

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
SEPTEMBER 17, 2009**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, September 17, 2009, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Rennie Brantz, Jamie Leigh and Stephen Phillips. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Town Clerk Freida Van Allen, Assistant to the Town Manager Jim Byrne, Interim Police Chief Curtis Main, Fire Chief Reggie Hassler, Public Works Director Blake Brown, Utilities Director Rick Miller, Human Resources Director Peri Moretz and Development Coordinator David Graham.

ANNOUNCEMENTS

Mayor Clawson pointed out the new artwork in the Council Chambers that is sponsored by the Watauga County Arts Council.

RETIREMENT RECOGNITION

Town Manager Greg Young recognized Captain Curtis Main for his 28 plus years of service with the Town of Boone Police Department.

Town Manager Greg Young recognized Master Police Officer Carl Underwood for his 11 plus years of service with the Town of Boone Police Department.

TENTATIVE AGENDA ADOPTION

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

1. Addition of Item 4.H. - Consent Agenda Item - Approval of WHS Homecoming Parade permit.
2. Deletion of Item 6.D. - Presentation of Proposed Text Amendment - Historic Preservation Powers.
3. Deletion of Item 6.O. - Scheduling of Special Meeting - Water Study Committee.
4. Addition of Item 6.P. - Board Appointment - Town/Gown Committee.
5. Addition of Item 6.T. - Discussion of Sign Moratorium Extension.
6. Deletion of Items 7.A. & 7.B. - Requested Appearance - Mike Curcio.
7. Deletion of Item 7.F. - Requested Appearance - Cherry Johnson.
8. Addition of Closed Session Item - Legal Advice regarding a water intake and the Howard Street project.

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

VOTE: Aye - All
 Nay - None
 Absent-1(Pepin)

CONSENT AGENDA ADOPTION

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

Minutes: August 3, 2009 - Special Meeting.
 August 3, 2009 - Quarterly Public Hearing.
 August 20, 2009 - Regular Meeting.

Tax Releases & Refunds: July 2009:

TAX REFUNDS

JULY, 2009

<u>Taxpayer</u>	Year	Amount	Description
MARTIN, JAMES WAYNE	2008	28.90	TURN IN TAG
REEVES, JOHN A REEVES, JILL D	2008	8.04	TURN IN TAG
LONG, JAMES BLAKELEY	2008	6.93	TURN IN TAG
		43.87	

**TAX RELEASES
JULY, 2009**

<u>Taxpayer</u>	Year	<u>Amount</u>	Description
MCGUIRE, ERNEST CLINT	2009	71.41	INCORRECT SITUS
JONES, GARRETT MYRON	2009	215.56	INCORRECT SITUS
LAWS, JOHN LEWIS & FRANCES	2009	3.70	SOLD VEHICLE
ASU FOUNDATION	2009	36.08	EXEMPT
NIX, AIMEE MARIE	2009	11.81	TURN IN TAG
PAGE, JOSEPH RANDALL	2008	1.11	TURN IN TAG
KING, CHARLES JESSE	2008	2.59	TURN IN TAG
		342.26	

Adoption of Resolution - To Apply for Rural Center Grant.

RESOLUTION

WHEREAS, in the summer of 2008, the North Carolina General Assembly included a \$50 million appropriation to the North Carolina Rural Economic Development Center in the FY2007-2009 state budget, for the purpose of making grants to rural communities in need of water and wastewater infrastructure improvements; and

WHEREAS, the Town of Boone has need for and intends to construct or rehabilitate a publicly-owned treatment works or an alternate wastewater system, for wastewater collection systems or for water supply and distribution systems, project described as the U 4020 project; and

WHEREAS, the Town of Boone intends to request grant assistance from the Supplemental Grants Program for the project;

NOW, THEREFORE BE IT RESOLVED, BY THE TOWN COUNCIL OF THE TOWN OF BOONE:

That the Town of Boone will arrange financing for all remaining costs of the project, if approved for a grant.

That the Town of Boone will provide for efficient operation and maintenance of the project on completion of construction thereof.

That Mayor Loretta Clawson, and successors so titled, is hereby authorized to execute and file an application on behalf of the Town of Boone with the NCREDC (Rural Center) for a grant to assist in the construction of the project described above.

That, and successors so titled, is hereby authorized and directed to furnish such information as the Rural Center may request in connection with such application or the project; to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That the Town of Boone has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to the grants pertaining thereto.

ADOPTED this the 17th, day of September, 2009.

ATTEST:

Mayor

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 118)

Adoption of Grant Project Ordinance - Water Capital Improvement Plan.

**GRANT PROJECT ORDINANCE
NORTH CAROLINA RURAL ECONOMIC DEVELOPMENT CENTER INC.
CONTRACT REF #: 2009-416-40101-112
ORDINANCE #09-12**

BE IT ORDAINED by the Town Council of the Town of Boone, North Carolina, that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant project ordinance is hereby adopted.

SECTION 1. The project authorized is to contract with an engineering firm to prepare a water capital improvement plan.

SECTION 2. The scope of the work is anticipated to be completed by June 2010.

SECTION 3. The officers of this unit are hereby directed to proceed with the grant project within the terms of the grant agreement documents, and the budget contained herein.

SECTION 4. The following amounts are appropriated for the project:

Preparation of a water capital improvement plan	\$45,000
Grant administration	<u>\$ 2,250</u>
Total	\$47,250

SECTION 5. The following revenues are anticipated to be available to complete this project.

NC Rural Economic Development Center, Inc. – Grant	\$30,650
Local match – Town of Boone	<u>\$16,600</u>
Total	\$47,250

SECTION 6. The Finance Officer is hereby directed to maintain within the Grant Project Funds sufficient specific detailed accounting records to satisfy the requirements of the grantor agency and the grant agreements. The terms of the grant agreement shall also be met.

SECTION 7. Copies of this grant project ordinance shall be furnished to the Clerk to the Town Council, to the Budget Officer & the Finance Officer for direction in carrying out this project.

Adopted this 17th day of September 2009.

