MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
AUGUST 20, 2009

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, August 20, 2009, 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, Stephen Phillips, and Jamie Leigh. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Town Clerk Freida Van Allen, Deputy Town Clerk Kimberly Brown, Assistant to the Town Manager Jim Byrne, Interim Police Chief Curtis Main, Fire Marshal Ronnie Marsh, Public Works Director Blake Brown, Utilities Director Rick Miller, Development Coordinator David Graham, and Planner Jane Shook.

ANNOUNCEMENTS

Mayor Clawson called the meeting to order and welcomed all in attendance. She pointed out that applications have been received from Jamie Leigh and Hersey "Mac" Forehand for the vacancy left by Liz Aycock. Mayor Clawson opened the floor for nominations to fill the vacant position. Council Member Mason nominated Jamie Leigh. She stated that Ms. Leigh possesses vision and initiative and has worked hard to become up-to-date on the many issues facing the Council. Council Member Brantz seconded the nomination. Council Member Phillips nominated Mac Forehand and pointed out that he has lived in Boone for many years and has extensive background in business and the tourism-related industry. Council Member Pepin seconded the nomination. With no other nominations, Mayor Clawson called for a vote on each of the nominees:

Hersey "Mac" Forehand - 1 (Phillips)

Jamie Leigh - 3 (Mason, Pepin, and Brantz)

Mayor Clawson then invited District Court Judge Greg Horne to perform the swearing-in ceremony for Council Member Leigh. Mayor Clawson welcomed Jamie Leigh as the newest member of the Boone Town Council and thanked Mr. Forehand for his interest in serving the citizens of Boone.

Mayor Clawson noted that anyone wanting to speak during the public comment session would need to sign the public comment sign-up sheet.

Mayor Clawson read the following announcement: *In conjunction with the statewide "Fall Liter Sweep 2009" campaign issued by Governor Beverly Perdue for September 19th through October 3rd, 2009, the Town of Boone will hold a "Fall Boone Clean-Up Day" on Saturday, September 19, 2009. Interested participants may come by the Town of Boone Public Works Department located at 321 East King Street between 9:00 a.m. - 2:00 p.m. to pick up cleaning supplies. For more information, contact Shannon Isaacs at (828)268-6230.*

TENTATIVE AGENDA ADOPTION

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

1. Addition of Item 7.U. - Adoption of Encroachment Agreement - Craymie Project.
2. Deletion of Item 8.B. - Requested Appearance - Chris Eller.

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

VOTE: Aye - All
Nay - None

CONSENT AGENDA ADOPTION

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

Minutes: July 16, 2009
Tax Releases & Refunds: June 2009:

TAX RELEASES
JUNE 2009

Taxpayer	**Year**	**Amount**	**Description**
SARGENT, DAVID JAMES MILLER, DARLA RENEE	2008	11.74	OVERLAP PLATES
BICZEL, MELANIE AJA SCHRAMM	2008	2.48	SOLD VEHICLE
JESTES, SHEENA WHITE	2008	35.71	LIVES IN SURRY COUNTY
DOSS, KIM DAVID	2008	17.06	OVERLAPPING TAGS
HEDRICK, DAROLD LEE	2008	7.64	TURN IN TAG
COSGROVE, COLEMAN KIDD	2008	30.78	MOVED TO ALABAMA
PARKER, GERALD LEE	2008	6.31	ADJ FOR BILL OF SALE
KULCINSKI, LYNORA FRANCES	2008	29.67	DOUBLE BILLED
	2007	30.60	DOUBLE BILLED
CARTER, JAY EDWARDS	2007	27.86	DOUBLE BILLED
		199.85	

TAX REFUNDS
JUNE 2009

Taxpayer	**Year**	**Amount**	**Description**
ROSE, ALBERT LEE	2008	16.11	TURN IN TAG
WEBSTER, EMILY LORRAINE	2008	6.08	TURN IN TAG
		22.19	

Adoption of Municipal Records Retention & Disposition Schedule. **(Copy permanently on file at Town Hall.)**

Council Member Brantz stated that after reviewing additional information regarding this matter, he will support the adoption of this schedule, but he asked that the Municipal Records Retention & Disposition Schedule be reviewed and evaluated by the Historic Preservation Commission.

Approval of Special Events Permit - 2009 ASU Homecoming Parade.

Approval of NWRHA Agreement:

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

AGREEMENT

This Agreement, made this ___ day of _____, 2009, by and between Northwestern Regional Housing Authority, a North Carolina housing authority, (hereafter referred to as "NRHA") and the Town of Boone, (hereafter "the Town"), known and referred to collectively as "the parties."

W I T N E S S E T H

THAT WHEREAS, the Town has adopted provisions in its Water and Sewer Use Ordinance by which the Town has created an opportunity for certain affordable housing projects located outside the corporate boundaries of the Town to obtain water and sewer services from the Town at in-town rates; and

WHEREAS, the parties wish to enter an agreement whereby the necessary certifications and commitments can be memorialized;

NOW, THEREFORE, for and in consideration of the Town charging in-town water and sewer rates to the residents of White Laurel Phase I so long as they maintain their eligibility therefor, the parties certify and agree as follows:

1. NRHA certifies the following:

   A. NRHA is a duly created and authorized Housing Authority, as that term is defined in N.C. Gen. Stat. §157-3;

   B. NRHA manages the White Laurel Phase I rental housing project; and

   C. All residents of the rental housing project known as White Laurel Phase I qualify for and receive housing assistance under the Section 8 Program of the Untied State Housing Act of 1937, as amended.

2. Should White Laurel Phase I ever cease to be managed by a duly authorized Housing Authority, as that term is defined in N.C. Gen. Stat. § 157-3, or should all residents of White Laurel Phase I cease to qualify for and receive housing assistance under the Section 8 Program, United States Housing Act of 1937, as amended, NRHA shall immediately notify the Town, and eligibility by the residents of White Laurel Phase I for in-town water and sewer use rates shall cease as of the date White Laurel Phase I is no longer managed by a duly authorized Housing Authority or the date upon which all residents of White Laurel Phase I cease to qualify for and receive housing assistance under the aforesaid Section 8 Program, (hereafter, "the eligibility ending event") whichever occurs first.

3. Should NRHA fail to notify the Town prior to the occurrence of the eligibility ending event in sufficient time to allow the Town to adjust rates for water and sewer services back to their customary rates at the time White Laurel Phase I is no longer eligible for in-town rates, NRHA shall indemnify and fully reimburse the Town, and by this Agreement commits to repay the Town any undercharges to the residents of White Laurel Phase I which result from the cessation of the Project's eligibility for the in-town rate because it no longer meets the criteria of §6-6 (E)(3) of the Town's Water and Sewer Use Ordinance, agreeing that such undercharges shall be measured as the difference between in-town rates actually charged to the residents of White Laurel Phase I and the rates for customers residing outside the town's corporate boundaries, including all such charges incurred from the date of the eligibility ending event through and including the sixtieth day after the Housing Authority has notified the Town in writing that the residents of White Laurel Phase I are no longer entitled to the in-town rate, or the date that the water and sewer usage rates are adjusted back to their customary rates, whichever occurs last.

4. The terms described herein constitute the entire agreement between the parties as to the subject matter of this Agreement.

VOTE: Aye - All
Nay - None

PUBLIC COMMENT

There was no one signed up to speak under the public comment period.

PUBLIC HEARING - PROPOSED INCREASE IN OCCUPANCY TAX

Mayor Clawson opened a public hearing at 6:40 p.m. to receive public input on the proposed increase in the room occupancy tax. Town Manager Greg Young explained that the North Carolina General Assembly has ratified a bill which grants authority to the Town of Boone to increase the occupancy tax from 3% to 6%. He stated that a public hearing to receive public comment on the proposal is required in order to be able to make the change.

Mac Forehand, Director of the Boone Convention & Visitors Bureau, spoke in support of an increase in the room occupancy tax from 3% to 6%. He asked that the following language be added after the first paragraph of the proposed resolution: *"when furnished in furtherance of their non-profit purpose*."

Council Member Mason stated that the Boone Tourism Development Authority has been involved in this issue and is supportive of both the proposed increase in occupancy tax and the proposed effective date of October 1, 2009.

With no other public input, Mayor Clawson closed the public hearing at 6:46 p.m.

ADOPTION OF ZONING MAP & ORDINANCE AMENDMENTS

Case 20090340 Michael Rezoning - Charles Michael has requested a rezoning of 183 Delmar Street from R-1 Single Family to B-2 Neighborhood Business. Development Coordinator David Graham presented the following information regarding the Planning Commission action on this request:

First Motion and Vote:

Commission Member Woolridge made a motion, seconded by Commission Member Marland, that the proposed amendment is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which related to the application because it is filling a nodal neighborhood business need, does not have a traffic impact on the neighborhood, and adequate buffering will be provided.

VOTE: Aye - 5 (Dotson, Huffstetler, Marland, Vincent, Woolridge)
Nay - 4 (Milstead, Poteat, Scantlin, Spann)

Second Motion and Vote:

Commission Member Woolridge made a motion, seconded by Commission Member Marland, for the Planning Commission to recommend approval for the following reason: the request fills a nodal neighborhood business need, does not have a traffic impact on the neighborhood, and adequate buffering will be provided.

VOTE: Aye - 5 (Dotson, Huffstetler, Marland, Vincent, Woolridge)
Nay - 4 (Milstead, Poteat, Scantlin, Spann)

Council Member Phillips asked if construction of up to twelve units will be permitted by right in the proposed zoning district to which Mr. Graham replied in the affirmative. Council Member Mason praised the efforts of the neighborhood members for their knowledge of the comprehensive plan and the efforts made by the residents to protect their neighborhood. She stated that the Council has a duty to protect the integrity, viability, health and safety of the

Town's neighborhoods but that she cannot support this request. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved that the proposed amendment to the Town's zoning ordinance is not consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to the application because of the following comprehensive plan policies:

- *2.1.2 F - Commercial uses may be encouraged to develop by consolidation and expansion of existing commercially zoned property, only when such consolidation and expansion does not encroach upon a viable residential area.*
- *2.1.2H - Encroachment of incompatibly scaled and designed commercial or office uses into viable existing or planned residential areas shall be prohibited.*
- *2.3.3 A - The protection and rehabilitation of viable neighborhoods shall be encouraged to insure their continued existence as a major housing source and as a reflection of the area's image as an attractive, highly livable community.*

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to deny the proposed amendment to the Town's zoning ordinance and believe that denial is reasonable and in the public interest because it protects a viable neighborhood.

VOTE: Aye - All
Nay - None

Case 20090350 Phan Rezoning - Kiet and Lei Phan have requested a rezoning of 139 Whitener Drive from R-1 Single Family to R-3 Multi-Family. Development Coordinator David Graham pointed out a notice from Kiett and Lei Phan which stated that they would like to withdraw the Zoning Map Amendment Petition.

Case 20090347 Administrator - Unified Development Ordinance (UDO) text amendment modifying the term "administrator." Development Coordinator David Graham explained that the proposed text will clarify that "administrator" can be more than one person. Furthermore, he stated that the members of the Planning Commission had voted unanimously to recommend approval of the text amendment. Upon a motion by Council Member Phillips, seconded by Council Member Brantz, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to the application because it provides for clarity in the UDO.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Phillips, seconded by Council Member Brantz, the Council moved to approve the following proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because it provides clarity within the UDO:

Section 15. Definitions of Basic Terms

Administrator: **Person with the primary responsibility, as assigned by the Town Manager, for administering and enforcing this ordinance or that person's designee.**

VOTE: Aye - All
Nay - None

Case 20090344 Accessory Apartment - UDO text amendment modifying Articles X and XI in regard to Use 1.210 Single Family with Accessory Apartment in the R-1A zoning district. Development Coordinator David Graham explained the intent of the amendment is to allow single-family residents with accessory apartment uses (use 1.210)in the R-1A zoning district

along with modified text to address owner occupancy requirements. He further noted that the proposed amendment is supported by the Affordable Housing Task Force. Mr. Graham stated that the Planning Commission voted unanimously to recommend approval of the proposed amendment. Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to the application because of the following comprehensive plan policies:

- *2.3.3 A - The protection and rehabilitation of viable neighborhoods shall be encouraged to insure their continued existence as a major housing source and as a reflection of the area's image as an attractive, highly livable community.*
- *2.3.3 F - The affordable housing needs of area residents, particularly elderly and low to moderate income residents, shall be recognized in Town policies and actions regarding residential development.*

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Phillips, the Council moved to approve the following proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because this request encourages affordable housing choices and helps to maintain single-family neighborhoods:

Section 165. Table of Permissible Uses

The Table of Permissible Uses should be read in close conjunction with the definition of terms set forth in Section 15 and the other interpretive provisions set forth in this article

Uses Description	R-1	R-1A	RR	R-2	R-3	R-4	R-A	MH	O/I	B-1	B-2	B-3	U-1	M-1
1.200 Two-family Residences														
1.210 Single family residence with accessory apartment		Z	Z	Z	Z	Z	Z		Z	Z	Z	Z	Z	

Section 181. Primary Residence with Accessory Apartment

[a] A lot may be classified as a Primary Residence with Accessory Apartment (land use 1.210) and permitted as such only when one of the following standards is met:

[1] The owner of the lot resides in the primary residence or the accessory apartment at least ninety percent of the year, a "year" understood and defined as the preceding twelve month period ending on the date of the application or any inquiry by the administrator. In situations in which an applicant seeks to initiate the use of a lot as a Primary Residence with Accessory Apartment and there has been no prior occupancy of either dwelling unit, the owner shall make a written declaration of the intention to

reside in the primary residence or the accessory apartment at least ninety percent of the year, and the written declaration shall acknowledge that should the owner's residency ever fall below ninety percent of any subsequent rolling twelve month period, the zoning permit shall be revoked and the right to use the property as a primary residence with accessory apartment shall cease. The Town shall retain the original declaration and acknowledgment, and a copy of each shall be provided to the owner.

[2] The owner and all tenants of the lot comply with all registration and other requirements of Section 159[d], *above,* and for lots not located in a neighborhood conservation district, the owner also notifies all tenants of UDO occupancy limitations. In situations in which an applicant seeks to initiate the use of a lot as a Primary Residence with Accessory Apartment and there has been no prior occupancy of either dwelling unit, the owner shall make a written declaration of the intention to comply with all registration and other requirements of Section 159[d], *above,* and for lots not located in a neighborhood conservation district, to notify all tenants of UDO occupancy limitations. The written declaration shall acknowledge that should the owner or tenants fail to comply with all registration and other requirements of Section 159[d], *above,* or the requirements of this subsection, the zoning permit shall be revoked and the right to use the property as a primary residence with accessory apartment shall cease. An owner who does not reside on the lot for the period described in subsection [1], *above*, may only allow others to reside on the lot pursuant to a written lease and shall file a copy with the Town. The lease must include provisions that the tenant(s) must comply with the Town's noise ordinance and the Town's occupancy limitations and that violation of the Town's noise ordinance or occupancy limitations shall be considered a material violation of the lease and shall result in the termination of the lease and tenancy.

[b] On a single lot, a Primary Residence with Accessory Apartment (land use 1.210) may have no more than one single family residence and one accessory apartment.

[c] The occupancy of an accessory apartment shall be limited to no more than 2 unrelated persons or 4 members of a family.

[d] The owner of a Primary Residence with Accessory Apartment shall provide adequate off-street parking in compliance with Section 346(e), *infra,* for the accessory apartment to the side or to the rear of the primary residence. In no case shall a front yard area be converted to parking or used to satisfy off-street parking requirements. For purposes of this section, the "front yard area," "side" or "rear" of the primary residence shall be determined by the location of the street referenced in the physical address of the lot, with the portion of the primary residence closest to said street considered "the front" without regard to the orientation or main entrance of the primary residence.

[e] The accessory apartment shall not be served by a driveway separate from any driveway serving the primary residence.

[f] An attached accessory apartment shall be designed so that the appearance of the primary residence remains that of a single family dwelling. The accessory apartment entrance shall be located on the side or in the rear of the single family residence.

[g] An accessory apartment shall be clearly subordinate to the primary residence. The floor area of an attached accessory apartment may not be more than 50 (fifty) percent of the floor area of the primary residence and may never exceed eight hundred (800) square feet. The floor area of a detached accessory apartment may not be more than 50 (fifty) percent of the floor area of the primary residence and may never exceed six hundred (600) square feet.

