council moved to approve the following budget amendment:

| DESCRIPTION                       | ACCOUNT #          | TO:         | FROM: |
|-----------------------------------|--------------------|-------------|-------|
| Regular Salaries (Administration) | 010-401-000-501101 | \$11,752.00 |       |
| FICA (Administration)             | 010-401-000-508101 | \$899.00    |       |
| Retirement (Administration)       | 010-401-000-508211 | \$577.00    |       |
| 401K (Administration)             | 010-401-000-508222 | \$587.00    |       |
| Regular Salaries (Finance)        | 010-402-000-501101 | \$2,910.00  |       |
| FICA (Finance)                    | 010-402-000-508101 | \$222.00    |       |
| Retirement (Finance)              | 010-402-000-508211 | \$143.00    |       |
| 401K (Finance)                    | 010-402-000-508222 | \$146.00    |       |
| Regular Salaries (GIS)            | 010-414-000-501101 | \$1,566.00  |       |
| FICA (GIS)                        | 010-414-000-508101 | \$120.00    |       |
| Retirement (GIS)                  | 010-414-000-508211 | \$77.00     |       |

|                                         |                    |            |             |
|-----------------------------------------|--------------------|------------|-------------|
| 401K (GIS)                              | 010-414-000-508222 | \$78.00    |             |
| Regular Salaries (Development Services) | 010-500-360-501101 | \$6,360.00 |             |
| FICA (Development Services)             | 010-500-360-508101 | \$487.00   |             |
| Retirement (Development Services)       | 010-500-360-508101 | \$312.00   |             |
| 401K (Development Services)             | 010-500-360-508222 | \$318.00   |             |
| Appropriated Fund Balance               | 010-000-000-499900 |            | \$26,554.00 |

Council member Wilcox stated he would like time to further study the pay study and budget amendment.

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

Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved to approve the following budget amendment:

|                                        |                    |             |             |
|----------------------------------------|--------------------|-------------|-------------|
| Capital Outlay - Other Equipment (WTP) | 030-700-804-574000 | \$18,000.00 |             |
| Appropriated Fund Balance              | 030-000-000-499900 |             | \$18,000.00 |

VOTE:           Aye – All  
                      Nay – None

Upon a motion by Council member Spann, seconded by Council member Mason, Council moved to approve the following budget amendment:

|                                       |                    |             |             |
|---------------------------------------|--------------------|-------------|-------------|
| Raw Water Study (WTP)                 | 030-700-804-578000 | \$41,000.00 |             |
| NC Rural Economic Develop - Raw Water | 030-000-000-448026 |             | \$40,000.00 |
| Appropriated Fund Balance             | 030-000-000-499900 |             | \$1,000.00  |

VOTE:           Aye - All  
                      Nay - None

Mayor Clawson declared a break at 8:08 p.m. Council reconvened at 8:20 p.m.

**REQUESTED APPEARANCE - JASMINE SHOSHANNA**

Jasmine Shoshanna appeared before the Town Council with information about zero-waste initiatives and requested action from the Council in implementing this practice in the town of Boone. Council member Mason expressed appreciated to Ms. Shoshanna for bringing this information to the Council but suggested that a resolution be brought before the Council at a future meeting specifically outlining objectives for this initiative. Upon a motion by Council member Mason, seconded by Council member Spann, Council moved to appoint two representatives from the Council to meet with Ms. Shoshanna to discuss zero-waste initiatives.

VOTE:           Aye - All

Nay - None

Council members Mason and Brantz volunteered to meet with Ms. Shoshanna.

**REQUESTED APPEARANCE – JEFF TURNER - FIRST BAPTIST CHURCH**

Lauri Holton, on behalf of Jeff Turner and First Baptist Church, appeared before the Council to request approval of a special events permit to close a portion of College Street to host a College Welcome Block Party on Wednesday, August 23, 2006 from 4:00 p.m. until 8:00 p.m. Council discussed its concern with traffic issues at that location including the Appalcart bus routes during that time period. Police Chief Bill Post echoed the concerns about heavy traffic volume and congestion being a safety issue. Upon a motion by Council member Pepin, seconded by Council member Spann, Council moved to deny the special event permit.