Loretta Clawson, Mayor

Freida Van Allen, Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGE(S) 387)

Adoption of Grant Project Ordinance - Winklers Creek Sedimentation Removal.

**GRANT PROJECT ORDINANCE
NORTH CAROLINA RURAL ECONOMIC DEVELOPMENT CENTER INC.
CONTRACT REF #: 2009-388-40101-112
ORDINANCE #09-13**

BE IT ORDAINED by the Town Council of the Town of Boone, North Carolina, that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant project ordinance is hereby adopted.

SECTION 1. The project authorized is to remove sedimentation from Winkler's Creek raw water intake in order to increase the intake's capacity for storage.

SECTION 2. The scope of the work is anticipated to be completed by December 2010.

SECTION 3. The officers of this unit are hereby directed to proceed with the grant project within the terms of the grant agreement documents, and the budget contained herein.

SECTION 4. The following amounts are appropriated for the project:

Improvement of access road	\$ 40,000
Sediment removal	\$ 190,000
Construction mobilization	\$ 30,000
Construction of dewatering basin	\$ 265,000
Final disposal of dewatered materials	\$ 240,000
Contingency	\$ 100,000
Construction administration	\$ 20,000
Grant administration	\$ 25,000
CDBG administration	\$ 60,000
Engineering	\$ 80,000
Field surveying	\$ 10,000
Inspection	\$ 40,000
Total	<u>\$1,100,000</u>

SECTION 5. The following revenues are anticipated to be available to complete this project.

NC Rural Economic Development Center, Inc. – Grant	\$ 500,000
CDBG match	\$ 600,000
Total	<u>\$1,100,000</u>

SECTION 6. The Finance Officer is hereby directed to maintain within the Grant Project Funds sufficient specific detailed accounting records to satisfy the requirements of the grantor agency and the grant agreements. The terms of the grant agreement shall also be met.

SECTION 7. Copies of this grant project ordinance shall be furnished to the Clerk to the Town Council, to the Budget Officer & the Finance Officer for direction in carrying out this project.

Adopted this 17th day of September 2009.

Loretta Clawson, Mayor

Freida VanAllen, Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGE(S) 388-389)

Adoption of Code Amendment - Taxi Operator.

§ 110.05 CONDITIONS OF PERMIT; ISSUANCE AND FEE.

(A) If the Town Council finds that the applicant has not been convicted off a felony; a violation of any federal or state statute relating to the use, possession, or sale of intoxicating liquors; any federal or state statute relating to prostitution; any federal or state statute relating to the use, possession or sale of narcotic drugs; and that the applicant is a citizen of the united States and is not a habitual user or intoxicating liquors or narcotic drugs; and has not been a habitual violator of traffic laws, and is a careful and prudent driver, the Town Council ~~may~~ **shall** issue a permit to the applicant to drive a taxicab upon receipt of a \$15.00 fee. **This section, however, shall not otherwise prohibit the Town from issuing a permit to a person who, although not fully meeting each of the foregoing criteria, has otherwise demonstrated the ability to safely engage in the business of transporting passengers for hire, as determined by the Town of Boone Police Department.**

Adoption of Amendment - Personnel Policy.

Section 14. Separation Allowances for Law-Enforcement Officers.

- (a) Every sworn law enforcement officer, as defined by N.C. Gen. Stat. § 128-21(11b) or N.C. Gen. Stat. § 143-166.50, shall be eligible for a separation allowance, as provided by N.C. Gen. Stat. § 143-166.42. Beginning in the month in which the officer retires on a basic service retirement under the provisions of N.C. Gen. Stat. 128-27(a), the Town shall pay an annual separation allowance equal to eighty-five hundredths percent (0.85%) of the annual equivalent of the base rate of compensation most recently applicable to the officer for each year of creditable service. The allowance shall be paid in equal installments on the payroll frequency used by the employer. To qualify for the allowance, the officer shall:
 - (1) Have:
 - (i) completed 30 or more years of creditable service: or
 - (ii) have attained 55 years of age and completed five or more years of creditable service; and
 - (2) Not have attained 62 years of age; and
 - (3) Have completed at least five years of continuous service as a law enforcement officer as herein defined immediately preceding a service retirement. Any break in the continuous service required by this subsection because of disability retirement or disability salary continuation benefits shall not adversely affect an officer's qualification to receive the allowance, provided the officer returns to service within 45 days after the disability benefits cease and is otherwise qualified to receive the allowance.
- (b) As used in this section, "creditable service" means the service for which credit is allowed under the retirement system of which the officer is a member, provided that at least fifty percent (50%) of the service is as a law enforcement officer as herein defined.

- (c) Payment to a retired officer under the provisions of this section shall cease at the first of:
- (1) The death of the officer;
 - (2) The last day of the month in which the officer attains 62 years of age; or
 - (3) The first day of reemployment by a local government employer in any capacity, except that a retired officer may be employed in a public safety position in a capacity not requiring participation in the Local Governmental Employees' Retirement System without disqualifying him or herself from receiving the allowance.
- (d) This section does not affect the benefits to which an individual may be entitled from State, local, federal, or private retirement systems. The benefits payable under this section shall not be subject to any increases in salary or retirement allowances that may be authorized by local government employers or for retired employees of local governments.
- (e) The law enforcement officer, after separation from employment with the Town, must notify the Town of any new employment by a local government employer in any capacity. In the event a former law enforcement officer fails to notify the Town of employment, the Town may suspend further payments until information is provided which establishes that the new employment is non-disqualifying, at which point the individual shall be paid any funds which were withheld, and payments shall resume.
- (f) This amendment shall not entitle any law enforcement officer to retroactive payments of any benefit for the period prior to the effective date, nor prospectively deny payment of a separation allowance to an officer who was previously determined to be eligible, unless a change in eligibility occurs subsequent to enactment.

This Amendment shall be effective July 31, 2009 at 12:55 p.m.