[h] Detached accessory apartments are those which are not attached to the primary residence. A detached accessory apartment may be located over a garage, workshop, studio or similar structure or built as a free standing cottage. Every detached accessory apartment must be architecturally compatible with the primary residence, and certified as such by the Community Appearance Commission.

[i] A detached accessory apartment shall be located to the side or rear of the primary residence and its front most point may be no closer to the fronting street than the front most point of the primary residence.

[j] A two story detached accessory apartment may be allowed only when the primary residence is 1 ½ stories or more, and its architectural compatibility has been certified by the Community Appearance Commission.

[k] A Primary Residence with Accessory Apartment (land use 1.210) must comply with all applicable land use intensity ratios, and the exemption in Section 200 [a], *infra,* shall not apply.

[l] At any time when a lot classified and permitted as a Primary Residence with Accessory Apartment (land use 1.210) no longer complies with all applicable requirements of this section, the zoning permit allowing the use shall be revoked and the right to use the property as a Primary Residence with Accessory Apartment shall cease.

VOTE: Aye - All

Nay - None

Case 20090346 Manufactured Home Parks - UDO text amendment modifying Section 191 providing a public health, safety, and general welfare statement. Development Coordinator David Graham explained the purpose of the proposed text amendment is to clarify current separation requirements for manufactured home parks. He noted that the Planning Commission has voted unanimously to recommend approval of the request. Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to the application because of the following comprehensive plan policy: *2.2.4 D - The Town shall place renewed emphasis on enforcement of the state building code and flood prevention regulations to avert or minimize loss of life and property during natural disasters.*

VOTE: Aye - All

Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Phillips, the Council moved to approve the following proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because it supports the public health, safety, and welfare of residents in manufactured home parks.

Section 191. Manufactured Home Park

[b] The requirements for the manufactured home space shall be:

[4] The following separation requirements are established for fire protection purposes and are designed to ensure the public health, safety and general welfare of individuals in manufactured home parks. Each manufactured home shall be located at least twenty (20) feet from any other manufactured home and at least twenty five (25) feet from any other building within the park, excluding storage buildings accessory to individual manufactured homes. Each home shall be at least twenty (20) feet from any property line or right-of-way. Each home shall be set back at least ten (10) feet from any private streets within the park. No structure or fence may be placed in the open area between the rear of the units.

Section 205. Building Setback Requirements

[c] In the B-1 district, the minimum street setback distance shall not apply to a projecting theater marquee, canopy or roof overhang supports as long as such supports do not go beyond the edge of the sidewalk. When the B-1 district abuts a district other than a U-1, the lot boundary setback shall be fifteen (15) feet. However, this exemption shall not obviate the need for an encroachment agreement, when otherwise required.

VOTE: Aye - All

Nay - None

Case 20090345 Amendment Process - UDO text amendment modifying Article XXI in regard to the amendment process. Development Services Planner Jane Shook explained the purpose of the text amendment is to clarify the procedure used when initiating and drafting text amendments. She noted that the Planning Commission has voted unanimously to recommend approval of the text with the following change: The ~~Development Services staff~~ **Administrator** shall also post notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way **within at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing**. Upon a motion by Council Member Phillips, seconded by Council Member Pepin, Council moved to approve the changes recommended by the Planning Commission.

VOTE: Aye - All

Nay - None

Upon a motion by Council Member Phillips, seconded by Council Member Pepin, the Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because the amendment brings the Unified Development Ordinance into conformity with State requirements and other applicable Town ordinances and provides clarity within the process.

VOTE: Aye - All

Nay - None

Upon a motion by Council Member Phillips, seconded by Council Member Leigh, Council moved to approve the following proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because the amendment brings the Unified Development Ordinance into conformity with State requirements and other applicable Town ordinances and provides clarity within the process:

Section 378. Amendments in General

[a] Amendments to the text of this ordinance (hereafter, "the UDO") or to the Town's officially adopted zoning map shall be made in accordance with the provisions of this article.

[b] The term major map amendment shall refer to an amendment that addresses the zoning district classification of five or more tracts of land in separate ownership or any parcel of land (regardless of the number of lots or owners) in excess of fifty (50) acres. All other amendments to the zoning district map shall be referred to as a minor map amendment.

Section 379. Initiation of Amendments

[a] Within the Municipal Government of the Town of Boone, including staff, officers, boards, commissions, task forces, advisory bodies, committees, and other such entities, only the Council may initiate an amendment to this ordinance (hereafter, "staff and other Town entities"). Staff and other Town entities, when they are charged or empowered

with making recommendations to the Town Council regarding the text of the UDO, may make recommendations regarding potential desired changes to the UDO to the Council, but the preparation of the text of a proposed draft amendment shall only proceed after the Council has endorsed the policy objectives sought to be achieved with the recommendation and has acted to authorize preparation of a draft text amendment.

[b] Whenever a request to amend this ordinance is initiated or authorized by the Council, the Town Attorney in consultation with the Administrator shall determine whether the proposed amendment represents substantive planning policy or procedural matters, such as enforcement procedures, amendment procedures and appeal procedures.

[1] If the Town Attorney determines the proposed amendment represents a substantive planning policy, the Administrator shall draft the text of the proposed amendment in consultation with the Town Attorney. Before an amendment drafted by the Administrator is presented to the Council for consideration, the Town Attorney shall endorse and date the draft amendment with the following statement: Approved as to Form this day of _____, 20___, _____, Town Attorney.

[2] If the Town Attorney determines the proposed amendment represents a procedural matter, the Town Attorney shall draft the text of the proposed amendment in consultation with the Administrator. Before an amendment drafted by the Town Attorney is presented to the Council for consideration, the Administrator shall endorse and date the draft amendment with the following statement: Approved as to Planning Policy this _____ day of _____ 20___, _____, Administrator.

[c] Any other person may petition the Council to amend this ordinance. The petition shall be filed with the administrator and shall include, among the information deemed relevant by the administrator:

[1] The name, address, and phone number of the applicant,

[2] A description of the land affected by the proposed amendment if a change in zoning district classification is proposed,

[3] Stamped envelopes containing the names and addresses of all those to whom notice of the public hearing must be sent as provided for in Section 380, and

[4] A description of the proposed map change or a summary of the specific objective of any proposed change in the text of this ordinance.

[d] Upon receipt of a petition as provided in Subsection [c], the administrator shall either:

[1] Treat the proposed amendment as one requested by the staff and other Town entities, and proceed in accordance with Subsection [a] if the Administrator believes that the proposed amendment has significant merit and would benefit the general public, or

[2] Forward the petition to the Council with or without written comment for a determination of whether a draft amendment should be prepared in accordance with subsection [b].

[e] Upon receipt of a draft amendment, should the Council act to proceed with its consideration, it shall establish a date for a public hearing on it. The public hearing may be scheduled at a pre-arranged date, time and location, such as at a "quarterly public hearing," or at such other date, time and location authorized by the Council which will allow proper notice to issue in advance of the hearing.

[f] No later than seven (7) days prior to the date set for the public hearing, the Administrator shall prepare an analysis of the proposed petition (hereafter, "the Section 379[f] report") to assist the Planning Commission and Council in determining the conformity of the draft amendment with the Comprehensive Plan and any other officially adopted plans of the Town which relate to the proposed amendment.

Section 380. Hearing Required: Conduct of Hearing; Notice of Hearing

[a] No action that amends or repeals any of the provisions of the UDO may be adopted until a public hearing has been held on such.

[b] The Council and Planning Commission shall meet in joint session to hold the public hearing, and a quorum of each body must be present. Public hearings on proposed ordinance amendments will be scheduled no less frequently than on a quarterly basis in February, May, August and November. A record of the public hearing will be prepared by staff and minutes of the hearing submitted to the Planning Commission and Council as soon as practical following the public hearing. Public hearings shall be conducted in accordance with rules for the hearing adopted by the Council. The Mayor or other presiding officer may, at a minimum, limit the length of time for each speaker, require the designation of a spokesperson for groups of persons

supporting or opposing the proposed amendment for the same reasons, provide for the maintenance of order and order the removal from the hall of any person attempting to disrupt the hearing or to intimidate or belittle other speakers, and limit the number of persons in the hall at any one time, insofar as the number of persons wishing to attend the hearing exceeds the safe capacity of the hall.

[c] The Administrator shall publish a notice of the public hearing no less than once a week for two (2) successive weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten (10) days nor more than twenty five (25) days before the date fixed for the hearing. In computing this period, the date of publication shall not be counted but the date of the hearing shall be.

[d] With respect to map amendments, the Administrator shall mail written notice of the public hearing by first class mail to the owners, as shown on the listings of the Watauga County Tax Administrator, of all properties whose zoning classification will be changed by the proposed amendment and owners of properties for which any portion is within one hundred fifty (150) feet of the subject property. Each notice shall be deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing. The person mailing such notices shall certify to the Council that fact, and such certificate shall be deemed conclusive in the absence of fraud. The certificate of mailing shall be included in the Administrator's Section 379[f] report to the Council and Planning Commission. However, if the proposed zoning map amendment directly affects more than fifty (50) properties owned by a total of at least fifty (50) different property owners, the Council may direct notification, instead of by the aforesaid individually mailed notices, by publication of the notice described in subsection [c], *supra*, alone, but the notice must be not less than one-half a newspaper page in size and must be supplemented by individual notices by first class mail to property owners who reside outside the newspaper circulation area, according to the addressees listed on the most recent property tax listing for each affected property.

[e] The Administrator shall also post notices of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right of way within at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the Administrator shall post sufficient notices to provide reasonable notice to interested persons. In addition the Administrator shall take any other action deemed by the Council or Administrator to be useful or appropriate or desirable to give notice of the public hearing.

[f] Every notice required by this section shall:

[1] State the date, time, and place of the public hearing,

[2] Summarize the nature and character of the proposed change,

[3] Reasonably identify the property whose zoning classification would be affected by the amendment if the proposed amendment involves a change in zoning district classification,

[4] State that the full text of the proposed amendment can be obtained from the Town Clerk, and

[5] State that substantial and insubstantial changes in the proposed amendment may be made following the public hearing.

Section 381. Protest to Zoning District Changes (used to be Section 384)

[a] If a petition opposing a change in the zoning classification of any property is filed in accordance with the provisions of this section, then the proposed amendment may be adopted only by a favorable vote of three-fourths of the Council. For the purposes of this section, vacant positions on the Council and members who are excused from voting shall not be considered for calculation of the requisite supermajority.

[b] To trigger the three-fourths vote requirement, the petition must meet all of the following:

[1] Be signed by the owners of either (I) twenty percent (20%) or more of the area included in the proposed change or (ii) five percent (5%) of a 100-foot wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary the Town may rely on the county tax listing to determine the 'owners' of potentially qualifying areas. When there are multiple owners of a single parcel, all owners must sign the protest petition for the parcel to be included in the calculation of the amount of property represented by the protest petition.

[2] Be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment.

[3] Be received by the Town Clerk in sufficient time to allow the town at least two normal working days**,** excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed amendment to determine the sufficiency and accuracy of the petition.

[4] Be on a form provided by the Town Clerk and contain all the information requested on this form.

[c] A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment.

[d] Only those protest petitions that meet the qualifying standards set forth at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement.

[e] A protest petition shall not be applicable to any amendment which initially zones property added to the territorial coverage of the Town as a result of annexation or otherwise, or to an amendment to an adopted conditional district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved for the conditional district.

[f] If a petition opposing a change in the zoning classification of any property is filed in accordance with the provisions of this section, the Administrator shall announce to the Planning Commission and Council receipt of such petition prior to accepting public comment at the public hearing.

Section 382. Planning Commission Consideration of Proposed Amendments

[a] At its next meeting following the public hearing, scheduled in accordance with Section 22[a], *supra,* the Planning Commission shall review the proposed amendment and shall submit a written recommendation to the Council. The Planning Commission shall specifically advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan and any other officially adopted plans that are applicable and whether the Planning Commission recommends adoption of the proposed amendment. In its report to the Council, the Planning Commission may comment, as it deems appropriate, on any other matter related to the proposed amendment.

[b] Additional testimony not presented at the public hearing may be considered by the Planning Commission upon favorable vote of the majority of its members present.

[c] No member of the Planning Commission shall participate in the discussion or vote on any recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

Section 383. Council Action on Amendments

[a] At any meeting following the receipt of the recommendation from the Planning Commission or after thirty (30) days following referral of the proposed amendment to the Planning Commission if the Planning Commission fails to make a recommendation, the Council may proceed with its consideration of the proposed amendment. The Council must take action, however, no later than sixty (60) days after the Planning Commission adopts a recommendation. A comment by the Planning Commission that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Council, and the Council is not bound by any other recommendation of the Planning Commission, including a recommendation that the proposed amendment be rejected**.**

[b] Additional testimony not presented at the public hearing may be considered by the Council upon favorable vote of the majority of its members present.

[c] Prior to adopting or rejecting any zoning amendment, the Council shall adopt a statement describing whether its action is consistent with the comprehensive plan and other officially adopted plan that is applicable and explaining why the Council considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

[d] A Council member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

Section 384. Ultimate Issue Before Council on Amendments

[a] In deciding whether to adopt a proposed amendment to this ordinance, the central issue before the Council is whether the proposed amendment advances the public health, safety, or welfare. All other issues are irrelevant, and all information related to other issues at the public hearing may be declared irrelevant by the mayor and be excluded. In particular, when considering proposed minor map amendments:

[1] The Council shall not consider any representations made by the petitioner that if the change is granted the rezoned property will be used for only one

of the possible range of uses permitted in the requested classification. Rather, the Council shall consider whether the entire range of permitted uses in the requested classification is more appropriate than the range of uses in the existing classification.

[2] The Council shall not regard as controlling any advantages or disadvantages to the individual requesting the change, but shall consider the impact of the proposed change on the public at large.

Section 385. Action Subsequent to Council Decision

[a] The Administrator shall notify the petitioner of the disposition of the amendment petition and file a copy of the decision in the office of the Development Services Department. All amendments pertaining to watershed protection must be filed with the North Carolina Division of Environmental Management, North Carolina Division of Environmental Health, and the North Carolina Division of Community Assistance.

[b] In the case of approval of an amendment, all necessary changes to the zoning ordinance or zoning map shall be entered within five (5) working days of the effective date of the amendment. The Administrator shall authenticate the entry of each amendment and shall maintain a record of the nature and date of the amendment.

Section 386. Special Provisions for Conditional Districts

[a] Property may be placed in a conditional district (bearing the designation CD) only in response to a petition by the owners of all property to be included. No State owned property may be placed in a conditional district without approval by the Council of State.

[b] Any proposal for a conditional district zoning approval must be accompanied by a site specific development plan and supporting documentation that specifies the actual use or uses intended for the property and any rules, regulations and conditions that, in addition to all predetermined ordinance requirements, will govern the development and use of the property. Refer to Appendix A for additional information.

[c] Conditional zoning district decisions are a legislative process subject to judicial review using the same procedures and standard of review established for general district zoning decisions. Requests for conditional zoning district approvals shall be processed and considered in the same procedure as set forth in Section 380, *et seq.,* for zoning amendments and the voting shall be the same as required in zoning matters. Conditional zoning district decisions shall be made in consideration of relevant adopted land use plans such as the Comprehensive Plan, Thoroughfare Plan, Alternative Transportation Plan and similar adopted land use policy.

VOTE: Aye - All
Nay - None

Case 20090343 Administrative Mechanisms - UDO text amendment modifying Article III and Article V in regard to the Planning Commission, Community Appearance Commission, Tree Board, and Board of Adjustment. Development Services Planner Jane Shook explained the purpose of the text amendment is to bring the UDO into compliance with newly adopted Town Code changes. She listed the proposed changes to the text amendment recommended by the Planning Commission. Discussion ensued concerning requests for staff and other resources and regarding who should be authorized to grant requests for use of Town resources. Upon a motion by Council Member Pepin, seconded by Council Member Mason, Council moved to approve the following change to the proposed text amendment: "[b] [5] The Planning commission may create subcommittees or working groups within its membership without the explicit approval of the Town Council providing that these groups do not use ongoing ~~staff~~ resources. Where ongoing ~~staff~~ resources are requested the assignment of these resources must be approved by the Town ~~Council or it's designee~~ Manager or his/her designee."