VOTE:           Aye - All  
                      Nay - None

**REQUESTED APPEARANCE – LYNN WILLIS - APPALACHIAN SKATE PARK**

Lynn Willis, representing the Appalachian Skatepark Council, appeared before the Council to request permission for sponsorship signs to be placed at the skatepark located behind the Watauga County Swim Complex. He indicated that the signs will be similar to the advertising signs located at the Little League Optimist Field and must be approved by Stephen Poulos, Director of the Watauga County Parks and Recreation Department. Mr. Willis stated the proceeds from the signs will be used for the maintenance of the skatepark. He requested that the Town initiate the amendment to the sign ordinance on the Appalachian Skatepark Council's behalf. Council member Pepin asked about the placement of the signs and any effect on surrounding residences. Mr. Willis explained that the signs will be placed on the railing of the skate deck and the fencing surrounding the adjacent softball field. He stated that they should not be visible to any surrounding residences but possibly to persons using the Town's Greenway Trail. Council member Wilcox stated these signs would not be as visible as the ones along the Optimist field. Upon a motion by Council member Pepin, seconded by Council member Brantz, Council moved to direct the Development Services staff and the Town Attorney to study this request and prepare a draft to present at the November Quarterly Public Hearing.

VOTE:           Aye - All  
                      Nay - None

**REQUESTED APPEARANCE - JOANNA WEINTRAUB**

Cindy Ball, on behalf of Joanna Weintraub, appeared before the Council to request approval of a special events permit to close a portion of King Street and Hardin Street for a march to recognize the International Day of Peace on Thursday, September 21, 2006 from 4:00 p.m. until 6:00 p.m. Ms. Ball informed the Council that the group would also like to request permission to fly several flags along King Street that week. Ms. Ball presented Council with a proclamation endorsing this event. Discussion ensued concerning traffic issues and safety issues with closing two major streets during that time period. Council suggested that the group utilize the sidewalks which would not require a permit and fee. Upon a motion by Council member Pepin, seconded by Council member Brantz, Council moved to endorse the event by having Mayor Clawson sign the proclamation presented by Ms. Ball.

VOTE:           Aye - All  
                      Nay - None

Upon a motion by Council member Pepin, seconded by Council member Spann, Council moved to deny the special event permit due to concerns with traffic and costs of staffing support for the event.

VOTE:           Aye - All  
                    Nay - None

Upon a motion by Council member Pepin, seconded by Council member Brantz, Council moved to allow the placement of banners along King Street for the week of September 18, 2006, provided that the banners fit the existing structures.

VOTE:           Aye - All  
                    Nay - None

#### **REQUESTED APPEARANCE - RON & JOYCE DUNBAR**

Town Attorney Sam Furgiuele opened a public hearing at 9:23 p.m. to hear sworn testimony from Joyce Dunbar, Public Utilities Director Rick Miller, and Development Services Director John Spear concerning a request for water allocation extension for the project located at 1996 US Highway 421 East. Ms. Dunbar explained that she has a twenty-four unit project currently underway on West King Street that is behind schedule, a fact which is delaying her project on East King Street. She stated that she anticipates her project on East King Street to begin by the Spring of 2007. Ms. Dunbar stated she is agreeable to paying the availability fees. Public Utilities Director Rick Miller stated this project was approved for water in 1998. He stated that twelve units planned for construction on East King Street can be approved by his staff. Development Services Director John Spear stated he was not aware of any development rights for the property without consulting Ms. Dunbar's construction file. Town Attorney Sam Furgiuele advised that the Council could grant an extension but revise the extension date at a later time if Ms. Dunbar can provide paperwork detailing any development rights for the property. With no other testimony, Mr. Furgiuele closed the public hearing at 9:35 p.m. Upon a motion by Council member Wilcox, seconded by Council member Mason, Council moved to grant a one-year extension upon the complete payment of the availability fees for the project.