Approval of WHS Homecoming Parade Special Event Permit. - Thursday, October 15, 2009 at 4:00 p.m. on King Street

VOTE: Aye - All
 Nay - None
 Absent-1(Pepin)

PUBLIC COMMENT

Melanie and Scott Patterson of Melanie's Restaurant appeared before Council to discuss the football game parking. Ms. Patterson felt the parking situation, especially the traffic cones, was not encouraging to patrons of downtown businesses. Ms. Patterson said she lost more than \$900 of business that day. Ms. Patterson felt the Town is trying to correct a parking situation that really does not need to be corrected. Ms. Patterson felt the parking spaces along King Street should not be monitored during game day parking; however, the Town should continue to charge for spaces in downtown lots. No further action was taken.

DISCUSSION OF PROPOSED TEXT AMENDMENT - SPECIAL FLOOD HAZARD AREA REGULATIONS

Development Coordinator David Graham presented a proposed text amendment that will modify the current flood plain regulations in the UDO. Mr. Graham explained that the Town received the draft flood insurance rate maps in 2008 and that the public comment period has elapsed. Mr. Graham said the flood insurance rate maps will be effective on December 3, 2009 and that the Town should have corresponding flood plain regulations in place by that date. Council member Mason noted that new terms are being proposed in the text amendment. Mr. Graham said that

new terms are proposed since the Town is modeling the regulations based upon the State of North Carolina model flood damage prevention ordinance. Council member Brantz felt that a general summary should be presented explaining the new flood maps and proposed text in “laymen’s terms” because the public will find the new maps and text difficult to comprehend. Council member Phillips agreed that the proposed changes should be summarized for the public. On a motion by Council member Mason, seconded by Council member Phillips, Council moved to send the proposed flood hazard text and map amendment to the November 2, 2009 quarterly public hearing and that staff notify the public of the text and map amendment in the Watauga Democrat via a 1/2 page ad and to mail individual notices to property owners who reside outside the newspaper circulation area.

VOTE: Aye-All
 Nay-None
 Absent-1(Pepin)

DISCUSSION OF ZONING MAP AMENDMENTS - INCLUSION OF IRIS LANE IN GRAND BOULEVARD NEIGHBORHOOD CONSERVATION DISTRICT

Council member Brantz said that a number of residents of Iris Lane have requested inclusion of their neighborhood in the Grand Boulevard Neighborhood Conservation district. Council member Brantz said there are four single-family homes with a four-five room apartment house on Iris Lane and that there have been some complaints of noise. On a motion by Council member Brantz, seconded by Council member Mason, Council moved to have staff prepare a map amendment to be considered at the November 2, 2009 quarterly public hearing that would include Iris Lane in the Grand Boulevard Neighborhood Conservation district.

VOTE: Aye - All
 Nay - None
 Absent-1(Pepin)

REQUEST PERMISSION FOR COMMUNITY APPEARANCE COMMISSION INPUT - AFFORDABLE HOUSING TEXT AMENDMENTS

Council member Mason said the Affordable Housing Task Force is preparing a text amendment that regulates high-density, single-family housing. Council member Mason requested permission to have the Community Appearance Commission review the proposed text amendment before presenting it to Council. Town Attorney Sam Furguele explained the proposed text amendment and said Council will review projects on a case-by-case basis using the Conditional-Use process. Mr. Furguele said this is the first step toward developing this type of high-density, single-family zone. On a motion by Council member Phillips, seconded by Council member Brantz, Council moved to grant permission to the Community Appearance Commission to review the proposed affordable housing task force text amendment.

VOTE: Aye - All
 Nay - None
 Absent-1(Pepin)

DISCUSSION OF RESOLUTION - ADOPTED BY THE COORDINATED RECYCLING COMMITTEE FOR PLACEMENT OF RECYCLING CONTAINERS IN THE TOWN OF BOONE

Council member Phillips presented the following resolution and said representatives from the County, Town and ASU have met and would like to propose a text amendment to require new apartment complexes to provide recycling containers, including plastic recycling receptacles.

***Resolution to Require an Area for Recycling Containers
at Apartment Buildings where Dumpsters are Required or where Curb-side Recycling is not
Available***

Whereas, the Town of Boone tries to promote recycling as a positive environmental practice; and

Whereas, one method of promoting recycling is to make recycling opportunities more convenient; and

Whereas, many Town of Boone citizens who reside in apartment buildings would like to recycle, but are not provided adequate on-site recycling opportunities; and

Whereas, the Town of Boone subsidizes the provider of disposal services to collect recycling at apartment buildings as long as the management of the apartment building provides recycling containers (either by purchasing or renting the containers); and

Whereas, when these recycling containers are provided, they are often times placed vicariously so that the containers are not visible or so that the containers are not properly supported causing them to turn over and be difficult to use; and

Whereas, most apartment buildings are required to provide a dumpster area(s) to adequately serve the number of potential users at the building, and

Whereas, the cost to include a recycling area as part of the dumpster area(s) would be relatively minor and should not add significantly to the cost of the dumpster area(s); and

Whereas, currently the disposal service company can accommodate up to five 96-Gallon Recycling Containers at any given recycling area (1 Container for each type of recyclable: Paper/Pasteboard, Aluminum, Clear Glass, Green Glass, Brown Glass) (Plastic is discussed later);

Therefore, the Coordinated Recycling Committee strongly supports the Town of Boone requiring a recycling area to be part of the dumpster area(s) at apartment buildings. (If locating the recycling area at a dumpster pad proves difficult, the recycling area must be located in another accessible area of the apartment building grounds.)

The dumpster/recycling area(s) should be adequate to serve the number of occupants at the apartment building and be accessible to the occupants.

The dimensions of the recycling area should be adequate to hold the number of recycling containers accepted by the disposal service.

To help accommodate space needs, the recycling area should be included any and all of the required Recreation Space, Green Space, Open Space, and/or Livability Space ratios.

Futhermore, whereas the disposal service company is currently unable to pickup recyclable plastic at apartment buildings due to lack of capacity; and

Whereas, per North Carolina Solid Waste Laws, plastic will be banned from landfill disposal effective October 2009;

Therefore, the Coordinated Recycling Committee urges the Town of Boone to search for suitable areas within the Town limits where recycling containers for plastic could be available to the whole community at convenient hours.