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved that the aforementioned modification also be applied to the text for the Community Appearance Commission, the Tree Board, and the Board of Adjustment.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to adopt the supplemental language regarding the chair/vice chair as proposed by the Planning Commission.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to clarify the reference to Articles IV and XIII in Section 25 [a] [7].

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Pepin, Council moved that the proposed amendment, as amended, to the Town's zoning ordinance is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because it provides consistency between the Municipal Code and the Unified Development Ordinance.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Brantz, the Council moved to approve the following proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because it provides consistency between the Municipal Code and the Unified Development Ordinance and promotes more efficient use of staff resources:

Section 21. Appointment and Terms of Planning Commission Members

[a] There shall be a Planning Commission consisting of thirteen (13) members. Eight (8) members shall reside within the town and be appointed by the Council. Five (5) members shall reside within the town's extraterritorial planning area (hereafter "ETJ") and be appointed by the Watauga County Board of Commissioners. The Council shall suggest two nominees to the Watauga County Board of Commissioners for each appointment. (In accordance with N. C. Gen. Stat. §160A-362, the town must provide a means of proportional representation based on population for residents of the ETJ. There shall be at all times at least one representative of the ETJ on the Planning Commission. Each additional member must be appointed to the Planning Commission to achieve proportional representation only when the population of the entire ETJ constitutes a full fraction of the town's population divided by the total membership of the Planning Commission. If the Watauga County Board of Commissioners fails to make an appointment within ninety (90) days after receiving a resolution from the Council requesting that it be made, the Council may make the appointment, but the person appointed shall reside in the ETJ. (Before appointing a new representative to the Planning Commission as a result of an extension of the ETJ, the Watauga County Board of Commissioners shall hold a public hearing on the selection. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The Watauga County Board of Commissioners shall select appointees only from those who apply at or before the public hearing. The Commissioners shall make the appointments within forty five days following the public hearing.) To the extent a qualified person can be found, one of the eight (8) members appointed by the Council shall be a resident of Boone and a full-time student of Appalachian State University.

[b] Planning Commission members shall generally be appointed for four (4) year staggered terms, but members may continue to serve until their successors have been appointed. The Appalachian State University student member shall serve a term of one (1) year. Vacancies which occur for reasons other than the expiration of term shall be filled as they occur only for the unexpired remainder of the term.

[c] Members may be appointed to no more than three successive terms. A former member may be reappointed following a one-year period of non-membership.

[d] Unless the Council takes specific action to excuse the absences and reappoint a member after being informed by the Administrator of the member's removal, a Planning Commission member shall be automatically removed for failure to attend three (3) consecutive regularly scheduled meetings or quarterly public hearings or for failure to attend fifty percent (50%) of the meetings within any twelve month period of the member's appointed service. Absences due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Commission**.** For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by the Council, the member shall be replaced. The Administrator shall notify in writing any member for whom one more absence will trigger removal. In addition, the Administrator or a member of the Council may propose removal of a member for other good cause related to the performance of Commission duties, but before removal on that basis, the member shall be given an opportunity to appear before the Council to address the issues involved.

[e] If a resident member moves outside the town or if an ETJ member moves outside the planning jurisdiction, that shall constitute a resignation from the Planning Commission, effective upon the date a replacement is appointed by the Council.

[f] A member of the Planning Commission may resign by notifying the Mayor, Town Manager, or Administrator.

Section 22. Meetings of the Planning Commission

[a] The Planning Commission shall establish a regular meeting no less than quarterly, or more often as it shall determine or require, and at the request of the Council, Town Manager, or Administrator.

[b] Since the Commission has only advisory authority, it need not conduct its meetings strictly in accordance with the quasi-judicial procedures set forth in Articles IV, V, and VI. However, it shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas.

[c] The Planning Commission shall operate in compliance with the North Carolina Open Meetings law, codified as N.C. Gen. Stat. §§ 143-318.9 et seq. (hereafter, "the law"). At a minimum, all meetings of the Planning Commission or any sub-committee, advisory group, or working group of the Commission, by whatever name or designation (hereafter referred to as a "sub-committee") shall require all of the following:

[1] Notice of all official meetings, other than an emergency meeting, by posting of the date and time of the meeting at least 48 hours in advance on the bulletin board for that purpose in Town Hall, unless a longer notice is required by this ordinance or State law. If an agenda has been distributed to members of the Commission, it shall also be posted. An "official meeting" occurs whenever a regularly scheduled meeting of the Planning Commission or sub-committee occurs, whether or not a quorum is present, or when a majority of the Planning Commission or sub-

committee meet, whether in person or by electronic means such as conference call or e-mail, to conduct a hearing, deliberate, take action, or otherwise transact public business. “Deliberate” includes examining, weighing or reflecting upon the reasons for or against a possible decision and also includes the collective acquisition and exchange of facts preliminary to a decision. An “emergency meeting” is one that concerns generally unexpected circumstances which require the immediate consideration of the Planning Commission or sub-committee. In the event of an emergency meeting, a local news medium must be notified prior to the meeting of the date, time and subject matter of the meeting.

[2] A meeting which is open to the public, except as to a closed session conducted in accordance with the law for a reason authorized by the law.

[3] Full and accurate minutes of the meeting, a copy of which shall be provided to the Town Clerk, once they are approved by the Commission or sub-committee.

[d] In the absence of the Chair, the Vice-Chair shall conduct any meeting of the Planning Commission, and in the absence of both officers, the Mayor may designate a person to act as Chair for the meeting in question.

[e] The agenda shall include only those matters within the responsibilities and powers of the Planning Commission as provided herein.

[f] The business of the Planning Commission or sub-committee shall be conducted in such manner as to afford all members an opportunity to speak. However, no member shall generally address the body until first recognized by the Chair, and members of the Planning Commission or sub-committee shall be respectful to each other and shall avoid interrupting each other.

[g] Minutes of the Planning Commission or sub-committee shall be subject to revision and adoption by the group as a whole**.**

[h] Meetings of the Planning Commission or sub-committee shall proceed in the following order: adoption of an agenda, approval of the minutes, unfinished business, new business, informal discussion, and public comment, when public comment is to be accepted. By majority vote of the members in attendance, the order of business may be altered.

[i] At any meeting of the Planning Commission or sub-committee, if the meeting is opened for public comment, any person wishing to address the body or sub-committee shall state his or her name and whether or not he or she is a resident of the town or ETJ.

[1] If there is a signup sheet provided, speakers shall be recognized in the order in which they have signed up.

[2] Unless a different time limit is adopted by the Planning Commission or sub-committee, no member of the public shall be allowed to speak for more than five minutes.

[3] Should more than one person wish to make substantially the same comments regarding the same subject, or where a group of persons supports or opposes the same positions, the presiding officer may require that all such persons designate a spokesperson for their group to address the Planning Commission or sub-committee, and the presiding officer may allot a larger amount of time for the presentation of the group position by the spokesperson.

[4] All persons addressing the Planning Commission or sub-committee shall be treated respectfully by other persons in attendance at the meeting, and

all speakers shall conduct themselves with proper decorum. Should any person present during a public comment period substantially interfere with the ability of a person offering public comment or engage in behavior which violates norms of accepted decorum, or should a person offering public comment engage in behavior which violates norms of accepted decorum, after warning such person(s) and, except in a situation where there is a risk of harm to any person present, providing such person(s) the opportunity to alter the behavior to bring it into conformity with norms of accepted decorum, the presiding officer may direct that such person(s) be removed from the meeting.

Section 23. Quorum and Voting

[a] A quorum shall consist of seven (7) members.

[b] All actions or recommendations of the Planning Commission or sub-committee shall require the presence of a quorum and are only effective or adopted upon majority vote of the members present, following a motion and second. In the case of a divided vote on any question on which the Commission is required to act, the record shall include the vote of each member. When such action is to be reported to the Council, the committee, task force, or advisory body shall not only report the action or recommendation adopted, but the vote by which it was adopted. Proxy voting is not allowed, but a member who cannot be physically present may participate in the meeting by electronic or telephonic means so long as the member can hear all deliberations and proceedings of the Commission, and the members of the Commission can hear the member.

[c] A roll call vote shall be taken upon the request of any member.

[d] ETJ members may vote on all matters considered by the Commission, regardless of the location of the property.

Section 24. Planning Commission Officers

[a] Unless the Town Council designates the Chair and Vice-Chair of the Planning Commission, it shall retain the power to choose its own Chair and Vice-Chair. The Planning Commission shall designate the Chair and Vice-Chair of any sub-committees**.** The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for unlimited re-appointment. Vacancies in these offices shall be filled for the unexpired terms only.

[b] The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

Section 25. Powers and Duties of Planning Commission

[a] The Planning Commission may:

[1] Make studies of the area within its jurisdiction and surrounding areas;
[2] Determine objectives to be sought in the development of the study area;

[3] Prepare and adopt plans for achieving these objectives;

[4] Develop and recommend to the Council policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner. The Planning Commission shall not, however, have the power to “initiate” changes to this ordinance, as the term “initiate” is used in Article XXI, Section 379.

[5] Advise the Council concerning the use and amendment of means for carrying out plans;

[6] Make findings and recommendations to the Council concerning proposed zoning text and map amendments, as provided for and in compliance with Section 382.

[7] Review and either approve or deny proposed minor subdivision requests when a portion of the land to be subdivided lies within a Designated Water Supply Watershed District, based upon application of Articles IV and XIII of this ordinance.

[8] Perform any other related duties that the Council may direct.

[b] Limitations on Powers of the Planning Commission

[1] No individual member of the Planning Commission shall purport to speak or act on behalf of the Commission without action by the Commission explicitly authorizing the member to speak or act on its behalf.

[2] No individual member of the Planning Commission, nor the Planning Commission itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the Commission to speak or act on its behalf.

[3] Without an express grant of authority or explicit authorization by the Council, no individual member of the Planning Commission, nor the Commission itself, may direct staff members of the Town to take action requiring the expenditure of Town funds.

[4] The Planning Commission may not create any group external to its membership without the explicit approval and or appointment of the Town Council. When deemed appropriate the Town Council will appoint a group(s) to advise the Planning Commission on tasks assigned by the Town Council or it's designee.

[5] The Planning Commission may create subcommittees or working groups within it's membership without explicit approval of the Town Council providing that these groups do not require ongoing resources. Where ongoing resources are requested the assignment of these resources must be approved by the Town Manager or his or her designee.

Section 26. Advisory Committees

[a] From time to time the Council may appoint one or more individuals to help the Planning Commission carry out its planning responsibilities with respect to a particular subject area. By way of illustration, without limitation, the Council may appoint advisory committees to consider the thoroughfare plan, bikeway plans, community appearance plans, housing plans, economic development plans, etc. Such advisory committees shall be created and operate, unless otherwise designated by the Council, according to the procedures established under Municipal Code §§ 30.51, and 35.01, *et seq*.

[b] Members of such advisory committees shall sit as nonvoting members of the Planning Commission when such issues are being considered, and they shall be invited to lend their talents, energies, and expertise to the Planning Commission. However, all formal recommendations of the Planning Commission to the Council shall be made by the Planning Commission itself. As with Commission members, unless the Council takes specific action to excuse the absences and reappoints an advisory committee member after being informed by the Administrator of the member's removal, an advisory committee member shall be automatically removed for failure to attend three (3) consecutive meetings or for failure to attend fifty percent (50%) of the meetings within any twelve month period. Absences due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the committee. For example, if a member misses six of

twelve meetings during a twelve month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by the Council, the member shall be replaced. The Administrator shall notify in writing any member for whom one more absence will trigger removal. In addition, the Administrator or a member of the Council may propose removal of a member for any other good cause related to the performance of committee duties, but before removal on that basis, the member shall be given an opportunity to appear before the Council to address the issues involved.

[c] Nothing in this section shall prevent the Council from establishing independent advisory groups, committees, or commissions to make recommendations on any issue directly to the Council.

Section 29. Appointment and Terms of Community Appearance Commission Members

[a] There shall be a Community Appearance Commission consisting of seven (7) members. All members shall reside within the planning jurisdiction of the town and shall be appointed by the Council. To the extent qualified persons can be found, the majority of members shall have special training or experience in a design field such as architecture, landscape design, horticulture, city planning, or a closely related field.

[b] Community Appearance Commission members shall be appointed for three (3) year staggered terms, but members may continue to serve until their successors have been appointed. Vacancies which occur for reasons other than the expiration of term shall be filled as they occur for the unexpired remainder of the term.

[c] Members may be appointed to no more than three successive terms. A former member may be reappointed following a one-year period of non-membership.

[d] Unless the Council takes specific action to excuse the absences and reappoints a member after being informed by the Administrator of the member's removal, a Community Appearance Commission member shall be automatically removed for failure to attend three (3) consecutive meetings or for failure to attend fifty percent (50%) of the meetings within any twelve month period. Absences due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Commission. For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by the Council, the member shall be replaced. The Administrator shall notify in writing any member for whom one more absence would trigger removal. In addition, the Administrator or a member of the Council may propose removal of a member for any other good cause related to the performance of Commission duties, but before removal on that basis, the member shall be given an opportunity to appear before the Council to address the issues involved.

[e] A member of the Community Appearance Commission may resign by notifying the Mayor, Town Manager, or Administrator.

Section 30. Meetings of the Community Appearance Commission

[a] The Community Appearance Commission shall establish a regular meeting schedule and shall meet at least quarterly, or more often as it shall determine or require, and at the request of the Council, Town Manager, or Administrator.

[b] Since the **C**ommission has only advisory authority, it need not conduct its meetings strictly in accordance with the quasi-judicial procedures set forth in Articles IV,

V, and VI. However, it shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas.

[c] The Community Appearance Commission shall operate in compliance with the North Carolina Open Meetings law, codified as N.C. Gen. Stat. §§ 143-318.9 et seq. (hereafter, "the law"). At a minimum, all meetings of the Community Appearance Commission or any sub-committee, advisory group, or working group, by whatever name or designation (hereafter referred to as a "sub-committee") shall require all of the following:

[1] Notice of all official meetings, other than an emergency meeting, by posting of the date and time of the meeting at least 48 hours in advance on the bulletin board for that purpose in Town Hall. If an agenda has been distributed to members of the Community Appearance Commission or sub-committee, it shall also be posted. An "official meeting" occurs whenever a regularly scheduled meeting of the Community Appearance Commission or sub-committee occurs, whether or not a quorum is present, or when a majority of the Community Appearance Commission meet, whether in person or by electronic means such as conference call or e-mail, to conduct a hearing, deliberate, take action, or otherwise transact public business. "Deliberate" includes examining, weighing or reflecting upon the reasons for or against a possible decision and also includes the collective acquisition and exchange of facts preliminary to a decision. An "emergency meeting" is one that concerns generally unexpected circumstances which require the immediate consideration of the Community Appearance Commission or sub-committee. In the event of an emergency meeting, a local news medium must be notified prior to the meeting of the date, time and subject matter of the meeting.

[2] A meeting which is open to the public, except as to a closed session conducted in accordance with the law for a reason authorized by the law.

[3] Full and accurate minutes of the meeting, a copy of which shall be provided to the Town Clerk, once they are approved by the Community Appearance Commission or sub-committee.

[d] In the absence of the Chair, the Vice-Chair shall conduct any meeting of the Community Appearance Commission, and in the absence of both officers, the Mayor may designate a person to act as Chair for the meeting in question.

[e] The agenda shall include only those matters within the responsibilities and powers of the Community Appearance Commission as provided herein.

[f] The business of the Community Appearance Commission or sub-committee shall be conducted in such manner as to afford all members an opportunity to speak. However, no member shall generally address the body until first recognized by the Chair, and members of the Community Appearance Commission or sub-committee shall be respectful to each other and shall avoid interrupting each other.

[g] Minutes of the Community Appearance Commission or sub-committee shall be subject to revision and adoption by the group as a whole.

[h] Meetings of the Community Appearance Commission or sub-committee shall proceed in the following order: adoption of an agenda, approval of the minutes, unfinished business, new business, informal discussion, and public comment, when public comment is to be accepted. By majority vote of the members in attendance, the order of business may be altered.

[i] At any meeting of the Community Appearance Commission or sub-committee, if the meeting is opened for public comment, any person wishing to address the

Commission or sub-committee shall state his or her name and whether or not he or she is a resident of the town or ETJ.

[1] If there is a sign up sheet provided, speakers shall be recognized in the order in which they have signed up.

[2] Unless a different time limit is adopted by the Commission or sub-committee, no member of the public shall be allowed to speak for more than five minutes.