VOTE:           Aye - All  
                    Nay - None

#### **REQUESTED APPEARANCE - TWO RIVERS COMMUNITY SCHOOL**

Town Attorney Sam Furgiuele opened a public hearing at 9:36 p.m. to hear sworn testimony from Steve Oates, Public Utilities Director Rick Miller, and Development Services Director John Spear concerning a request for water and sewer service to five additional modular units on property located at 1018 Archie Carroll Road. Responding to questions from the Council, Development Services Director John Spear stated the property is not in the town limits or ETJ, but is in the designated secondary growth area. Steve Oates, principal of Two Rivers Community School, stated that water was originally approved for the site in the fall of 2005. He explained that the new units are needed because enrollment has increased. Public Utilities Director Rick Miller stated that the amount of 972 gallons-per-day was originally allocated to the property. He further noted that the property is using only 141 gallons-per-day. With no other public testimony, Mr. Furgiuele closed the public hearing at 9:54 p.m. Council member Mason stated that there are no zoning regulations for the property since it is outside the town's zoning jurisdiction and voiced her concern about the impact on adjoining property owners. Council discussed imposing zoning guidelines as a condition for approval for the property. Council member Wilcox stated that since the property was granted water previously, the Council could possibly study this area for future ETJ expansion. Upon a motion by Council member Wilcox, seconded by Council member Brantz, Council moved to grant the request for an additional 540 gallons-per-day for the property.

VOTE:           Aye - 3 (Spann, Wilcox, Brantz)  
                    Nay - 2 (Mason, Pepin)

#### **PUBLIC COMMENT**

Angela Quick, principal of Watauga High School, appeared before the Council to make a request for the Town's Public Works Department to pave an access-way for the special-needs students

from the rear of the school to the Horticulture Building. She stated that she has been unable to persuade any local paving contractors to take the job due to their busy schedules. Ms. Quick agreed that Watauga County would pay the entire cost of the job. Public Works Director Blake Brown stated that the area to be paved is a ten-foot strip approximately 140 feet long and estimated the cost including asphalt, machinery, and labor to be \$1800 dollars. Upon a motion by Council member Mason, seconded by Council member Wilcox, Council moved to amend the agenda to take action on the request.

VOTE:           Aye - All  
                      Nay - None

Upon a motion by Council member Pepin, seconded by Council member Spann, Council moved to grant the request for the Public Works Department to perform the job with the conditions that all costs are to be paid by Watauga County and that an indemnification agreement must be executed between the parties.

VOTE:           Aye - All  
                      Nay - None

### **CLOSED SESSION**

Upon a motion by Council member Wilcox, seconded by Council member Pepin, Council moved to enter Closed Session at 10:09 p.m. pursuant to NCGS 143-318.11a)3)6)5) in order to discuss the following matters:

- Personnel matters.
- Land acquisition/negotiations.
- Attorney/Client - Legal advice on changes to the Cable TV law.
- Legal advice - Wheel Lock/Parking matters.

VOTE:           Aye - All  
                      Nay - None

Upon a motion by Council member Wilcox, seconded by Council member Mason, Council moved to exit Closed Session at 11:22 p.m.