Council member Phillips said since the State is banning plastic from landfills effective October 1st, the Town is initiating a pilot program to provide locations and containers for plastic recycling. Public Works Director Blake Brown said the Town is ready to start the pilot program once Council approves it and will monitor the program for participation. Mr. Brown noted that the Town currently holds a 77% participation rate for recycling. Council member Mason said

the site locations need to be convenient to all citizens. On a motion by Council member Phillips, seconded by Council member Brantz, Council moved to allow staff to prepare a proposed text amendment to the UDO that would require an area for recycling containers at apartment complexes where dumpsters are required or where curbside recycling service is not provided by the Town. The proposed text would follow the guidelines as set forth in the resolution above. The proposed text amendment should be available for public comment and presented at the November 2, 2009 quarterly public hearing.

VOTE: Aye-All
 Nay-None
 Absent-1(Pepin)

On a motion by Council member Phillips, seconded by Council member Brantz, Council moved to allow staff to work with GDS, once its contract is reviewed, to start a two-month pilot program in which the Town would locate a suitable area within the town limits where recycling receptacles, including plastic, would be available to the community as a whole at convenient hours. This area, within the town limits, could be either on Town property, such as the Horn in the West, or if permissible on privately held property--such as a shopping center.

VOTE: Aye - All
 Nay - None
 Absent-1(Pepin)

APPROVAL OF ENCROACHMENT AGREEMENT - BOONE HALL PROJECTING SIGN

Development Coordinator David Graham said this encroachment agreement is for a projecting sign for Boone Hall. On a motion by Council member Phillips, seconded by Council member Brantz, Council moved to adopt the following agreement:

STATE OF NORTH CAROLINA ENCROACHMENT AGREEMENT
COUNTY OF WATAUGA
TOWN OF BOONE

THIS ENCROACHMENT AGREEMENT is made and entered into this the 17th day of September 2009, by and between the TOWN OF BOONE, party of the first part; and The Winkler Organization 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 at 805 West King Street with the following: projecting sign (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
 Absent-1(Pepin)

APPROVAL OF ENCROACHMENT AGREEMENT - HAIRCUT 101 PROJECTING SIGN

Development Coordinator David Graham said this encroachment agreement is for a projecting sign for Haircut 101. On a motion by Council member Mason, seconded by Council member Phillips, Council moved to adopt the following agreement:

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA
TOWN OF BOONE

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the 17th day of September 2009, by and between the TOWN OF BOONE, party of the first part; and John J. Mena 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 at 174 South Depot Street with the following: projecting sign (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
 Absent-1(Pepin)

APPROVAL OF AGREEMENT - PERSONNEL SERVICES - NC LEAGUE OF MUNICIPALITIES

Town Manager Greg Young said this agreement is to employ a facilitator to conduct a parking charette for downtown. Council member Mason explained that the DBDA wants to review how the Town can improve parking. Council member Mason said staff from Development Services along with McLaurin Parking will make presentations to allow the Town to review what is working with downtown parking and what it not working. Council member Mason said the

charette will present short-term policies that may help the parking situation long-term. Mayor Clawson felt the charette was a good idea especially if the Town looks at the broad view. Council member Leigh asked who will attend the charette. Council member Mason said everyone will be encouraged to attend, citizens, merchants, and students. Town Manager Young said the facilitator will not be able to facilitate a meeting until November. After little discussion, on a motion by Council member Phillips, seconded by Council member Mason, Council moved to adopt the following agreement:

**MEMORANDUM OF AGREEMENT
PERSONNEL SERVICE TOWN OF
BOONE**

This agreement is made and entered into this 17th day of September, 2009, by and between the North Carolina League of Municipalities, an unincorporated association, hereinafter called "League," and the Town of Boone, hereinafter called "Town."

WITNESSETH

In consideration of the amounts of money hereinafter agree to be paid, and in consideration of the other conditions hereinafter agreed to by the Town, the League offers to perform the following services:

Scope of Services

See Attachment A, Scope of Services, which is incorporated into and made a part of this Memorandum of Agreement by reference.

Time for Performance

The time for performance will be approximately 2 months. The MAPS Group will work with the Town to plan an effective agenda prior to the facilitation. The facilitation services will be conducted during the month of November and/or December according to the needs of the Town. Changes in this date may be agreed upon by the Town and the MAPS Group.

Costs

The total cost of the proposed work will be based on \$800.00 per day plus actual expenses and will be paid in one installment at the completion of the contract. The League will bill in one lump sum payment. Total costs are estimated at \$2,500.00.

If more time is required for this project than described in the attached proposal, this assistance will be billed at \$800.00 per day plus actual expenses incurred. The Town agrees to submit payment immediately upon receipt of the bill.

Execution

If this Memorandum of Agreement is not executed and returned to the League Office within thirty (30) days from the submission date, the time frame for performance may have to be renegotiated.

If the terms of this contract are acceptable, please sign two (2) copies and return same to the League office.

EXHIBIT A

**FACILITATION SERVICES
Town of Boone**

Program Objective

This proposal is designed to assist the Town in the planning, training, facilitation, and reporting of results from a group facilitation project. Objectives for the project include planning and conducting a process that will allow the Town to obtain stakeholder feedback and priorities in addressing parking in the downtown business district. Planning a process that achieves the desired outcomes, assisting with establishing an agenda, and providing facilitation of the group which will help the group make effective use of time, consider valid information, and make informed decisions that reflect the participation and commitment of group members are all potential activities involved.

Facilitation and Services to be Provided

The Town will be responsible for 1) notifying participants of the planning meeting, facilitation schedule, and location; 2) assuring notification of all appropriate stakeholders, and 3) arranging for the facilities and any logistics associated with the facilitation.

The MAPS Group will be responsible for providing planning and facilitation services and reporting results of the facilitation. The facilitators will be neutral parties focused on effective group process.

Proposed Time Frame

The retreat will take place at times and places to be mutually agreed upon by the MAPS Group and the Town, tentatively in Boone November and/or December 2009. This date may be changed through agreement of both parties.

Costs

Costs for planning, training, and facilitation are based on 2 days of facilitated by Becky Veazy, plus actual expenses for mileage, meals, motel, etc. Costs are estimated at \$2,500. Should additional days be needed for the project they will be billed at \$800 per day, plus actual expenses.