[3] Should more than one person wish to make substantially the same comments regarding the same subject, or where a group of persons supports or opposes the same positions, the presiding officer may require that all such persons designate a spokesperson for their group to address the Commission or sub-committee, and the presiding officer may allot a larger amount of time for the presentation of the group position by the spokesperson.

[4] All persons addressing the Commission or sub-committee shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. Should any person present during a public comment period substantially interfere with the ability of a person offering public comment or engage in behavior which violates norms of accepted decorum, or should a person offering public comment engage in behavior which violates norms of accepted decorum, after warning such person(s) and, except in a situation where there is a risk of harm to any person present, providing such person(s) the opportunity to alter the behavior to bring it into conformity with norms of accepted decorum, the presiding officer may direct that such person(s) be removed from the meeting.

Section 31. Quorum and Voting

[a] A quorum shall consist of four (4) members.

[b] All actions or recommendations of the Community Appearance Commission or sub-committee shall require the presence of a quorum and are only effective or adopted upon majority vote of the members present, following a motion and second. In the case of a divided vote on any question on which the Commission is required to act, the record shall include the vote of each member. When such action is to be reported to the Council or Planning Commission, the Community Appearance Commission shall not only report the action or recommendation adopted, but the vote by which it was adopted. Proxy voting is not allowed, but a member who cannot be physically present may participate in the meeting by electronic or telephonic means so long as the member can hear all deliberations and proceedings of the Commission, and the members of the Commission can hear the member.

[c] A roll call vote shall be taken upon the request of any member.

Section 32. Community Appearance Commission Officers

[a] Unless the Town Council designates the Chair and Vice-Chair of the Community Appearance Commission, it shall retain the power to choose its own Chair and Vice-Chair. The Community Appearance Commission shall designate the Chair and Vice-Chair of any sub-committees. The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for unlimited re-appointment. Vacancies in these offices shall be filled for the unexpired terms only.

[b] The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

Section 33. Powers and Duties of the Community Appearance Commission

[a] The Community Appearance Commission may:

[1] Make studies and recommend to the Council plans, goals, and objectives relating to the visual appearance, community beautification, landscape development, and redevelopment of the town's planning area.

[2] Develop and recommend to the Council policies, ordinances, administrative procedures, and other means for carrying out plans for community beautification in a coordinated and efficient manner. The Community Appearance Commission shall not, however, have the power to “initiate” changes to this ordinance, as the term “initiate” is used in Article XXI, Section 379.

[3] Respond to requests made by the Administrator for recommendations concerning the suitability of site landscaping for proposed special use permits.

[4] Upon request of the Administrator, review and approve or reject requests for approval of alternative means to address the Commercial Development Appearance Standards of Article XXII, in accordance with Section 399, as well as when such approval is a condition adopted by the Board of Adjustment in connection with the issuance of a special use permit or one adopted by the Council in a conditional zoning determination.

[5] Perform any other duty assigned by the Council which is authorized pursuant to N.C. Gen. Stat. § 160A-452.

[b] Limitations on Powers of the Community Appearance Commission

[1] No individual member of the Commission shall purport to speak or act on behalf of the Commission without action by the Commission explicitly authorizing the member to speak or act on its behalf.

[2] No individual member of the Commission, nor the Commission itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the Commission to speak or act on its behalf.

[3] Without an express grant of authority or explicit authorization by the Council, no individual member of the Commission, nor the Commission itself, may direct staff members of the Town to take action requiring the expenditure of Town funds.

[4] The Community Appearance Commission may not create any group external to its membership without the explicit approval and or appointment of the Town Council. When deemed appropriate the Town Council will appoint a group(s) to advise the Community Appearance Commission on tasks assigned by the Town Council or it’s designee.

[5] The Community Appearance Commission may create subcommittees or working groups within it’s membership without explicit approval of the Town Council providing that these groups do not require ongoing resources. Where ongoing resources are requested the assignment of these resources must be approved by the Town Manager or his or her designee.

Section 36. Appointment and Terms of Tree Board Members

[a] There shall be a Tree Board consisting of five members. All members shall reside within the planning jurisdiction of the town. To the extent qualified persons can be found, the members shall have special training or experience in arboriculture, horticulture, architecture, or landscape design.

[b] Tree Board members shall be appointed for two [2] year staggered terms, but members may continue to serve until their successors have been appointed. Vacancies which occur for reasons other than the expiration of term shall be filled as they occur for the unexpired remainder of the term.

[c] Members may be appointed to no more than three successive terms. A former member may be reappointed following a one-year period of non-membership.

[d] Unless the Council takes specific action to excuse the absences and reappoints a member after being informed by the Administrator of the member's removal, a Tree Board member shall be automatically removed for failure to attend three (3) consecutive meetings or for failure to attend fifty percent (50%) of the meetings within any twelve month period. Absences due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Board. For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by the Council, the member shall be replaced. The Administrator shall notify in writing any member for whom one more absence would trigger removal. In addition, the Administrator or a member of the Council may propose removal of a member for any other good cause related to the performance of Board duties, but before removal on that basis, the member shall be given an opportunity to appear before the Council to address the issues involved.

[e] A member of the Tree Board may resign by notifying the Mayor, Town Manager, or Administrator**.**

Section 37. Meetings of the Tree Board

[a] The Tree Board shall meet as it deems necessary or desirable, no less than quarterly (in order to meet the requirements of Tree City USA) and more often as it shall determine or require, and at the request of the Council, Town Manager, or Administrator.

[b] Since the Board has only advisory authority, it need not conduct its meetings strictly in accordance with the quasi-judicial procedures set forth in Articles IV, V, and VI. However, it shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas.

[c] The Tree Board shall operate in compliance with the North Carolina Open Meetings law, codified as N.C. Gen. Stat. §§ 143-318.9 et seq. (hereafter, "the law"). At a minimum, all meetings of the Tree Board or any sub-committee, advisory group, or working group, by whatever name or designation (hereafter referred to as a "sub-committee") shall require all of the following:

[1] Notice of all official meetings, other than an emergency meeting, by posting of the date and time of the meeting at least 48 hours in advance on the bulletin board for that purpose in Town Hall. If an agenda has been distributed to members of the Tree Board or sub-committee, it shall also be posted. An "official meeting" occurs whenever a regularly scheduled meeting of the Tree Board or sub-committee occurs, whether or not a quorum is present, or when a majority of the Tree Board meets, whether in person or by electronic means such as conference call or e-mail, to conduct a hearing, deliberate, take action, or otherwise transact public business. "Deliberate" includes examining, weighing or reflecting upon the reasons for or against a possible decision and also includes the collective acquisition and exchange of facts preliminary to a decision. An "emergency meeting" is one that concerns generally unexpected circumstances which require the immediate consideration of the Tree

Board or sub-committee. In the event of an emergency meeting, a local news medium must be notified prior to the meeting of the date, time and subject matter of the meeting.

[2] A meeting which is open to the public, except as to a closed session conducted in accordance with the law for a reason authorized by the law.

[3] Full and accurate minutes of the meeting, a copy of which shall be provided to the Town Clerk, once they are approved by the Tree Board or sub-committee.

[d] In the absence of the Chair, the Vice-Chair shall conduct any meeting of the Tree Board, and in the absence of both officers, the Mayor may designate a person to act as Chair for the meeting in question.

[e] The agenda shall include only those matters within the responsibilities and powers of the Tree Board, as provided herein.

[f] The business of the Tree Board or sub-committee shall be conducted in such manner as to afford all members an opportunity to speak. However, no member shall generally address the body until first recognized by the Chair, and members of the Tree Board or sub-committee shall be respectful to each other and shall avoid interrupting each other.

[g] Minutes of the Tree Board or sub-committee shall be subject to revision and adoption by the group as a whole.

[h] Meetings of the Tree Board or sub-committee shall proceed in the following order: adoption of an agenda, approval of the minutes, unfinished business, new business, informal discussion, and public comment, when public comment is to be accepted. By majority vote of the members in attendance, the order of business may be altered.

[i] At any meeting of the Tree Board or sub-committee, if the meeting is opened for public comment, any person wishing to address the body or sub-committee shall state his or her name and whether or not he or she is a resident of the town or ETJ.

[1] If there is a signup sheet provided, speakers shall be recognized in the order in which they have signed up.

[2] Unless a different time limit is adopted by the Tree Board or sub-committee, no member of the public shall be allowed to speak for more than five minutes.

[3] Should more than one person wish to make substantially the same comments regarding the same subject, or where a group of persons supports or opposes the same positions, the presiding officer may require that all such persons designate a spokesperson for their group to address the Tree Board or sub-committee, and the presiding officer may allot a larger amount of time for the presentation of the group position by the spokesperson.

[4] All persons addressing the Tree Board or sub-committee shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. Should any person present during a public comment period substantially interfere with the ability of a person offering public comment or engage in behavior which violates norms of accepted decorum, or should a person offering public comment engage in behavior which violates norms of accepted decorum, after warning such person(s) and, except in a situation where there is a risk of harm to any person present, providing such person(s) the opportunity to alter the behavior to bring it into conformity with norms of

accepted decorum, the presiding officer may direct that such person(s) be removed from the meeting.

Section 38. Quorum and Voting

[a] A quorum shall consist of three (3) members.

[b] All actions or recommendations of the Tree Board or sub-committee shall require the presence of a quorum and are only effective or adopted upon majority vote of the members present, following a motion and second. In the case of a divided vote on any question on which the Tree Board is required to act, the record shall include the vote of each member. When such action is to be reported to the Council, Community Appearance Commission or Planning Commission, the Tree Board shall not only report the action or recommendation adopted, but the vote by which it was adopted. Proxy voting is not allowed, but a member who cannot be physically present may participate in the meeting by electronic or telephonic means so long as the member can hear all deliberations and proceedings of the Board, and the members of the Board can hear the member.

[c] A roll call vote shall be taken upon the request of any member.

Section 39. Tree Board Officers

[a] Unless the Town Council designates the Chair and Vice-Chair of the Tree Board, it shall retain the power to choose its own Chair and Vice-Chair. The Tree Board shall designate the Chair and Vice-Chair of any sub-committees. The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for re-appointment. Vacancies in these offices shall be filled for the unexpired terms only. The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for re-appointment. Vacancies in these offices may be filled for the unexpired terms by the Council.

[b] The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

Section 40. Powers and Duties of the Tree Board

[a] The Tree Board may:

[1] Make studies and recommend to the Council plans, goals, and objectives relating to the urban forest of the town.

[2] Develop and recommend to the Council policies, ordinances, administrative procedures, plans and other means for maintaining the town's urban forest program. The Tree Board, shall not, however, have the power to “initiate” changes to this ordinance, as the term “initiate” is used in Article XXI, Section 379.

[3] Develop public education programs which inform the public on matters concerning the betterment of trees and related resources.

[4] Coordinate and/or conduct special projects for the betterment of the urban forest.

[b] Limitations on Powers of the Tree Board

[1] No individual member of the Board shall purport to speak or act on behalf of the Board without action by the Board explicitly authorizing the member to speak or act on its behalf.

[2] No individual member of the Board, nor the Board itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the Board to speak

or act on its behalf.

[3] Without an express grant of authority or explicit authorization by the Council, no individual member of the Board, nor the Board itself, may direct staff members of the Town to take action requiring the expenditure of Town funds.

[4] The Tree Board may not create any group external to its membership without the explicit approval and or appointment of the Town Council. When deemed appropriate the Town Council will appoint a group(s) to advise the Tree Board on tasks assigned by the Town Council or it's designee.

[5] The Tree Board may create subcommittees or working groups within it's membership without explicit approval of the Town Council providing that these groups do not require ongoing resources. Where ongoing resources are requested the assignment of these resources must be approved by the Town Manager or his or her designee.

Section 43. Appointment and Terms of the Board of Adjustment

[a] There shall be a Board of Adjustment consisting of eight (8) regular members and eight (8) alternates. Alternates shall serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Each alternate, while attending any regular or special meeting of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member. Five (5) regular members and five (5) alternates shall reside within the town and shall be appointed by the Council (hereafter, "resident members"). Three (3) regular members and three (3) alternates shall reside within the town's ETJ and shall be appointed by the Watauga County Board of Commissioners. The Council shall suggest two nominees to the Watauga County Board of Commissioners for each appointment. (In accordance with N.C. Gen. Stat. §160A-362, the town must provide a means of proportional representation based on population for residents of the ETJ**.** There shall be at all times at least one representative of the ETJ on the Board of Adjustment. Each additional member must be appointed to the Board of Adjustment to achieve proportional representation only when the population of the entire extraterritorial planning area constitutes a full fraction of the town's population divided by the total membership of the Board of Adjustment). If, despite good faith efforts, enough residents of the ETJ cannot be found to fill the seats reserved for residents of such area, then the Watauga County Board of Commissioners may appoint other residents of the county (including residents of the town) to fill these seats. If the Watauga County Board of Commissioners fails to make these appointments within ninety (90) days after receiving a resolution from the Council requesting that they be made, the Council may make them. (When selecting a new representative to the Board of Adjustment as a result of an extension of the ETJ, the Watauga County Board of Commissioners shall hold a public hearing on the selection. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The Watauga County Board of Commissioners shall select appointees only from those who apply at or before the public hearing. The Watauga County Board of Commissioners shall make the appointments within forty- five days following the public hearing). In making appointments to the Board of Adjustment, both the Council and the Watauga County Board of Commissioners shall consider the employment of current board members and alternates, and their spouses, and shall strive to create such employment diversity upon the board so as to minimize the likelihood that a conflict of interest with regard to a particular case will prevent the Board of Adjustment from assembling a full board of eight (8) members to hear the case. Therefore, in order to be considered for appointment to the Board, an applicant must provide the Town with information concerning his or her employment and that of his or her spouse, if any.

[b] Regular members and alternates shall be appointed for three (3) year staggered terms, but both may continue to serve until their successors have been appointed. Vacancies may be filled for the unexpired terms only.

[c] Members may be reappointed to successive terms without limitation.

[d] Unless the Council takes specific action to excuse the absences and reappoints a member after being informed by the Administrator of the member's removal, Regular Board of Adjustment members shall be automatically removed for failure to attend three (3) consecutive meetings or for failure to attend fifty percent (50%) of the regular meetings in any twelve month period. Absences due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Board. For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by the Council, the member shall be replaced. Alternate members shall likewise be removed for failure to attend or participate in three (3) consecutive meetings for which the member's attendance is requested. The Administrator shall notify in writing any member for whom one more absence will trigger removal. In addition, the Administrator or a member of the Council may propose removal of a member for any other good cause related to the performance of Board duties, but before removal on that basis, the member shall be given an opportunity to appear before the Council to address the issues involved.

[e] If a regular or alternate resident member moves outside the town, or if an ETJ regular or alternate member moves outside the planning jurisdiction, that shall constitute a resignation from the board.

[f] The resident member alternate may sit only in lieu of a regular resident member and the ETJ alternate may sit only in lieu of the regular ETJ member. When so seated, alternates shall have the same powers and duties as the regular member they replace.

[g] A member of the Board of Adjustment may resign by notifying the Mayor, Town Manager, or Administrator.

Section 44. Meetings of the Board of Adjustment

[a] At a time which it establishes, the Board of Adjustment shall conduct a monthly meeting to be held so long as there are items for its consideration, and it may schedule additional meetings ("special meetings"), as necessary, so long as all notice requirements of Sections 118(c) and 119 are met.

[b] The Board of Adjustment may conduct its meetings in accordance with its duly adopted rules of procedures so long as they are not inconsistent with the provisions of this ordinance or State law, and the Board shall comply with the requirements of Article VI.

[c] The Board of Adjustment and any sub-committee, advisory group, or working group, by whatever name or designation (hereafter referred to as a "sub-committee") shall operate in compliance with the North Carolina Open Meetings law, codified as N.C. Gen. Stat. §§ 143-318.9 et seq. At a minimum, all meetings of the Board of Adjustment or any sub-committee shall require all of the following:

[1] A meeting which is open to the public, except as to closed session conducted in accordance with the law for the reasons authorized by the law.

[2] Full and accurate minutes of the meeting, a copy of which shall be provided, once approved by the Board, to the Town Clerk.

[d] At any meeting of the Board of Adjustment, when the meeting is opened for public testimony, any person wishing to address the Board shall state his or her name.

[1] If there is a signup sheet provided for speakers, speakers shall be recognized in the order in which they have signed up.