VOTE:           Aye - All  
                      Nay - None

### **ACTION FOLLOWING CLOSED SESSION**

Council member Wilcox offered discussion of the following action regarding the issue of wheel-lock devices:

**Action 5: Amend Section 75.06 to create different standards for signage in residential parking lots from other parking lots, by adding the language in bold.**

Section 75.06           *USE OF PARKING CONTROL DEVICES OR METHODS IN  
PARKING LOTS AND SPACES*

- B.     *It shall be unlawful for any person to authorize, direct, contract for, implement, or apply a parking control device or method to a vehicle in any parking lot or space **serving or utilized for any non-residential structure(s), or combination of non-residential and residential structures or units** in the Town of Boone, unless and except if it is clearly and conspicuously posted on the premises, in location(s) which can be easily seen by an unauthorized person of ordinary vision utilizing the*

*parking lot or space from any and every location in the parking lot, on a sign or combination of signs, in print that can easily be read by a person of ordinary vision from any and every location in the parking lot, that the parking lot or space is a private parking lot or space, that unauthorized vehicles will be subjected to the use of a parking control device or method, and disclosing the amount of any charge imposed to remove the boot or other parking control device from the vehicle. The sign must disclose the specific type of parking control device or method used, e.g., “Private Parking Lot - Unauthorized Vehicles will be Booted, \$50.00 charge for removal.” If a parking lot is in a location where confusion might arise as to which premises are served by the parking lot, at least one sign positioned at every entrance to the parking lot must disclose for which premises and/or establishments, parking is authorized. If the practice of a particular parking lot owner is to allow the application of a parking control device or method to a vehicle, the owner is to allow the application of a parking control device or method to a vehicle, the owner of which utilizes the parking lot to visit both authorized premises and/or establishments and unauthorized premises and/or establishments, the sign must so state.*

***It shall be unlawful for any person to authorize, direct, contract for, implement or apply a parking control device or method to a vehicle in any parking lot serving or utilized for a wholly residential structure or structures in the Town of Boone, such as an apartment complex, unless and except if it is clearly and conspicuously posted on the premises, in location(s) which can be easily seen by an unauthorized person of ordinary vision entering the parking lot by motor vehicle, on a sign or combination of signs, in print that can easily be read by a person of ordinary vision entering the parking lot by motor vehicle, that the parking lot is a private parking lot, that unauthorized vehicles will be subjected to the use of a parking control device or method, and disclosing the amount of any charge imposed to remove the boot or other parking control device from the vehicle. The sign must disclose the specific type of parking control device or method used, e.g., “Private Parking Lot - Unauthorized Vehicles will be Booted, \$50.00 charge for removal.”***

Council member Spann raised issues concerning Action 5. Council member Brantz suggested that a sign be placed in each single parking space. Upon a motion by Council member Wilcox, seconded by Council member Spann, Council moved for approval of Action 5.

VOTE:           Aye - All  
                      Nay - None

Upon a motion by Council member Pepin, seconded by Council member Spann, Council moved for approval of Action 3 as follows:

**Action 3: Start to aggressively enforce the ordinance through the imposition of civil penalties.**

RESOLUTION

*WHEREAS, despite the repeated attempts by the Town of Boone to allow persons aggrieved by actions taken or omitted in violation of Section 75.06 of the Town of Boone Municipal Code to themselves pursue criminal charges against violators, those persons have failed to pursue such remedies; and*

*WHEREAS, it is apparent to the Boone Town Council that in order to protect the*

*public welfare, health, and safety, the Town of Boone Police Department must take an active role in enforcing the requirements of Section 75.06 of the Town of Boone Municipal Code;*

*NOW, THEREFORE, BE IT RESOLVED THAT the Boone Town Council directs the*

*Town Manager to direct appropriate resources to monitor compliance with Section 75.06 of the Town of Boone Municipal Code, and should violations be found, notify the offending individuals of the imposition of civil penalties against them, and demand payment of the appropriate civil penalties.*

*Adopted this 17<sup>th</sup> day of August, 2006.*

*Attest:*

*Mayor*

*Town Clerk*

**(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 5)**

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

Upon a motion by Council member Mason, seconded by Council member Spann, Council moved to approve Action 8:

**Action 8: Enhance current penalties by barring a person from providing towing, wheel lock, booting, or similar services in the Town if the person has been convicted of violating the ordinance.**