Arrangements

The Town will make all physical arrangements for the facilitation in terms of location and logistics, and will notify all participants of the designated place, time, and date for the facilitation.

Consultants

The consultant for the retreat will be Rebecca Veazy.

VOTE: Aye - All
 Nay - None
 Absent-1(Pepin)

APPROVAL OF ENGINEERING CONTRACT - WINKLER'S CREEK INLET PROJECT

Assistant to the Manager Jim Byrne said this contract will begin the initial phase of the environmental restoration of the Winkler's Creek inlet project. Assistant to the Manager Byrne said that the Town Attorney needs to review the contract and make changes. On a motion by Council member Mason, seconded by Council member Phillips, Council moved to adopt the following contract, subject to Town Attorney approval.

STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

Cavanaugh & Associates, P.A. appreciates the opportunity to provide Engineering Services for the project as referenced below:

Re: Winkler's Creek Intake Restoration
C&A No. M11.09.000

THIS AGREEMENT, made and entered into this _____ day of _____, 2009, by and between **Cavanaugh & Associates, P.A.**, their successors or assigns, (hereinafter called "ENGINEER" and **the Town of Boone**, their successors or assigns, (hereinafter called "CLIENT"). Either ENGINEER or CLIENT shall not assign this agreement without the prior written consent of the other.

Project Description and Scope of Services:

Cavanaugh & Associates, P.A. will provide Engineering Services under this proposal in accordance with the following scope of services. The scope described below is based on a total project budget of \$600,000.

1. Surveying
Providing topography of existing conditions for pond area and haul road:
 - 1.1. Provide 2 foot contours;
 - 1.2. Set horizontal and vertical control (Temporary Bench Mark);
 - 1.3. Locate any visible utilities;
 - 1.4. Provide a digital drawing in AutoCAD format to Cavanaugh Engineering.
2. Geotechnical Investigation
 - 2.1. Conduct core sampling to determine particle size distribution of the impoundment substrate.
3. Design
 - 3.1. Site Plan;
 - 3.2. Grading, Storm, Erosion Control for Access;
 - 3.3. Grading, Storm, Erosion Control for Dewatering;
 - 3.4. Grading, Storm, Erosion Control for Demobilization;
 - 3.5. Construction Details & Specifications.
4. Permitting
 - 4.1. NCDOT Driveway (temporary);
 - 4.2. NCDENR - Land Quality - ESC;
 - 4.3. NCDENR - Water Quality;
 - 4.4. USACE - Dredge and Fill - Maintenance;
 - 4.5. NC Public Water Supply Section - Intake.
5. Construction Administration
 - 5.1. Bid Package Preparation;
 - 5.2. Bid Advertisement Preparation;
 - 5.3. Bid Advertisement Coordination;
 - 5.4. Bid Package Distribution;
 - 5.5. Conduct Pre-Bid Conference;
 - 5.6. Preparation of Contractor Bid Clarifications; Conduct Bid Opening; Perform Post-Bid Package Review;
 - 5.7. Prepare Notice of Award;
 - 5.8. Prepare Contract Packages;
 - 5.9. Gather Contractor Information (Insurance, Bonds, etc.);
 - 5.10. Facilitate Contract Execution;
 - 5.11. Prepare Notice to Proceed.
 - 5.12. Conduct Pre-Construction Meeting.
6. Construction Observation
 - 6.1. Field Observation;
 - 6.2. Prepare Weekly Reports;
 - 6.3. Prepare Monthly Reports;
 - 6.4. Maintain Project Files;
 - 6.5. Prepare Record Drawings.

The above scope does not include:

§ Any other service not specifically described in the above scope of services.

CLIENT’S Responsibilities:

- 1. Single Representative: The CLIENT shall designate a single representative with respect to the services to be rendered under this Agreement who shall act on behalf of the CLIENT and issue instructions to the ENGINEER.
- 2. Criteria and Information: The CLIENT shall provide all criteria and full information as to its requirements for the Project, including objectives, constraints, projected demands and service areas, and performance requirements.
- 3. Access: The CLIENT shall arrange access for the ENGINEER to all public and private properties where such access is required for the performance of services under this Agreement.
- 4. Reviews: The CLIENT shall examine all work products presented by the ENGINEER and shall render decisions pertaining thereto within a reasonable time as not to delay the services of the ENGINEER.
- 5. Regulatory Fees: The CLIENT shall furnish all required fees for regulatory approval of the project.

A condition is hidden if concealed by existing finishes or is not capable of investigation by reasonable visual observation. If the ENGINEER has reason to believe that such a condition may exist, the CLIENT shall authorize and pay all const associated with the investigation of such a condition. If (1) the CLIENT fails to authorize such investigation or correction after due notification, or (2) the ENGINEER has no reason to believe that such a condition exists, the CLIENT is responsible for all risks associated with this condition, and the ENGINEER shall not be responsible for the existing condition nor any resulting damages to persons or property.

Fee Arrangement

The fee for the Engineering Services described in the above scope will be compensated as follows:

Surveying	4,530
Geotechnical Investigation	3,500
Engineering Design	28,025
Specifications	6,440
Permitting	11,600
Bid and Construction Administration	7,480
Construction Observation	22,160
Total Project Fee	\$83,735

This fee does not include any permit application fees. Such fees will be paid directly by the CLIENT.

Additional Services

Cavanaugh & Associates, P.A. can provide services that are required in addition to those being provided and outlined in this proposal at hourly rates. If additional services are required, the rates for those additional services will be negotiated or we can provide an additional proposal in lieu of using hourly rates.

Billing/Payment

All invoices are due upon receipt. Interest will be due at 1 ½% per month on outstanding invoices in excess of 30 days. If payment is not made by the stated date on the invoice, **Cavanaugh & Associates, P.A.** may exercise the right to terminate the performance of services without further obligation to the Client. Payment will still be due for services completed to the time this option is exercised. In the event that any portion or all of an account remains unpaid for 90 days after billing, the Client shall pay the cost of collection, including attorney's fees.