[2] All persons addressing the Board of Adjustment shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. Should any person present during a public comment period substantially interfere with the ability of a person offering public comment or engage in behavior which violates norms of accepted decorum, or should a person offering public comment engage in behavior which violates norms of accepted decorum, after warning such person(s) and, except in a situations where there is a risk of harm to any person present, providing such person(s) the opportunity to alter their behavior to bring it into conformity with norms of accepted decorum, the presiding officer may direct that such person(s) be removed from the meeting.

Section 45. Quorum

[a] A quorum for the Board of Adjustment shall consist of seven (7) members. A quorum is necessary for the board to take official action.

[b] A member who has withdrawn from the meeting without being excused as provided in Section 46 shall be counted as present for purposes of determining whether a quorum is present.

Section 46. Voting

[a] The concurring vote of four fifths of the regular board membership (excluding vacant seats) shall be necessary to reverse any order, requirement, decision, or determination of the administrator or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance (including the issuance of a special-use permit) or to grant any variance. All other actions of the board shall be taken by majority vote. For purposes of this Section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered **"**members of the board**"** for calculations of the requisite supermajority if there are no qualified alternates available to take the place of such members.

[b] Once a member is physically present at a board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with Subsection 46 [c] or has been allowed to withdraw from the meeting in accordance with Subsection 46 [d].

[c] A member shall not participate in or vote on any quasi-judicial matter in a manner that would violate an affected person's rights to an impartial decision maker. If an objection is raised to a member's participation and that member does not request recusal, the remaining members shall by majority vote rule on the objection. Impermissible conflicts include, but are not limited to:

[1] Prior to hearing the matter, a member has a fixed opinion concerning the subject matter of the hearing that is not susceptible to change.

[2] A member has had an undisclosed *ex parte* communications concerning the case before the Board of Adjustment.

[3] A member has a close familial, business, or other associational relationship with a person who will be affected by the outcome of a decision by the Board of Adjustment.

[4] A member has a direct or indirect financial interest in the outcome of the matter before the Board of Adjustment.

[d] A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.

[e] Except as authorized in subsection [c] above, a motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.

[f] A roll call vote shall be taken upon the request of any member.

[g] Both ETJ and resident members may vote on all matters coming before the board.

Section 47. Board of Adjustment Officers

[a] Unless the Town Council designates the Chair and Vice-Chair of the Board of Adjustment, it shall retain the power to choose its own Chair and Vice-Chair. The Board of Adjustment shall designate the Chair and Vice-Chair of any sub-committee. The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for unlimited re-appointment. Vacancies in these offices shall be filled for the unexpired terms by the Town Council.

[b] The **C**hair or any member temporarily acting as Chair may administer oaths to witnesses coming before the board.

[c] The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

Section 48. Powers and Duties of Board of Adjustment

[a] The Board of Adjustment shall hear and decide:

[1] Appeals from any order, decision, requirement, or determination made by the Administrator, as provided in Section 106.

[2] Applications for special-use permits, as provided in Section 61.

[3] Applications for variances, as provided in Section 107.

[4] Questions involving interpretations of the zoning map, including disputed district boundary lines and lot lines, as provided in Section 109.

[5] Any other matter the board is required to act upon by any other town ordinance.

[b] The Board of Adjustment may subpoena witnesses and compel the production of evidence.

[c] Limitations on the Powers of the Board of Adjustment

[1] No individual member of the Board shall purport to speak or act on behalf of the Board without action by the Board or authorization in the Board's duly adopted Rules of Procedure explicitly authorizing the member to speak or act on its behalf.

[2] No individual member of the Board, nor the Board itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the Board to speak or act on its behalf.

[3] Without an express grant of authority or explicit authorization by the Council, no individual member of the Board, nor the Board itself, may direct staff members of the Town to take action requiring the expenditure of Town funds.

[4] The Board of Adjustment may not create any group external to its membership without the explicit approval and or appointment of the Town Council. When deemed appropriate the Town Council will appoint a group(s) to advise the Board of Adjustment on tasks assigned by the Town Council or it's designee.

[5] The Board of Adjustment may create subcommittees or working groups within it's membership without explicit approval of the Town Council providing that these groups do not require ongoing resources. Where ongoing resources are requested the assignment of these resources must be approved by the Town Manager or his or her designee.

Section 49. Appeals

[a] Every decision of the Board of Adjustment shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the Watauga County Clerk of Superior Court within 30 days of the last of the relevant following dates:

[1] If a permit is issued or variance granted, the date the decision is filed with the Watauga County Register of Deeds;

[2] If the application is denied or is not to be recorded with the Register of Deeds, the date the decision is filed in the office of the Administrator; or

[3] The date a written copy of the decision is delivered to the applicant and every aggrieved party who has filed a written request for such copy with the secretary or Chair of the Board at the time of its hearing of the case. Note: The decision of the Board may be delivered to the applicant or aggrieved party who has duly requested a copy either by personal service or by registered mail or certified mail, return receipt requested, at the address provided by the applicant or aggrieved party.

Section 112. Board Action on Appeals and Variances

[d] If the variance is granted, the nature of the variance and any conditions attached thereto shall be entered on the face of any necessary zoning permit.

VOTE: Aye - All
Nay - None

Case 20090405 Projecting Theater Marquees - UDO text amendment modifying Article XVIII and XII. New text provides for additional signage options to theaters in the B-1 Central Business District. Development Services Planner Jane Shook explained that the proposed amendment is to modify text in regard to marquee signs to include new text, "projecting theater marquee" in the B-1 Central Business District. Upon a motion by Council Member Phillips, seconded by Council Member Brantz, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because the amendment supports the historic character for downtown.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Phillips, seconded by Council Member Brantz, the Council moved to approve the following proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because the amendment supports historic character for downtown:

Section 322. Definitions

[a] Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this article.

Section 323. General Regulation of Signs

[i] Changeable Copy: Signs in the B-2, B-3 zones and projecting theater marquees in the B-1 zones may contain changeable copy; however, in no case shall the changeable copy portion of the sign exceed fifty percent (50%) of the total sign area. Copy which changes through mechanical, digital, electronic, or manual means may change or alternate no more than once every sixty (60) minutes.

Section 329. Signs Permitted in the B-1 District

[a] The B-1 (downtown) district has diverse shops in close proximity to one another, and is oriented primarily to daytime pedestrian use. Flower boxes, benches, shake shingle roofs and natural plantings lend the area a distinctive mountain village appearance. Leisurely shopping is encouraged. The intent of this section is therefore, to promote the downtown as a shopping and gathering place and to enhance the village atmosphere. The use of wooden signs is encouraged, so as to contribute to the warmth, friendliness and natural beauty of the area.

[1] Each business is permitted two (2) signs chosen from the following categories: attached, canopy, or projecting. In no case may both signs be in the same category. Painted wall signs are prohibited in the B-1 zone. Signs may be illuminated. Businesses are also allowed one sign from the following:

a. A projecting sign which may contain the name of the business and any logo which the business chooses to adopt. The sign may not exceed four (4) square feet in size, and the bottom of the sign shall be no more and no less than eight (8) feet above the sidewalk. It shall display only the name of the business and/or buildings which it is attached to and the building and/or business logo or logos and no more than one (1) per building.

b. A freestanding sign which may be a maximum size of two (2) feet by two (2) feet, and the bottom of said sign shall display only the name of the business and/or building which it is located in front of, and the building and/or business logo or logos and no more than one (1) sign per building.

[2] Attached signs shall not exceed an area equal to the greater of sixteen (16) square feet or one half (1/2) square foot of sign area per linear foot of building frontage. For example, buildings which are thirty-two (32) feet across the front or less may have a sixteen (16) square feet attached sign. If the building is larger than thirty-two (32) feet across the front the permitted size would be determined by the formula, one half (1/2) square feet per linear foot of building. The maximum allowable square footage is forty-eight (48) square feet regardless of building size.

[3] Projecting signs may not exceed sixteen (16) square feet in area.

[4] Awning signs shall not exceed twenty-five percent (25%) of the area of the awning. The maximum allowable square footage is forty-eight (48)

square feet regardless of the size of the awning. Signs which are suspended under the awning and/or cantilevered roof shall be at least eight (8) feet above the sidewalk at their lowest point. Signs which are attached to the face or side of an awning may not exceed twelve (12) inches in height and no support structures shall be visible.

[5] All signs shall meet the additional requirements of Section 323.

[6] Businesses who choose to use a ground mounted sign instead of a freestanding sign may increase the maximum square footage in accordance with the provisions of Section 337.

[7] Projecting Theater Marquees: Theaters which choose to use a projecting theater marquee are only allowed to have the signage as permitted in Section 335[b].

Section 335. Marquee Sign Regulations

[a] The following regulations shall apply solely to marquee signs other than projecting theater marquee.

[1] Except where a projecting theater marquee is utilized pursuant to Section 335 [b], theaters, museums, auditoriums and other entertainment facilities are permitted one (1) changeable copy marquee in addition to their two (2) permitted signs.

[2] Marquee signs shall conform to the applicable sign requirements for the district in which they are located, however the area of the marquee sign shall be permitted an increase in size up to an additional one hundred (100%) percent provided that one of the other signs to which the business is entitled is reduced in size. The percentage of increase in area shall be equal to the reduction in area of the other permitted sign.

[3] If the marquee is a freestanding sign, the height of the marquee may not be increased over that permitted in the zone in which it is located.

[b] The following regulations shall apply solely to projecting theater marquee signs:

[1] A projecting theater marquee shall be allowed only in the B-1 Central Business District.

[2] No portion of a projecting theater marquee shall be less than ten feet above grade nor higher than sixteen feet.

[3] A projecting theater marquee and supporting structures shall not extend over the edge of any sidewalk or into any street right-of-way absent an encroachment agreement authorizing such incursion by the Town.

[4] The projecting theater marquee shall only be attached to the building in which the theater is located and must be above an entrance to the theater. No projecting theater marquee sign shall be wider than the building to which it is attached.

[5] Signage may be installed directly upon the vertical face or faces of a projecting theater marquee with the following conditions:

[a] Channel letters may extend above such vertical face or faces provided that the letter height is restricted to 12 inches in height.

[b] No sign may extend below such vertical face or faces with the exception of lighting elements. All lighting elements shall meet the requirements of 335 [b][2] above.

[c] The changeable copy portions of a projecting theater marquee shall not exceed fifty percent of the total area of all faces and comply with Section 323 [i].

[d] All other signage attached to a projecting theater marquee may not exceed 20 percent of the total area of all faces.

[6] A projecting theater marquee may be illuminated but shall not include flashing, blinking, scrolling or intermittent lights.

[7] Encroachment: Where a projecting theater marquee extends over a public sidewalk or other public property, an executed encroachment agreement approved by the Boone Council shall be required prior to issuance of any sign permit for a projecting theater marquee.

[8] A projecting theater marquee may be constructed either as part of a new structure or as an addition to an existing structure as follows:

[a] Site specific plans and specifications must be submitted from a registered North Carolina licensed structural engineer demonstrating that the projecting theater marquee complies in all ways with appropriate code provisions of the Town and the State of North Carolina, including but not limited to, materials, drainage, roof strength, bracing and anchorage.

[b] A final certification from the registered North Carolina licensed structural engineer shall be required stating that the projecting theater marquee complies with all appropriate code provisions of the Town and the State of North Carolina and that the projecting theater marquee has been constructed according to their submitted design.

VOTE: Aye - All
Nay - None

PERMISSION TO CREATE SUBCOMMITTEE - PLANNING COMMISSION

Planning Commission Chairperson Bunk Spann appeared before the Council to request the creation of a subcommittee in order to help with the duties and priorities set forth by the Council. With the adoption of the UDO text amendment in regard to Administrative Mechanisms, Council agreed that action on the request will not be necessary.

ADOPTION OF RESOLUTION - INCREASING ROOM OCCUPANCY TAX

Upon a motion by Council Member Pepin, seconded by Council Member Mason, Council moved to adopt the following resolution:

RESOLUTION LEVYING AND INCREASING THE ROOM OCCUPANCY AND

TOURISM DEVELOPMENT TAX WITHIN THE TOWN OF BOONE

WHEREAS, the North Carolina General Legislature has enacted a law authorizing the Town of Boone to levy a room occupancy and tourism development tax; and

WHEREAS, the North Carolina General Assembly has enacted a local law (HB 401) allowing the Town of Boone to increase this room occupancy tax; and

WHEREAS, the Town Council of the Town of Boone has determined that such a tax would be in the best interests of the citizens of the Town of Boone; and

WHEREAS, a public hearing on the levy and increase of a room occupancy and development tax was held on August 20, 2009; and

WHEREAS, there was at least ten (10) days public notice of said public hearing.

NOW, THEREFORE, BE IT RESOLVED that the Town of Boone hereby levies and increases the room occupancy and tourism development tax to (6%) of the gross receipts derived from the rental of any room, lodging or similar accommodation furnished by a hotel, motel, inn, or similar place within the corporate limits of the Town of Boone, subject to the following conditions:

1. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their non-profit purposes.

2. All taxes shall be levied, administered, collected and repealed as provided in G.S.160A-215.

3. At least two-thirds of the proceeds of a tax levied under this section shall be used only to promote travel and tourism in the Town and any remaining proceeds shall be used only for tourism-related expenditures. The term 'promote travel and tourism' means to advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the Town; the term includes administrative expenses incurred in engaging in the listed activities. The term 'tourism-related expenditures' means expenditures that in the judgment of the Authority are designed to increase the use of lodging facilities in the Town by attracting tourists or business travelers to the Town. The term includes tourism-related capital expenditures.

4. In accordance with the contract between the Town of Boone and the Boone Tourism Development dated February 19, 2009, the Town of Boone shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Boone Tourism Development Authority. As used in this subsection, 'net proceeds' means gross proceeds less the Town's actual cost of collecting the tax, as determined by the Finance Officer, not to exceed three percent (3%) of the gross proceeds. The Boone Tourism Development Authority shall report quarterly and at the close of the fiscal year to the Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the Council may require.

5. The Boone Town Council shall by this resolution reestablish the Boone Tourism Development Authority, which shall be a public authority under the Local Government and Budget and Fiscal Control Act and shall require that at least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the Town, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the Town. The Town Council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to the members of the Authority.

6. The tax levied under this Resolution shall become effective on the first day of October, 2009.

This resolution adopted this the 20th day of August, 2009.

_____

Mayor

ATTEST:

_____

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3 , PAGE 117)

VOTE: Aye - All

Nay - None

ADOPTION OF TOURISM RELATED EXPENDITURES BUDGET

After brief discussion, Council Member Brantz moved to submit the following list of tourism-related expenditures to the Tourism Development Authority for consideration and adoption with expenditures for Project U-4020 designated as the Council's top priority, along with six other expenditures emphasized as priority:

$ Appalcart Contribution - $92,500

$ Blue Ridge Parkway 75, Inc. - $4,000

$ Boone Area Chamber - Hand of Hospitality - $7,410

$ Clawson-Burnley - Park Construction - $134,375

$ Community Appearance & Landscaping - $27,650

$ Greenway & Parks Maintenance - $22,500

$ Greenway Expansion - $502,769

$ Horn in the West - Improvements - $132,232

$ Howard Street Project - Additional Engineering - $16,815

$ Jones House Community Center - $69,689

$ King Street - Site Furnishings- $20,000

$ King Street - Street Lights - $35,000

$ McLaurin Parking - Parking Service Contract - $141,440

$ NC DOT Project U-4020 - $1,712,750

$ Paving & Resurfacing - Roads - $155,638

$ Police Protection (17%) - $540,401

$ Seasonal Decorations (50%) - $6,500

$ Sidewalk Construction - $146,000

$ Snow & Ice Removal (25%) - $35,000

$ Stream Bank Restoration - $10,000

$ Street Garden Project @ Town Hall - Art - $2,189

$ Tree Planting Project - $13,249

$ Watauga County Arts Council - Contribution - $6,650

$ Watauga County Arts Council - Folklorist Position - $15,000

(Items in bold print were designated as priority matters by the Council.)

Council Member Phillips seconded the motion.