*Section 75.06           USE OF PARKING CONTROL DEVICES OR METHODS IN  
PARKING LOTS AND SPACES*

*Section 75.07           PENALTY*

- A.   Civil Penalties. Whoever Violates any provision of this Chapter shall be subject to the penalty provisions of § 10.99.*
- B.   Criminal Penalties. Any person who violates section 75.03, 75.04, or 75.06A of this Chapter shall be guilty of an infraction for each violation, pursuant to N.C. Gen. Stat. § 14-4 (b), punishable by a penalty of up to \$50.00 per violation.*
- C.   Any person who violates section 75.05 by charging more than the fees permitted under this Chapter, or who violates sections 75.06B or 75.06C shall be guilty of a Class 3 misdemeanor, pursuant to N.C. Gen. Stat. § 14-4 (a), punishable by a fine of up to \$500.00. Any person who violates any other provision of section 75.05 of this Chapter shall be guilty of an infraction, pursuant to N.C. Gen. Stat. § 14-4 (b), punishable by a penalty of up to \$50.00.*
- D.   No person convicted of a misdemeanor as the result of violating Chapter 75 of the Town of Boone Municipal Code may thereafter engage in towing or in the application of parking control devices or methods in the Town of Boone.*

VOTE:       Aye - All  
              Nay - None

Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved to approve Action 5 as amended to require a sign for every three parking spaces with arrows to indicate each space is included under the sign.

VOTE:           Aye - All  
                    Nay - None

Upon a motion by Council member Brantz, seconded by Council member Spann, Council moved to require that wheel-lock or parking management companies establish an appeals process that employs an independent or third-party review process. Council member Spann suggested, as an amendment to the motion, an appeal process similar to the process used by the Downtown Boone Development Association. Council member Brantz accepted the amendment. After further discussion, Council member Spann withdrew his second to the motion. No one else seconded the motion; therefore, the motion died for lack of a second.

Upon a motion by Council member Spann, seconded by Council member Mason, Council moved to set an effective date for the implementation of these actions as September 1, 2006.

VOTE:           Aye - All  
                    Nay - None

Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved to approve the following Amendment to the Town Manager's Employment Agreement:

STATE OF NORTH CAROLINA  
COUNTY OF WATAUGA

#### AMENDMENT TO EMPLOYMENT AGREEMENT

This Amendment to Employment Agreement, entered into this 17<sup>th</sup> day of August, 2006, amends the Employment Agreement between the Town of Boone, a North Carolina Municipal Corporation (hereinafter "Boone"), and Gregory E. Young, (hereinafter "Employee") dated the 26<sup>th</sup> day of September, 1991, by adding the following provision, as "Section X," the consideration for which is the continued service of the Town Manager, hereby acknowledged by the Town as fair and adequate, renumbering Sections X through Sections XIII of said Agreement as Section XI through XIV, respectively:

#### SECTION X

The Town agrees to put into force and pay the entire premium for the Employee's group insurance coverage providing health, dental, disability and life insurance in accordance with the standard policies adopted by the Town. The Employee, upon reaching fifteen (15) years of service with the Town, shall have 50% of his health insurance premiums paid upon separation from the Town. For each additional year of services after fifteen (15) years, the Town will pay an additional 1.66% of the premium up to a maximum payment of 75% of the total premium for thirty (30) years or more of service. All premium payments by the Town will cease at such time as the Employee becomes eligible for and begins receiving payment and coverage, respectively, for Social Security retirement or Social Security disability benefits, and Medicare benefits.

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

VOTE:           Aye - All  
                    Nay - None

Upon a motion by Council member Pepin, seconded by Council member Mason, Council moved to set a date for a public parking summit on Monday, October 23, 2006, at 7:00 p.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE:           Aye - All  
                      Nay - None

**ADJOURNMENT**

On a motion by Council member Brantz, seconded by Council member Mason, Council moved to adjourn the meeting at 12:28 a.m.

VOTE:           Aye - All  
                      Nay - None

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Deputy Town Clerk

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Mayor