Professional Liability

ENGINEER maintains professional liability coverage for damages as a result of our negligent acts, errors, or omissions. Upon request, a certificate of insurance can be provided as proof of coverage.

Termination of Services

Either party may terminate this agreement upon 10 days written notice should the other fail to perform his/her obligations. In the event of termination, the Client shall pay the ENGINEER for all services, rendered to the date of termination, all-reimbursable expenses, and reimbursable termination expenses. This project has a minimum termination fee of \$500.00 Five Hundred Dollars.

Period of Service

If the ENGINEER is delayed by circumstances outside of his control, then the ENGINEER shall promptly notify the CLIENT in writing of such delay. If the delay will cause a monetary impact to the ENGINEER, then the ENGINEER shall notify the CLIENT in writing of such projected costs.

Mediation

In addition to and prior to arbitration, the parties shall endeavor to settle disputes by mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise. Demand for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for mediation shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations.

Acceptance

This Agreement represents the entire and integrated Agreement between CLIENT and ENGINEER. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement. Any alteration made to this Agreement by either party will render the Agreement null and void. If this Agreement meets with your approval, please sign and return both copies to our office to serve as our contractual agreement and authorization to proceed. We will execute and return one copy to you. We look forward to working with you on this project.

IN WITNESS THEREOF, the parties have caused this Agreement to be signed by their duly authorized officers in duplicate originals, the day and year first above written.

VOTE: Aye - All
 Nay - None
 Absent-1(Pepin)

APPROVAL OF UTILITY AGREEMENT - PROJECT U-4020

Public Services Director Blake Brown said this contract is for the burial of conduit for thirteen crosslines at a cost of \$258,432. Council member Brantz asked if the funds have been budgeted. Town Manager Greg Young said this amount is included with the one million dollars budgeted for the project. Council member Mason asked if the Town is making progress with the amenities the Town requested for the project. Public Services Director Brown said that he met with DOT representatives yesterday and that the DOT is working on including all the amenities the Town

requested. On a motion by Council member Brantz, seconded by Council member Phillips, Council moved to adopt the following contract:

NORTH CAROLINA

UTILITY AGREEMENT

WATAUGA COUNTY

DATE: 5/14/2009

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

Project: U-4020

AND

WBS Elements: 35015.3.1

TOWN OF BOONE

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

WITNESSETH:

WHEREAS, the Department has prepared and adopted plans to make certain street and highway improvements under Project U-4020, in Watauga County, said plans consists of installing a utility conduit system in 13 locations; Watauga County; said project having a right-of-way width as shown on the project plans on file with the Department's office in Raleigh, North Carolina; and,

WHEREAS, the parties hereto wish to enter into an agreement for certain utility work to be performed by the Department's construction contractor with full reimbursement by the Municipality for the costs thereof as hereinafter set out.

NOW, THEREFORE, it is agreed as follows:

1. The Department shall place provisions in the construction contract for Project U-4020 Watauga County, for the contractor to install a utility conduit system. Said work shall be accomplished in accordance with project special provisions attached hereto as Exhibit "A", cost estimate attached hereto as Exhibit "B" and the plan sheets attached hereto as Exhibit "C".
2. The Municipality shall be responsible for the utility conduit cost as shown on the attached Exhibit "C". The estimated cost to the Municipality is \$258,432.00 as show in the attached Exhibit "B". It is understood by both parties that this is an estimated cost and is subject to change. The Municipality shall reimburse the Department for said costs as follows:
 - A. Upon completion of the utility work, reimbursement shall be made in three (3) annual principal installments with the first payment due within sixty (60) days of invoicing by the Department but not later than one (1) year after project is let to contract. The second and third installment payments shall be due at one (1) year intervals on the same date as the first payment is due. The first and second payments will be based on the actual bid prices and actual quantities used. The Department shall be responsible for billing the Municipality at the appropriate time.
 - B. If the Municipality does not pay said invoice within sixty (60) days of the date of the invoice, the Department shall charge a late payment penalty and interest on any unpaid balance due in accordance with G.S. 147-86.23 and G.S. 105.241.21.
 - C. Any cost incurred due to additional utility work requested by the Municipality after award of the construction contract, shall be solely the responsibility of the Municipality. The Municipality shall reimburse the Department 100% of the additional utility cost.
3. In the event the Municipality fails for any reason to pay the Department in accordance with the provisions for payment hereinabove provided, North Carolina General Statute

136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to said Municipality by North Carolina General Statute, Section 136-41.1, until such time as the Department has received payment in full.

4. Upon the satisfactory completion of the relocations and adjustments of the utility lines covered under this Agreement, the Municipality shall assume normal maintenance operations to the said utility lines. Upon completion of the construction of the highway project, the Municipality shall release the Department from any and all claims for damages in connection with adjustments made to its utility lines; and, further, the Municipality shall release the Department of any future responsibility for the cost of maintenance to said utility lines. Said releases shall be deemed to be given by the Municipality upon completion of construction of the project and its acceptance by the Department from its contractor unless the Municipality notifies the Department, in writing, to the contrary prior to the Department's acceptance of the project.
5. It is further agreed that the following provisions shall apply regarding the utilities covered in this Agreement.
 - A. The Municipality obligates itself to service and to maintain its facilities to be retained and installed over and along the highway within the Department's right-of-way limits in accordance with the mandate of the North Carolina General Statutes and such other laws, rules, and regulations as have been or may be validly enacted or adopted, now or hereafter.
 - B. If at any time the Department shall require the removal of or changes in the location of the encroaching facilities which are being relocated at the Municipality's expense, the Municipality binds itself, its successors and assigns, to promptly remove or alter said facilities, in order to conform to the said requirement (if applicable per G.S. 136-27.1), without any cost to the Department.