VOTE: Aye - All

Nay - None

DISCUSSION & POSSIBLE ADOPTION - SPECIAL EVENT PARKING PLAN FOR DOWNTOWN BOONE

Steve McLaurin, Vice President of McLaurin Parking Company, presented a parking control plan for the downtown area to be implemented to accommodate parking issues that arise during the ASU football season. He explained the general terms of the plan will include the following:

- $ Ambassadors for Parking - Two (2) parking ambassadors placed at strategic locations in order to answer questions and direct event participants to designated parking areas.
- $ Signage - Temporary signage informing event participants of the location for parking assistance.
- $ Parking Staff - Four (4) on-street monitors for King Street; two (2) parking collectors for Queen Street lot, along Queen Street, and Town Hall lot; two (2) parking monitors for parking areas; and one (1) parking system manager.
- $ Time Schedule - Staff placement will begin six hours prior to the game kick-off and continue to at least 15 minutes after game kick-off.
- $ System Supplies - signage, uniforms, traffic cones, radios, etc.
- $ 40 parking spaces reserved on King Street for local and merchant use.
- $ Use of portion of Queen Street Parking Lot and Town Hall lots as "tailgating" parking areas.
- $ Parking for permit-holders in the Queen Street lot will be reserved for those using the lots for work obligations.
- $ Projected cost of implementing the plan - $2,100
- $ Projected revenue amount - $3,150

Several Council members voiced concern about the amount of reserved parking for patrons of the downtown businesses and the logistics of implementing the parking plan. It was the consensus of the Council to reserve all of the parking along King Street and to reserve the Depot Street lot behind the Post Office for patron parking. Council Member Mason asked that the term "tailgating" be removed from the signage. Discussion ensued regarding the use of the Horn in the West parking lot after 1:00 p.m. for additional parking. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to accept the proposal from McLaurin Parking with the following modifications:

- $ All of the parking spaces along King Street and in the Depot Street Lot be reserved for patron parking before and during ASU football games.
- $ Increase the number of Parking Ambassadors to a total of four (4).
- $ Use the Horn in the West parking lot for additional parking after 1:00 p.m.
- $ Replace the term "tailgating" with "football parking areas."
- $ Modify the parking plan as needed.

VOTE: Aye - All
Nay - None

Mayor Clawson declared a break at 8:50 p.m. Council reconvened at 9:04 p.m.

DISCUSSION & POSSIBLE ADOPTION - DOWNTOWN PARKING STUDY

Town Manager Greg Young presented two parking study proposals for the downtown area:

1. Walker Parking Consultants - $15,500

2. AECOM - $17,700.

Upon a motion by Council Member Phillips, seconded by Council Member Pepin, Council moved to table the action on the commission of a parking study due to the cost of the study.

VOTE: Aye - All

Nay - None

TRANSPORTATION COMMITTEE REQUEST - PURSUIT OF CROSS CONNECTOR WITH MODERN TOYOTA

Public Works Director Blake Brown presented a request from the Transportation Committee to approach Modern Toyota in order to discuss the possibility of constructing a cross connector from Chestnut Drive to New Market Boulevard for the purpose of creating a safer environment for conducting business as well as continuing to provide a means of exiting the Farthing/Chestnut neighborhood. Upon a motion by Council Member Pepin, seconded by Council Member Phillips, Council moved to approve the request.

VOTE: Aye - All

Nay - None

TRANSPORTATION COMMITTEE REQUEST - APPROVAL OF CROSSWALK ON TRACY CIRCLE

Public Works Director Blake Brown presented a request from the Transportation Committee to install a temporary crosswalk on Tracy Circle at the back entrance of the Grace Lutheran Church with permanent upgrades following the completion of the NC DOT U-4020 project. Upon a motion by Council Member Pepin, seconded by Council Member Brantz, Council moved to approve the request.

VOTE: Aye - All

Nay - None

TRANSPORTATION COMMITTEE REQUEST - APPROVAL OF UPGRADE TO CROSSWALK ON COLLEGE STREET

Public Works Director Blake Brown presented a request from the Transportation Committee to upgrade the existing crosswalk on College Street adjacent to the side entrance of the First Baptist Church by repainting the speed table and installing signage to increase motorists' awareness of the pedestrian crossing. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to approve the request.

VOTE: Aye - All

Nay - None

TRANSPORTATION COMMITTEE REQUEST - APPROVAL OF SURVEY & PUBLIC MEETING

Public Works Director Blake Brown presented a request from the Transportation Committee to send a survey to the residents in the Poplar Hill area and to hold a public meeting to create awareness and collect public input regarding possible right-in and right-out only changes suggested by the NC DOT. Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to approve the request.

VOTE: Aye - All

Nay - None

TRANSPORTATION COMMITTEE REQUEST - APPROVAL OF NEW SIDEWALK ALONG HORN IN THE WEST DRIVE

Public Works Director Blake Brown presented a request from the Transportation Committee to construct a sidewalk on Horn in the West Drive connecting to the existing sidewalk on the east side of the street continuing to the intersection of Horn in the West Drive and Oak Street. Council Member Mason stated a crosswalk from the sidewalk to the park across the street needs to be included. Upon a motion by Council Member Phillips, seconded by Council Member Brantz, Council moved to approve the request.

VOTE: Aye - All

Nay - None

REQUEST TEMPORARY VARIANCE OF NOISE ORDINANCE

Public Works Director Blake Brown appeared before the Council to present a request from Blythe Development for a temporary variance to the Town's existing Noise Ordinance during the construction of the NC DOT's U-4020 project. Council Member Pepin voiced a concern about noise complaints from surrounding neighborhoods. Town Attorney Sam Furgiuele pointed out that this is not a variance issue but that an amendment to the Town Code would be necessary. Upon a motion by Council Member Pepin, seconded by Council Member Mason, Council moved to direct the Town Attorney, Town Manager, and Public Works Director to meet to discuss the possibility of issuing a permit to exceed the noise ordinance which could be rescinded if numerous complaints are received from the surrounding neighborhoods.

VOTE: Aye - All

Nay - None

APPROVAL OF ENCROACHMENT AGREEMENT - MAST GENERAL STORE PROJECTING SIGNS

Development Services Planner Jane Shook presented a request for an encroachment agreement for a projecting sign for the Mast General Store at 630 West King Street. She explained that the sign will be thirteen (13) square feet and will meet all the requirements of Article 18 of the Unified Development Ordinance. Upon a motion by Council Member Phillips, seconded by Council Member Mason, Council moved to adopt the following encroachment agreement:

STATE OF NORTH CAROLINA ENCROACHMENT AGREEMENT

COUNTY OF WATAUGA

TOWN OF BOONE

THIS ENCROACHMENT AGREEMENT is made and entered into this the 20th day of August 2009, by and between the TOWN OF BOONE, party of the firs part; and Mast General Store, party of the second part.

W-I-T-N-E-S-S-E-T-H

THAT WHEREAS, the party of the second part desires to encroach on public land designated as sidewalk located 630 West King Street with the following: projecting signs (hereinafter referred to as "the facilities").

WHEREAS, it is to the material advantage of the party of the second part to effect this encroachment, and the party of the first part, in the exercise of authority conferred upon it by

statute, is willing to permit the encroachment on public land, subject to the conditions of this agreement.

NOW, THEREFORE, IT IS AGREED that the party of the first part hereby grants to the party of the second part the right and privilege to make this encroachment upon the following conditions, to wit:

That the said party of the second part binds and obligates itself, and its successors and assigns, to install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said public land, nor obstruct nor interfere with the proper maintenance thereof, to reimburse the party of the first part for the cost incurred for any repairs or maintenance to its roadways, sidewalks and other structures necessary due to the installation and existence of the facilities of the party of the second part, and if at any time the party of the first part shall require the removal of or changes in the location of the encroaching facilities, that the said party of the second part binds itself, its successors and assigns, to promptly remove or alter the said facilities in order to conform to the said requirements, without any cost to the party of the first part.

That the party of the second part agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and other warning devices for the protection of the public and in the case of encroachment into a street right of way, in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and amendments or supplements thereto. Information as to the above rules and regulations may be obtained from the party of the first part.

To the extent permitted by law, the party of the second part shall be responsible for all liability associated with the encroaching facility. The party of the second part agrees to indemnify and hold harmless the party of the first part from and against all claims based upon actions or omissions occurring during construction and maintenance, damages, losses and expenses, including court costs and attorney fees, arising out of or in any way related to the encroaching facility. The party of the second part shall cause its contractors to name the party of the first part as an additional insured on general liability insurance policies applicable to the project contemplated by this agreement.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such facilities in carrying out its construction and maintenance operations.

The party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; silting or pollution to the rivers, streams, lakes, reservoirs, other water impoundments; ground surfaces or other property; or pollution of the air. There shall be compliance with applicable all rules and regulations of the North Carolina Sedimentation Control Commission, and all other applicable laws and regulations relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover, the party of the second part agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the satisfaction of the party of the first part. The party of the second part shall comply with all pertinent ordinances, rule, regulations and laws, and failure to do so shall be a basis for revocation of this encroachment agreement by the party of the first part.

That the party of the second part agrees to assume the actual cost of any inspection of the work considered to be necessary by the party of the first part.

That the party of the second part agrees to have available at the encroaching site, at all times during construction, a copy of this agreement showing evidence of approval by the party of the first part. The party of the first part reserves the right to stop all work unless evidence of approval can be shown.

Provided the work referred to in this agreement is being performed on a completed public street open to traffic; the party of the second part agrees to give written notice of when work will begin to the party of the first part.

That in the case of noncompliance with the terms of this agreement by the party of the second part, the party of the first part reserves the right to stop all work until the facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

That it is agreed by both parties that this agreement shall become void if actual construction of the work contemplated herein is not begun and completed within 1 year(s) from the date of this agreement unless written waiver is secured by the party of the second part from the party of the first part.

The party of the first part expressly reserves the unrestricted right to require the party of the second part to change the location of the encroachments described herein at no expense to the party of the first part.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed as of the day and year first above written.

VOTE: Aye - All

Nay - None

ADOPTION OF SAHA LEASE

Town Attorney presented the changes to the SAHA lease and noted that the changes are not substantial to the document. Upon a motion by Council Member Pepin, seconded by Council Member Mason, Council moved to adopt the following lease agreement:

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF WATAUGA

THIS LEASE AGREEMENT is made this the ___ day of _____, 2009, by and between the **Town of Boone**, a North Carolina Municipal Corporation, hereinafter referred to as "**Lessor"** and the **Southern Appalachian Historical Association, Inc.**, a North Carolina non-profit corporation, hereinafter referred to as "**Lessee,**" collectively referred to as the "parties."

1. **Leased Premises**: The **Lessor** hereby leases to the **Lessee** that certain piece, parcel or lot of land situated, lying and being in Boone Township, Watauga County, North Carolina, and improvements thereto, more particularly described by the boundaries shown on the photographic exhibit attached hereto as "Attachment 'A,'" hereinafter referred to as "the premises." This lease is expressly conditioned upon the continued offer by Lessee of a sub-lease to the Watauga County Farmer's Market, Inc., (hereafter, "The Farmer's Market") for the duration of the Lease term, which includes the following terms:

   A. The Farmer's Market shall be required to pay an annual rent of $10,000.00 to Lessee (although they may agree to a higher amount), due and payable at the inception of the sub-lease and on the annual anniversary of the inception date thereafter.

   B. The parking lot included in the premises shall be fully available to The Farmer's Market each Saturday of its operation from 6:00 a.m. until 1:00 p.m. and for the full days of its two holiday operations, the dates for which shall be provided to Lessee as soon as practicable after they are known by The Farmer's Market, subject to the reasonable concurrent use by Lessee for the limited purposes of security, maintenance, monitoring and repair of the premises.

C. Compliance with all provisions of this Lease, including, without limitation, the requirements of paragraph 12, herein.

2. **Ownership of Historical Buildings**: All historical buildings on the premises which were donated specifically to **Lessee** and which may be removed from the premises without causing damage or destruction to the premises shall remain the property of **Lessee** unless abandoned by **Lessee**. However, prior to the effective date of this lease, the parties shall inventory said buildings and shall attach a description of those buildings owned by **Lessee** to this Lease as "Attachment 'B'" and this attachment shall serve as identification of those buildings owned by **Lessee**. Thereafter, Lessee shall have a claim of ownership only to those buildings so identified.

3. **Term**: The term of this Lease shall be for the period commencing on September 1, 2009 and ending on December 31, 2011, but in accordance with the provisions herein, may be renewed from time to time by the parties. Renewal of this Lease for any additional periods of time, however, shall only be effective with the approval of the Boone Town Council.

4. **Rent**: The rent for the above-described premises is one dollar ($1.00) per year, and shall be due and payable in full upon the execution of this Lease, and on or before the same date in each subsequent year during the term of this Lease.

5. **Repairs and Maintenance**: The **Lessee** shall provide all maintenance necessary to keep the premises in good and sanitary condition. Unless expressly assumed by **Lessor**, **Lessee** shall also be responsible for all repairs necessary to maintain the premises and improvements in safe, sanitary and good condition. **Lessee** agrees to notify **Lessor**, in writing, of any and all conditions in need of correction or repair. **Lessee** further agrees that no repairs will be undertaken, and no person or entity will be hired to undertake any repairs without first notifying **Lessor** in writing, at least ten days in advance, of **Lessee**'s intention to undertake or make such repairs, or in the event of an emergency, without first notifying **Lessor** by telephone at (828)262-4530 of the condition and repairs contemplated. Any repairs made to the premises shall be done in a workmanlike manner and shall become the property of **Lessor**. In making any repairs, **Lessee** shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all relevant federal and state laws relating to its operation of a facility and enterprise open to the public, and to its use of paid employees therein.

6. **Alterations**: **Lessee** agrees to neither make nor arrange for any alterations to the premises without the advance written approval of **Lessor**. Should any alterations be approved by **Lessor**, they shall be done in a workmanlike manner, and they shall become the property of **Lessor**. In making any alterations, **Lessee** shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all relevant federal and state laws relating to its operation of a facility and enterprise open to the public, and to its use of paid employees therein.

7. **Compliance with Laws**: In particular, and not by way of exclusion, in any and all its actions and activities, **Lessee** will comply with and hereby certifies its compliance with the Americans with Disabilities Act, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Fair Labor Standards Act, as amended, the Occupational and Health Safety Act, as amended, the North Carolina Employment Security Act, as amended, and the North Carolina Worker's Compensation Act, as amended, to the extent each such law applies to **Lessee** and/or any of its activities. **Lessee** commits that it will act in accordance with its duly adopted by-laws and will comply with all laws related to its status as a non-profit North Carolina Corporation. **Lessee** shall provide **Lessor** with its current by-laws at any time requested by **Lessor**. Should **Lessee**'s corporate status be revoked by the North Carolina Secretary of State, or should the **Lessee**'s non-profit status be revoked by the United States Internal Revenue Service or otherwise, this lease shall immediately terminate.

8. **Assignments or Subletting**: The **Lessee** shall not assign nor sublease the premises without the prior written consent of the **Lessor,** and it may not enter into any sublease or other instrument or agreement which conflicts or interferes with the parking conditions of paragraph 1b of the Lease**.** No sublease or assignment shall be approved unless the sub-lessee or assignee shall provide adequate liability insurance protection for its activities and actions, which insurance protection inures to the benefit of **Lessor**, and unless the sub-lessee or assignee agrees to defend, indemnify and hold harmless **Lessor** from all claims, demands and liability of any kind whatsoever. All proposed subleases or assignments must be in writing and shall be submitted to **Lessor** at least thirty days in advance of the proposed effective date of the sublease or assignment. All proposed assignments and subleases shall include, and all assignees and sub-lessees shall execute, a written waiver absolving Lessor of any and all responsibility for damage which might occur to the assignees or sub-lessees or their personal property. **Lessor** shall have no responsibility to approve any proposed sublease or assignment and may reject any such proposal for any reason which **Lessor**, in its sole discretion, considers adequate. Operation by **Lessee** or sub-lessee of a "Farmer's Market" or like undertaking on the premises shall be subject to this provision and all vendors participating therein are subject to these requirements.

9. **Utilities**: The **Lessee** shall be responsible for paying all utility costs incurred in connection with its use of the premises.

10. **Keys and Locks**: Should **Lessee** change any of the locks or add any locks to any of the doors, windows or other locked feature of the premises, **Lessee** shall, at its own expense, immediately provide duplicate keys to all such locks to **Lessor**. At the end of the lease term, **Lessee** shall return or turn over all keys which relate to the premises to **Lessor**.