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

VOTE: Aye - All
 Nay - None
 Absent-1(Pepin)

DISCUSSION OF COUNCIL MEETING SCHEDULE

Town Clerk Freida Van Allen presented Council with three options regarding the implementation of two regular meetings per month. Option #1 - 1st Thursday of each month at 9:00 a.m. and the 3rd Thursday of each month at 6:30 p.m. Option #2 - 1st and 3rd Tuesday of each month at 6:30 p.m. and Option #3 - 3rd Tuesday and 3rd Thursday at 6:30 p.m. Mayor Clawson suggested that Council try Option #3 for a couple of months. On a motion by Council member Mason, seconded by Council member Phillips, Council moved to implement Option #3 effective January 1, 2010, to re-evaluate the results in April 2010, and to amend the necessary documents to conduct two meetings per month.

VOTE: Aye - All
 Nay - None
 Absent-1(Pepin)

REQUEST TO SCHEDULE A PUBLIC HEARING - BOONE 2030 LAND USE PLAN

Development Coordinator David Graham said the Urban Forest Management Plan is also ready for public comment and requested that Council consider adding the plan to the Land Use Master Plan public hearing. On a motion by Council member Mason, seconded by Council member Leigh, Council moved to conduct public hearings for the Land Use Master Plan and Urban Forestry Management Plan on Monday, October 5th at 6:00 p.m.

VOTE: Aye - All
 Nay - None
 Absent-1(Pepin)

SCHEDULING OF SPECIAL MEETINGS - DBDA MEETINGS

On a motion by Council member Mason, seconded by Council member Leigh, Council moved to schedule the following special meetings in order to allow the entire Council to attend the upcoming DBDA meetings:

Monday, September 21, 2009, 6:00 p.m. - Broyhill Inn
Thursday, October 1, 2009, 9:00 a.m. - Watauga County Library
Thursday, November 5, 2009, 9:00 a.m. - Watauga County Library
Thursday, December 3, 2009, 9:00 a.m. - Watauga County Library

VOTE: Aye - All
 Nay - None
 Absent-1(Pepin)

SCHEDULE SPECIAL MEETING - INTERGOVERNMENTAL RETREAT

On a motion by Council member Brantz, seconded by Council member Mason, Council moved to schedule a special meeting for Monday, September 28, 2009 at 5:00 p.m. at the Broyhill Inn and Conference Center in order for Council to attend the next Intergovernmental Retreat.

VOTE: Aye - All
 Nay - None
 Absent-1(Pepin)

BOARD APPOINTMENT - CABLE TV ADVISORY COMMITTEE

There were no applications for the open position on the Cable TV Advisory Committee. The Town Clerk will continue to advertise the position.

BOARD APPOINTMENT - TOURISM DEVELOPMENT AUTHORITY BOARD

Council member Mason said there are two open positions on the Tourism Development Authority. One is for a taxable tourist accommodation and the other is for a restaurant owner/operator located within town. Doug Uzelac submitted an application for the taxable tourist accommodation position. On a motion by Council member Phillips, seconded by Council member Brantz, Council moved to appoint Doug Uzelac to an open position on the TDA board. His term will expire September 30, 2012. The Town Clerk will continue to advertise the open position.

VOTE: Aye - All
 Nay - None
 Absent-1(Pepin)

BOARD APPOINTMENT - WATER STUDY COMMITTEE

On a motion by Council member Mason, seconded by Council member Leigh, Council moved to appoint Zachary Ollis to the Water Study Committee.

VOTE: Aye - All
 Nay - None
 Absent-1(Pepin)

BOARD APPOINTMENT - BOARD OF ADJUSTMENT

Mayor Clawson pointed out there is a resident position and an alternate ETJ position on the Board of Adjustment. Christopher Winsor submitted an application for the resident position. On a motion by Council member Phillips, seconded by Council member Mason, Council moved to appoint Christopher Winsor to the resident position on the Board of Adjustment. His term will expire June 30, 2010. The Town Clerk will continue to advertise the open position.

VOTE: Aye - All
 Nay - None
 Absent-1(Pepin)

BOARD APPOINTMENT - ASU TOWN/GOWN COMMITTEE

On a motion by Council member Phillips, seconded by Council member Brantz, Council moved to appoint Jeannie Futrelle to the ASU Town/Gown Committee.

VOTE: Aye - All
 Nay - None
 Absent-1(Pepin)

ANNOUNCEMENT OF BOARD VACANCIES - TREE BOARD

Development Coordinator David Graham announced that all five positions on the Tree Board are now open. The Town Clerk will advertise the vacancies and the qualifications needed to serve and appointments will be made at the October meeting.

MONTHLY WATER USE STATUS REPORT

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

APPROVAL OF BUDGET AMENDMENTS

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

DESCRIPTION	ACCOUNT #	TO:	FROM:
BEER & WINE TAX	010-000-000-413300	\$39,600.00	
APPROPRIATED FUND BALANCE-GENERAL FUND	010-000-000-499900		(\$39,600.00)
WIDE AREA NETWORK	010-411-000-549111	\$8,232.00	
REPAIR & MAINTENANCE EQUIPMENT - FIRE DEPT	010-500-350-521201	\$1,061.00	
REPAIR & MAINTENANCE EQUIPMENT - WWTP	030-700-805-521201	\$6,077.00	
MISCELLANEOUS REVENUE - GENERAL FUND	010-000-000-489900		(\$9,293.00)
MISCELLANEOUS REVENUE - W&S FUND	030-000-000-489900		(\$6,077.00)
CAPITAL OUTLAY - OTHER IMPROVEMENTS KING ST	010-417-000-574001	\$229,000.00	
APPROPRIATED FUND BALANCE - GENERAL FUND	010-000-000-499900		(\$229,000.00)
REPAIR & MAINTENANCE VEHICLES - POLICE DEPT	010-500-300-525301	\$1,594.00	
MISCELLANEOUS REVENUE	010-000-000-489900		(\$1,594.00)
TRANSFER TO LAW ENFORCEMENT SEPARATION ALLOWANCE	010-500-300-598042	\$314.00	

APPROPRIATED FUND BALANCE - GENERAL FUND	010-000-000-499900		(\$314.00)
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VOTE: Aye - All
 Nay - None
 Absent-1(Pepin)

Mayor Clawson declared a break at 8:05 p.m. Council reconvened at 8:15 p.m.