11. **Insurance**: The **Lessee** shall provide and maintain insurance coverage against loss, destruction, or other damage to its property located on the premises, as well as against all risks for which **Lessee** is required to indemnify and hold **Lessor** harmless. **Lessee's** liability insurance coverage shall provide coverage for personal injury or bodily harm occurring during the term of the lease, whensoever a claim is made, in an amount no less than two million dollars ($2,000,000.00) per occurrence, and shall insure against injuries or damages which occur as a result of **Lessee's** own operations, as well as the operations of any assignee or sub-lessee approved by **Lessor**, including participants in any "Farmer's Market" or like undertaking on the premises. Certificates of insurance for each insurance policy required to be obtained by **Lessee** in compliance with this paragraph shall be filed and maintained with **Lessor** annually during the term of the Lease. **Lessee** shall immediately advise **Lessor** of any assertion of claim or litigation that may result in a claim of liability against **Lessor**.

12. **Farmer's Market**:

A. All structures, whether buildings, outbuildings, sheds, stands, mobile stands, trailers or otherwise, used in connection with the operation of a "Farmer's Market" must be maintained in a safe and sanitary condition and must be removed at the end of every season, a "season" being defined as that period during which the "Farmer's Market" is occupied and operated on a weekly basis by at least 90% of the usual number of vendors, except for the existing shed areas previously constructed by the Watauga County Farmer's Market (hereafter, the "Shed Area").

B. In order for the structures in the Shed Area to be left on the leased premises, **Lessee** must, before the end of any subsequent "season," provide **Lessor** with the names, addresses and telephone numbers of the structures in the Shed Area, along with proof that **Lessee** or each **Sub-Lessee** owner of the structures in the Shed Area has liability insurance which insures against loss, destruction, or other damage to the Shed Area, as well as against all risks for which each **Sub-Lessee** is required to indemnify and hold **Lessor** harmless. Said liability insurance coverage shall provide coverage for personal injury or bodily harm occurring

during the term of the lease, whensoever a claim is made, in an amount no less than one million dollars ($1,000,000.00) per occurrence, and two million dollars ($2,000,000.00) aggregate coverage.

C. A certificate of insurance for each insurance policy required to be obtained by **Lessee** or its **Sub-Lessees** in compliance with this paragraph shall be filed and maintained with **Lessor** annually during the term of the Lease. **Lessee** shall immediately advise **Lessor** of any assertion of claim or litigation against **Lessee** and/or its **Sub-Lessees**.

D. The **Lessee** and its **Sub-Lessees** shall defend, indemnify and hold harmless the **Lessor** from any and all claims, actions, damages, and liability associated with personal injury and/or damage to property arising from the Shed Area.

E. The **Lessor** reserves the right and may enter the premises used by the Farmer's Market, including the Shed Area, at any reasonable time for the purpose of inspecting said premises and for any other purpose in any way related to **Lessor**'s ownership or **Lessee's** or any **Sub-Lessee's** use of the premises. **Lessor** may move the structures in the Shed Area, if necessary to make repairs, install or maintain utilities, or other reasonable purpose. If it is necessary to move such structures, **Lessor** will, if feasible, first give **Lessee** or its **Sub-Lessees** an opportunity to move them. Should **Lessor** have to move said structures., **Lessor** shall not be responsible for any damage caused by its actions, or resulting from the structures being moved. **Lessee** and its **Sub-lessees** will take no action(s) which are in any way inconsistent with **Lessor**'s ownership interest in the property.

F. Following the termination of the Lease, by action of **Lessor** or the expiration of the term without renewal, any property left by any **Sub-Lessee** or participant in the "Farmer's Market" on the premises shall be considered abandoned and may be retained by or disposed of by **Lessor** as it sees fit.

13. **Lessor's Right to Enter Premises and Reservation of Limited Use of Parking Lot**: The **Lessor** reserves the right and may enter the premises at any reasonable time for the purpose of inspecting said premises, making such repairs as the **Lessor**, in its sole discretion, desires to make, and for any other purpose in any way related to **Lessor**'s ownership or **Lessee's** use of the premises. Lessor reserves the right for itself, its officers, employees, agents and licensees, for concurrent use of the parking areas included within the premises, so long as said use does not significantly interfere with Lessee's and The Farmer's Market's principal uses of the parking areas. In order to avoid such interference, at the inception of the Lease and on the annual anniversary of the inception date thereafter, or as soon thereafter as is practical, Lessee shall notify Lessor, in writing, of its dates of operation and the dates of any special events planned for the coming year. "Special events" for these purposes shall be any planned use of the premises by Lessee for a public exhibit or gathering for which a significant parking need is anticipated. In addition, Lessee shall protect this concurrent parking right by Lessor in any sub-lease, license or other instrument granting parking rights to any other entity or person.

14. **Use of Premises**: The premises are to be used for the purposes of operating an outdoor theater, historical village sites, picnic grounds, and such other activities as may be necessary to support those purposes, including parking in appropriate locations on the premises. Should **Lessee** fail to fail to produce its outdoor theater production for a period of time exceeding one continuous year, this failure shall be considered its abandonment of the premises, and this lease shall terminate. Any specific activity beyond those listed shall be subject to the advance approval of **Lessor**, but **Lessor** shall not unreasonably withhold approval for any such proposed activities, so long as they are in keeping with the general purposes of this lease and are consistent with **Lessee**'s status as a non-profit corporation. In the off-season, **Lessor** shall properly secure and make safe all structures, and shall either remove or secure and make safe any portable structures. The **Lessee** shall

not use or knowingly permit any part of the Leased Premises to be used for any purpose which violates any law, and **Lessee** shall comply with all land use ordinances of **Lessor**. **Lessor** reserves the right to use the premises described herein at such times as said premises are not being used by the **Lessee**, as well as in ways which do not unduly interfere with **Lessee.** **Lessee** will take no action(s) which are in any way inconsistent with **Lessor**'s ownership interest in the property. This Lease does not and shall not be construed to establish or create a partnership, joint venture, franchise or other form of business association between **Lessor** and **Lessee**.

15. **Information Required to be Furnished:** Within ten days of any change, **Lessee** shall provide to **Lessor** any change to its by-laws, shall notify **Lessor** of any change to its management staff, and at the execution of this lease and any time such composition changes, shall advise **Lessor** of the names and addresses of each member of board of directors.

16. **Rules for Operation**: **Lessee** shall have the right to promulgate such rules and regulations as it may deem appropriate for the behavior of patrons and its other licensees and invitees. However, **Lessee** shall provide **Lessor** with a copy of such rules and regulations as it may promulgate reasonably prior to their effective date.

17. **Default**: If the **Lessee** defaults in the payment of rent or in the performance of any of the conditions of this Lease or its responsibilities thereunder, all of which are deemed material, the **Lessor** may give the **Lessee** written notice of default for the first violation. If the **Lessee** does not cure said default within seven (7) days after the receipt of notice thereof, the **Lessor** may terminate this Lease. In the event of any repeated violation by **Lessee** of its responsibilities under this Lease, **Lessor** may terminate the Lease without affording **Lessee** any further opportunity to cure its violation. On the date specified in any such notice of default (unless the default is cured) or notice of termination, this Lease shall terminate and the **Lessee** shall at once quit and surrender the premises to the **Lessor**. If this Lease is terminated by the **Lessor**, it may thereafter resume possession of the premises by any lawful means and remove the **Lessee** and any other occupants and their property therefrom.

18. **Termination of Lease other than Default** : **Lessor** may terminate this Lease without cause, by action of the Town Council. **Lessee** may terminate this Lease without cause upon ten days written notice to **Lessor.**

19. **Abandoned Property**: Following the termination of this lease, by action of **Lessor** or the expiration of the term without renewal, any property left by **Lessee** on the premises shall be considered abandoned and may be retained by or disposed of by **Lessor** as it sees fit. However, **Lessee** shall have a sixty day period following the termination of this lease to remove any historical building(s) designated in accordance with paragraph 2 of this Lease. Thereafter, such building(s) will be deemed donated to **Lessor**.

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

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

22. **Waiver**: **Lessor's** failure to strictly enforce its rights under this Lease shall not constitute a waiver of such rights with respect to any violation of the Lease by **Lessee**, and the parties agree that this provision may itself not be waived by the conduct of the parties.

23. **Partial Invalidity**: If any term, covenant, condition or provision of this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

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

25. **Execution: Lessor** and **Lessee** each represent and warrant to the other that all necessary authorizations and approvals required for execution and performance of this Lease have been given and that the undersigned individual is duly authorized to execute this Lease and bind the party for which it signs.

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

If to **Lessor**, to: Greg Young

Town Manager

Town of Boone

P.O. Drawer 192

Boone, NC 28607

If to **Lessee**, to: Chair, Board of Directors

Southern Appalachian Historical Association

PO Box 295

Boone NC 28607

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

VOTE: Aye - All

Nay - None

ADOPTION OF DBDA CONTRACT

Upon a motion by Council Member Mason, seconded by Council Member Pepin, Council moved to adopt the following contract with the Downtown Boone Development Association:

STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

AGREEMENT BETWEEN

TOWN OF BOONE

AND THE DOWNTOWN BOONE DEVELOPMENT ASSOCIATION, INC.

THIS AGREEMENT ("Agreement") is entered into this ___day of _____, 200__, by and between the TOWN OF BOONE, a North Carolina municipality (hereafter referred to as "the Town") and the DOWNTOWN BOONE DEVELOPMENT ASSOCIATION,

INC., a North Carolina non-profit membership corporation (hereafter referred to as "the DBDA"), collectively referred to as "the Parties."

W I T N E S S E T H:

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

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

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

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

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

WHEREAS, the DBDA desires to enter this contract to engage in activities for which Municipal Service District taxes are authorized, and to act as the Town's agent and representative, to the extent described herein, in meeting the Town's requirements and responsibilities for its continued participation and success in the Main Street Program; and

WHEREAS, the Town wishes to contract with the DBDA for the provision of certain activities for which the expenditure of Municipal Service District taxes are authorized; and the Town further wishes to continue its participation in the Main Street Program and wishes to contract with the DBDA to act as its agent and representative, to the extent described herein, in meeting all of its requirements and responsibilities for its continued participation and success in the Main Street Program; and

WHEREAS, the parties wish to confirm their agreements and commitments in writing;

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

1. **Term**: The term of this Agreement shall be six (6) months, commencing on July 1,2009 and ending on December 31, 2009, but in accordance with the provisions herein, it may be renewed from time to time by the parties. Renewal of this Agreement for any additional periods of time, however, shall only be effective with the approval of the Boone Town Council and the duly elected Board of Directors of the DBDA.

2. **Consideration**: In consideration of the DBDA's performance of the duties and responsibilities set out herein, the Town will pay the DBDA one-half (½) of the Municipal Service District taxes paid to the Town in fiscal year 2008/2009, less any expenses incurred by the Town in the collection of those taxes (hereafter, "the funds").

3. **Responsibilities of the DBDA:** The DBDA shall utilize the funds solely for the following purposes, but may expend funds from other sources as it sees fit so long as they are expended in accordance with pertinent law and the DBDA's own by-laws.

   A. The DBDA may use the funds to create, coordinate and administer District revitalization projects which provide for services or functions, such as additional garbage pick up, which are in addition to or to a greater extent than those

provided or maintained by the Town for the entire town, but such expenditures shall be subject to advance review and permission by the Town's Town Manager;

B. The DBDA shall use the funds to create, coordinate and administer District revitalization projects which at a minimum include:

1. Promotion and developmental activities, such as sponsoring festivals and markets in the downtown area, promoting business investment in the downtown area, helping to coordinate public and private actions in the downtown area, and developing and issuing publications on the downtown area designed to improve the economic well-being of the downtown area;

2. Administering any District revitalization project specifically requested by the Town;

3. Acting as a clearing house for information concerning the availability of properties within the District for purchase or rent, by creating a repository of such information to which District property owners may contribute, as they may wish, and which shall be in a format which will make it broadly available to the public and to persons potentially interested in investment in the District;

4. Without limiting the right of the Town to directly participate therein, participating in all activities requested or required by or of the Town and by the North Carolina Department of Commerce in order for the Town to continue to participate in good standing in the North Carolina Main Street Program, and for the Town to derive all available benefits from its continued participation in the Main Street program;

5. Without limiting the right of the Town to directly participate therein, maintaining all information requested or required by or of the Town in order for for the Town to continue to participate in good standing in the North Carolina Main Street Program, and for the Town to derive all available benefits from its continued participation in the Main Street program;

6. Without limiting the right of the Town to directly participate therein, timely submitting all information requested or required by or of the Town and by the North Carolina Department of Commerce to the Town and to the North Carolina Department of Commerce in order for the Town to continue to participate in good standing in the North Carolina Main Street Program, and for the Town to derive all available benefits from its continued participation in the Main Street program; and

7. Reporting to the Town Council the duly adopted collective views of its membership and its Board of Directors as to those actions and policies which the Town may consider within the District to improve the District's economic well-being.

4. **Activities to Serve entire Municipal Service District:** All activities of the DBDA with the funds shall be undertaken in such manner, insofar as possible, as to provide benefits to and throughout the entire District.

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

Fair Labor Standards Act, as amended, the Occupational and Health Safety Act, as amended, the North Carolina Employment Security Act, as amended, and the North Carolina Worker's Compensation Act, as amended, to the extent each such law applies to the DBDA or any the activity.

6. **Compliance with its By-laws and Organizational Reporting to the Town:** The DBDA will operate and act in accordance with its duly adopted by-laws, including but not limited to the provisions which govern the conduct of the annual meetings of its membership, the notice and quorum requirements for meetings of its board of directors, the selection of its directors and officers, and its prohibition on legislative advocacy. Contemporaneous with the execution of this Agreement, the DBDA shall provide the Town with its current by-laws and a roster of its current board of directors and officers, including their names, addresses, terms and class of membership, and it shall seasonably notify and provide a copy to the Town of any changes in its by-laws or in its board of directors or officers. So long as the DBDA receives Municipal Service District funds, its by-laws shall provide that a member of the Town Council, appointed by the Town Council for a one year term, shall serve as an ex-officio member of its Board of Directors. In addition, so long as it receives Municipal Service District funds, the DBDA shall invite and include in its membership all property owners within the Municipal Service District and all Municipal Service District taxpayers. Should the DBDA' corporate status be revoked by the North Carolina Secretary of State, or should the DBDA's non-profit status be revoked by the United States Internal Revenue Service or otherwise, the DBDA shall immediately notify the Town, and this Agreement shall immediately terminate.

7. **Reporting on its Activities**: At least thirty days prior to the end of the contract period and at such additional times as may be requested by the Town, the DBDA shall report to the Town on its expenditure of Municipal Service District funds and shall submit its proposed work plan for the next anticipated contractual period. Said reports shall include at a minimum descriptions of activities of the DBDA which have taken place during the ending contract period and those activities which are planned for the anticipated contract period. In addition, the report shall disclose all measurable outcomes from the activities of the DBDA which have been supported by the expenditure of the funds during the contract period, and the measurable outcomes anticipated during the anticipated contractual period.

8. **Financial Reporting**: The DBDA shall operate in accordance with generally accepted accounting principles and shall provide the Town with its annual audit as it becomes available, but no later than September 1 each year. The audit must disclosed itemized expenditures by funding source, including such things as expenditures for each specific fringe benefit, rent, capital expenditures, etc. Financial information shall be provided in a form acceptable to the Town and shall include, among other things, an accounting for all funds from all sources received or collected by the DBDA during the reporting period. In addition, the DBDA shall provide such records, verification of the expenditure of the funds, and other such information as requested by the Town. Should the DBDA at any time be advised by a funding, taxing or other governmental entity, or by its accountants, of any misappropriation of funds from any source, or of any malfeasance or misfeasance, it shall immediately report such advice to the Town. Should the DBDA itself discover or determine any wrong doing, misappropriation, malfeasance or misfeasance, it shall immediately report such matter to the Town.

9. **Accountability**: All records of the DBDA shall be available for inspection by the Town Manager or the Town Manager's designee.

10. **Indemnity**: The DBDA is responsible for the proper expenditure of all Municipal Service District tax funds, and it shall indemnify and reimburse the Town for any misuse of said funds.

11. **Default**: If the DBDA defaults in the performance of any of its duties under paragraph 3 of this Agreement, all of which are deemed material, or violates any of the terms of

paragraphs 4, 5, 6, 7, 8, 9 or 10 of this Agreement, all of which are deemed material, the Town may immediately terminate the Agreement or suspend the payment of the funds, at its choice, without prior notice or an opportunity for the DBDA to cure its violation. Should the Town provide notice of default or notice of termination by the Town for any breach of the Agreement, the provision of such notice shall not be interpreted as a waiver of the enforcement of this or any other provision of the Agreement, and it shall not create any future requirement for notice prior to suspension of payments or termination of the Agreement. On the date specified in any such notice of default or notice of termination, this Agreement shall terminate. Should this Agreement be terminated, with or without notice, prior to the full expenditure of the funds by the DBDA, any unexpended Municipal Service District funds shall be immediately and fully remitted to the Town.

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

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

14. **Relationship of Parties:** Each party shall be considered to be an independent contractor in relation to the other, and neither shall be construed to be an agent or representative of the other party except as otherwise provided herein with regard to the North Carolina Main Street Program. Therefore, neither party shall have any liability to a third party for the acts or omissions of the other party. In addition, neither party, nor any of its employees, agents, or contractors, shall be deemed to be employees or agents of the other party. Neither party, nor any of that party's employees, agents or contractors, shall be entitled to compensation for services, worker's compensation, or employee benefits from the other party by virtue of this Agreement or actions taken in furtherance of the Agreement.

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

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

17. **Partial Invalidity**: If any term, covenant, condition or provision of this Agreement shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

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

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

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

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

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

If to the Town, to: Greg Young

Town Manager

Town of Boone

P.O. Drawer 192

Boone, NC 28607

If to the DBDA, to: President

The Downtown Boone Development Association, Inc.

PO Box 362

Boone NC 28607

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

VOTE: Aye - All

Nay - None

BOARD APPOINTMENT - CABLE TV ADVISORY COMMITTEE

Mayor Clawson announced a vacancy on the Cable TV Advisory Committee. She noted that the Clerk will advertise the vacancy in the usual venues.

BOARD APPOINTMENT - GREENWAY, PARKS & GARDENS COMMITTEE

Mayor Clawson announced a vacancy on the Greenway, Parks & Gardens Committee. She opened the floor for nominations. Council Member Phillips nominated Zachary Ollis. Council Member Brantz nominated Dominique Piscopo. With no other nominations, Mayor Clawson called for a vote on the nominations:

Zachary Ollis - 1 (Phillips)

Dominique Piscopo - 4 (Leigh, Mason, Pepin, and Brantz.)

BOARD APPOINTMENT - OUTSIDE AGENCY FUNDING COMMITTEE

Mayor Clawson noted that there is a vacant position on the Outside Agency Funding Committee and that an application has been received from Dr. Denise Levy. Upon a motion by Council Member Mason, seconded by Council Member Pepin, Council moved to appoint Dr. Denise Levy to serve on the Outside Agency Funding Committee.

VOTE: Aye - All
Nay - None

BOARD APPOINTMENT - WATER COMMITTEE

Mayor Clawson pointed out that no applications have been received for the vacant position on the Water Committee. She noted that the Clerk will continue to advertise this vacancy.

BOARD APPOINTMENT - BOARD OF ADJUSTMENT

Mayor Clawson announced that no applications for the vacant resident position on the Board of Adjustment have been received. She noted that the Clerk will continue to advertise this vacancy.

BOARD APPOINTMENT - PLANNING COMMISSION

Mayor Clawson announced that a vacant resident position is open on the Planning Commission and that an application has been received from Greg Simmons for that position. Upon a motion by Council Member Brantz, seconded by Council Member Pepin, Council moved to appoint Greg Simmons to serve on the Planning Commission; the term will expire on June 30, 2012.

VOTE: Aye - All
Nay - None

BOARD APPOINTMENT - ABC BOARD

Mayor Clawson stated that two applications have been received for the vacant position on the ABC Board from Paige Murray and Deborah Ragsdale. Council Member Phillips nominated Paige Murray, who has previously served on the board since its inception, possesses strong leadership qualities, and has been involved in programs to help prevent underage drinking. Council Member Mason nominated Deborah Ragsdale citing her business and financial experience and the fact that she resides within the corporate limits of Boone. With no other nominations, Mayor Clawson called for a vote on the nominations:

Paige Murray - 1 (Phillips)

Deborah Ragsdale - 4 (Members Leigh, Mason, Pepin, and Brantz.)

ANNOUNCEMENT OF BOARD VACANCIES - BOARD OF ADJUSTMENT & TOURISM DEVELOPMENT AUTHORITY

Mayor Clawson announced that an Alternate ETJ position is open on the Board of Adjustment and that two positions on the Tourism Development Authority Board are due to expire on September 30. She noted that the Town Clerk will advertise the vacancies in the usual venues.

MONTHLY WATER USE STATUS REPORT

Public Utilities Director Rick Miller presented the monthly water-use status report **(copy permanently on file in the August 2009 Town Council meeting packet.)**

ADOPTION OF ENCROACHMENT AGREEMENT - CRAYMIE PROJECT

Crae Morton appeared before the Council to request an encroachment agreement with the Town of Boone for improvements to a structure at the intersection of Howard and Depot Streets. He explained that the encroachment will include improvements to the facade, an awning on the front of the building, and placement of benches on the property. He noted that an issue currently exists as to the ownership of the sidewalk area along the property. Upon a motion by Council

Member Mason, seconded by Council Member Brantz, Council moved to adopt the following encroachment agreement for improvements to the facade, an awning, and benches at the property at 158 South Depot Street:

STATE OF NORTH CAROLINA ENCROACHMENT AGREEMENT

COUNTY OF WATAUGA

TOWN OF BOONE

THIS ENCROACHMENT AGREEMENT is made and entered into this the 20th day of August, 2009, by and between the TOWN OF BOONE, party of the firs part; and Craymie LLC, party of the second part.

W-I-T-N-E-S-S-E-T-H

THAT WHEREAS, the party of the second part desires to encroach on public land designated as South Depot and Howard Street with the following: brick facade, awnings and benches (hereinafter referred to as "the facilities").

WHEREAS, it is to the material advantage of the party of the second part to effect this encroachment, and the party of the first part, in the exercise of authority conferred upon it by statute, is willing to permit the encroachment on public land, subject to the conditions of this agreement.

NOW, THEREFORE, IT IS AGREED that the party of the first part hereby grants to the party of the second part the right and privilege to make this encroachment upon the following conditions, to wit:

That the said party of the second part binds and obligates itself, and its successors and assigns, to install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said public land, nor obstruct nor interfere with the proper maintenance thereof, to reimburse the party of the first part for the cost incurred for any repairs or maintenance to its roadways, sidewalks and other structures necessary due to the installation and existence of the facilities of the party of the second part, and if at any time the party of the first part shall require the removal of or changes in the location of the encroaching facilities, that the said party of the second part binds itself, its successors and assigns, to promptly remove or alter the said facilities in order to conform to the said requirements, without any cost to the party of the first part.

That the party of the second part agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and other warning devices for the protection of the public and in the case of encroachment into a street right of way, in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and amendments or supplements thereto. Information as to the above rules and regulations may be obtained from the party of the first part.

To the extent permitted by law, the party of the second part shall be responsible for all liability associated with the encroaching facility. The party of the second part agrees to indemnify and hold harmless the party of the first part from and against all claims based upon actions or omissions occurring during construction and maintenance, damages, losses and expenses, including court costs and attorney fees, arising out of or in any way related to the encroaching facility. The party of the second part shall cause its contractors to name the party of the first part as an additional insured on general liability insurance policies applicable to the project contemplated by this agreement.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such facilities in carrying out its construction and maintenance operations.

The party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the party of the first part. The party of the second part agrees

to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; silting or pollution to the rivers, streams, lakes, reservoirs, other water impoundments; ground surfaces or other property; or pollution of the air. There shall be compliance with applicable all rules and regulations of the North Carolina Sedimentation Control Commission, and all other applicable laws and regulations relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover, the party of the second part agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the satisfaction of the party of the first part. The party of the second part shall comply with all pertinent ordinances, rule, regulations and laws, and failure to do so shall be a basis for revocation of this encroachment agreement by the party of the first part.

That the party of the second part agrees to assume the actual cost of any inspection of the work considered to be necessary by the party of the first part.

That the party of the second part agrees to have available at the encroaching site, at all times during construction, a copy of this agreement showing evidence of approval by the party of the first part. The party of the first part reserves the right to stop all work unless evidence of approval can be shown.

Provided the work referred to in this agreement is being performed on a completed public street open to traffic; the party of the second part agrees to give written notice of when work will begin to the party of the first part.

That in the case of noncompliance with the terms of this agreement by the party of the second part, the party of the first part reserves the right to stop all work until the facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

That it is agreed by both parties that this agreement shall become void if actual construction of the work contemplated herein is not begun and completed within 1 year(s) from the date of this agreement unless written waiver is secured by the party of the second part from the party of the first part.

The party of the first part expressly reserves the unrestricted right to require the party of the second part to change the location of the encroachments described herein at no expense to the party of the first part.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed as of the day and year first above written.

VOTE: Aye - All

Nay - None

REQUESTED APPEARANCE - KRIS FOWLER

Kris Fowler appeared before the Council to request approval of the 5th Annual Toy Run scheduled for Saturday, October 3, 2009, at 11:00 a.m. and to request waiver of the $250 permit fee. He also requested that this event be added for approval annually as the ASU and WHS homecoming parades. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to approve the Special Event permit for the 5th Annual Toy Run, to waive the $250 permit fee, and to add this event as an annual event.

VOTE: Aye - All

Nay - None

REQUESTED APPEARANCE - WILL BRYAN

William Bryan, owner of BeansTalk Coffeehouse, appeared before the Council to request a waiver of the Town ordinance requirement for a mandated grease trap for a food-service business. He stated that to update the plumbing system to comply with the requirements will be extensive and costly. He stated that there is no food preparation on site and that the coffee is

served "to go." Public Utilities Director Rick Miller stated that he has granted the business an "education period" until 2011 to operate without a grease trap. Upon a motion by Council Member Pepin, seconded by Council Member Phillips, Council moved to deny the request from William Bryan for a waiver from grease trap requirements for the BeansTalk Coffeehouse and directed the Public Utilities Department to collect data and gather more information concerning the situation.

VOTE: Aye - All
Nay - None

Before deliberating on the water and sewer requests, Town Attorney Sam Furgiuele questioned the members of the Council on whether or not they have had contact with any of the applicants requesting water and sewer service. All Council members stated that they had not had any significant contact with any of the applicants submitting requests for water and sewer service.

WATER & SEWER REQUEST - MATT LANGSTON

Town Attorney Sam Furgiuele opened a public hearing at 10:26 p.m. to hear sworn testimony from

Jason Hennessee, property owner, on a request for water and sewer service to property located at 603 Blowing Rock Road. He explained that the project will consist of an 11-unit multifamily structure with 44 bedrooms. He pointed out that the property is the location of the old "Library Restaurant." He also explained that the building will include an indoor recreation area. Mr. Hennessee entered into evidence **(Hennessee Exhibit A - on file)** a site plan of the proposed project. Council Member Brantz asked about a time frame for the project. Mr. Hennessee stated that the anticipated completion date is 2010. With no other testimony, Mr. Furgiuele closed the public hearing at 10:33 p.m. Upon a motion by Council Member Phillips, seconded by Council Member Pepin, Council moved to grant the request for 6,006 gallons from the 2010 allotment for property located at 603 Blowing Rock Road.

VOTE: Aye - All
Nay - None

WATER & SEWER REQUEST - TIM HAGAMAN

Town Attorney Sam Furgiuele opened a public hearing at 10:34 p.m. to hear sworn testimony from Public Utilities Director Rick Miller, Ben McKethan, and Greg Parsons on a request for water and sewer service to property located at 1104 Highway 105. Tony di Santi, the attorney representing the applicant, began by explaining that the request is for 8,418 gallons per day for a 101-room hotel. He further explained that the property is conditionally zoned and must following the conditions set forth by the zoning designation. Public Utilities Director Rick Miller stated that all prior allocations to the property have expired. Ben McKethan, representing the Boone/Blowing Rock Lodging Association, spoke against the request from the standpoint that the area has an adequate number of lodging options and that the use of hotels/motels has decreased. Greg Parsons, of Catacorner Investments which owns the property, questioned the validity of information presented by Mr. McKethan. With no other testimony, Mr. Furgiuele closed the public hearing at 10:49 p.m. Upon a motion by Council Member Phillips, seconded by Council Member Brantz, Council moved to grant the request for 8,418 gallons per day from the 2011 allotment for property off Highway 105.

VOTE: Aye - All
Nay - None

WATER & SEWER REQUEST - JOHN WINKLER

Town Attorney Sam Furgiuele opened a public hearing at 10:53 p.m. to hear sworn testimony from

John Winkler, Public Utilities Rick Miller, and Roger Wright on a request for water and sewer service to property located at 2858 Highway 105. Mr. Winkler began by stated that the Council had previously allocated 13,446 gallons for a multifamily complex with retail development in September 2008 which is due to expire next month. He stated that the Council also allocated 2,886 gallons in March 2009 when the project was redesigned to change the retail into multifamily, also. Mr. Winkler explained that a new project is now being developed for the property and that he would like to relinquish all of the water allocations previously granted and apply for a new allocation to the property. Council Member Brantz asked about the time frame for the new project. Mr. Winkler stated he would like to begin grading for the project this fall. He stated that the project has been approved by the Board of Adjustment. Council Member Mason asked why the applicant cannot pay the availability fee for a water extension. Mr. Winkler stated that he cannot obtain financing to pay the availability fee until he is able to get the development permits issued from the Development Services office. Mr. Miller was able to calculate the gallons per day as 17,800 based on information given by Mr. Winkler that the project will have 132 bedrooms. Roger Wright stated that the applicant is not asking for more water but that the amount already allocated to the property be transferred to the new project. He stated that the project will be a planned-unit development and will be constructed using "green" construction techniques. Mr. Miller calculated the availability fee amount to be $ 173,250, which is required to be paid prior to extension of the water allocation. With no further testimony, Mr. Furgiuele closed the public hearing at 11:18 p.m. Upon a motion by Council Member Phillips, seconded by Council Member Brantz, Council moved to allow the applicant to relinquish 16,332 gallons per day previously allocated to this project, as well as 3,468 gallons previously allocated to projects listed at WWWC, LLC, for a total amount of 19,800 gallons and further moved to grant the request for an allocation of 19,800 gallons per day from the 2009 allotment to property located at 2858 Highway 105 and owned by a new LLC , contingent on the completion of an application for water & sewer service at the Public Utilities Department. Council Member Pepin stated that she is not comfortable supporting the request since there is not a complete application detailing information about the new project on which to base a decision.

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

WATER & SEWER REQUEST - FIRST PRESBYTERIAN CHURCH

Town Attorney Sam Furgiuele opened a public hearing at 11:24 p.m. to hear sworn testimony from Michael Trew, project engineer, Anna Lehman, and Public Utilities Director Rick Miller on a request for water and sewer service for property located off Deerfield Road. Michael Trew, the project engineer, explained that the structure needs water for fire suppression purposes due to the size. He stated that the applicant is willing to join the Town's water system when it becomes available. Mr. Trew noted that the sewer line has been tested and certified by officials from the Town and the State. Council Member Mason asked if a 12-inch line will be adequate. Public Utilities Director Rick Miller stated that size line will be adequate for fire suppression and water use. Anna Lehman, who is a member of the First Presbyterian Church Building Committee, stated that the church must vacate its current building by July 1, 2011. With no other testimony, Mr. Furgiuele closed the public hearing at 11:32 p.m. Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to grant the request for water for fire suppression for the First Presbyterian Church location off Deerfield Road. Council Member Mason stated that discussion of the future growth of this area is very much needed. Council Member Pepin stated that she cannot support this request because this development is outside of the Town limits and ETJ area.

VOTE: Aye - 3 (Phillips, Mason, Brantz)
Nay - 2 (Leigh, Pepin)

CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to enter Closed Session at 11:35 p.m. pursuant to NCGS 143-318.11a)3) to hear the following items:

-Discussion Regarding Daniel Boone Native Garden lease.

-Legal Advice Regarding Potential UDO Violation.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Pepin, seconded by Council Member Mason, Council moved to exit Closed Session at 12:49 a.m.

VOTE: Aye - All
Nay - None

ADJOURNMENT

Upon a motion by Council Member Pepin, seconded by Council Member Phillips, Council moved to adjourn at 12:50 a.m.

VOTE: Aye - All
Nay - None

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Deputy Town Clerk Mayor