DISCUSSION OF SIGN MORATORIUM EXTENSION PUBLIC HEARING

Town Attorney Sam Furguele said the Town needs to conduct a public hearing at the October meeting to consider extension of the sign moratorium. On a motion by Council member Mason, seconded by Council member Leigh, Council moved to schedule a public hearing on extension of the sign moratorium for the October 15, 2009 meeting and to advertise for this meeting.

VOTE: Aye - All
 Nay - None
 Absent-1(Pepin)

REQUESTED APPEARANCE - DEBBIE RAGSDALE

Debbie Ragsdale, member of the Boone ABC board, appeared before Council and presented a year-end report on revenues collected at the Boone ABC store. Ms. Ragsdale said the store has realized a 55% increase more than 08/09 sales and that the last quarter distribution to the Town equals \$263,563.75.

REQUESTED APPEARANCE - REV. BRAD FERRINGTON

Reverend Brad Ferrington, Campus Minister of the Appalachian Wesley Foundation, appeared before Council to request approval of a Special Events Permit for the Jimmy Smith 500 to be held at the Jimmy Smith Park. Reverend Ferrington explained that this fundraiser will be a walkathon similar to a Crop Walk or the Avon Walk for Breast Cancer. Reverend Ferrington said all proceeds raised will support the campus ministry and the Wine to Water ministry. Reverend Ferrington requested that the permit be granted for Saturday, October 31, 2009 from 7:00 a.m. to 7:00 p.m. and that one lane of Rivers Street be closed to accommodate the event. Reverend Ferrington also requested that the \$1,500 fee be waived. Interim Police Chief Curtis Main voiced his concern about the number of people expected in the park and felt that the park is not a sufficiently large venue. Chief Main also noted that the NC Department of Transportation must grant permission for the lane closure. Council member Mason asked what costs the fee will cover. Town Manager Greg Young said that crews from Public Works would be employed to erect and remove barricades and signage for the event. After a lengthy discussion regarding safety issues and the use of Town crews, Council suggested that ASU provide the security and traffic control for the event. On a motion by Council member Mason, seconded by Council member Phillips, Council moved to grant the Special Events Permit for the Jimmy Smith 500 and to waive the \$1,500 fee contingent upon the following:

1. Liability insurance must be provided for the event.
2. A letter of approval from the NC Department of Transportation regarding the lane closure along Rivers Street must be provided.
3. A letter of approval from Appalachian State University indicating that ASU staff will provide security and traffic safety measures for pedestrians must be supplied. Included in the letter must be a statement regarding the use of the adjacent parking lot as a staging area.
4. Traffic safety measures will include proper signage, barricades and egress capability for the sidewalk.

VOTE: Aye - All
 Nay - None
 Absent-1(Pepin)

REQUESTED APPEARANCE - CHERRY JOHNSON

Cherry Johnson appeared before Council to introduce folklorist Mark Freed to the Council and the community. Mr. Freed spoke of his work with the Watauga County Arts Council, how his programs include many local artists and that he is particularly proud of the Junior Appalachian Musicians' program. Council member Brantz exclaimed that Freed is a great teacher and organizer and that these programs are a wonderful opportunity for all citizens.

WATER & SEWER REQUEST - MEGA BUILDERS LLC

Town Attorney Sam Furguele opened a public hearing at 9:07 p.m. to hear sworn testimony from Director of Development for Mega Builders Francis Forde, Professional Engineer Alan Crees and Public Utilities Director Rick Miller on a request for water and sewer service to property located at 1785 Highway 105. Mr. Forde said this property is currently being used as the High Country Inn and that Mega Builders has plans to renovate the property into an apartment complex. Council member Mason asked how students would travel to the ASU campus. Mr. Forde said the property is in proximity to an AppalCART bus stop. Council member Mason asked if plans include development on the property located outside the Town limits. Mr. Forde said no. Council member Mason asked if Mega Builders is willing to annex the portion of property located outside the town limits. Mr. Forde said he did not see a problem in annexing the remaining portion of the property. Council member Brantz asked what the next step is in renovation of this property. Mr. Forde said approval is needed from the Board of Adjustment, bank loans must be secured, property must be purchased, and then renovation of the property could begin. Council member Brantz asked what the renovations will entail. Mr. Forde said the renovation would convert a hotel room into a one-bedroom efficiency apartment. Council member Brantz asked if this property would be offered to ASU for purchase. Mr. Forde said that was not Mega Builders' intention. Project engineer Alan Crees said sidewalks will be provided in front of the facility and that the DOT does not anticipate much more traffic from the apartment complex. Public Utilities Director Rick Miller explained that, according to his calculations, the project will use 10,420 gallons of water per day; however, Council granted 10,250 gallons of water per day from the 2010 allotment to the property. This allocation will expire October 28, 2009. Mr. Miller also reported that each apartment will have to be individually metered. Council member Brantz asked how much the availability fee for the project would cost. Public Utilities Director Rick Miller said the cost is \$85,965. Mr. Forde argued that Mega Builders should not have to individually meter the apartments since larger apartment complexes are allowed one meter. Council member Brantz asked how much the rent is for each apartment. Mr. Forde said between \$400-\$500 per month. There being no further questions or comments the public hearing closed at 9:31 p.m. After very little discussion, on a motion by Council member Mason, seconded by Council member Brantz, Council moved to allocate 10,420 gallons of water per day from the 2010 allotment contingent upon the following stipulations:

1. The portion of property not currently located in town must be annexed and zoned accordingly.
2. The property owner must coordinate a transportation plan for apartment dwellers that will not impact adjoining neighborhoods.
3. The property owner must comply with the Town's water and sewer code.
4. The High Country Inn water allocation of 10,250 gallons per day must be revoked.

VOTE: Aye-All
 Nay-None
 Absent-1(Pepin)

WATER & SEWER REQUEST - EAGLEWOOD DEVELOPMENT

Town Attorney Sam Furguele opened a public hearing at 9:33 p.m. to hear sworn testimony from Manager of Eaglewood Development Jay Adams, Public Utilities Director Rick Miller, Public Works Director Blake Brown and Development Coordinator David Graham to hear a request for water and sewer service to property located off Maryah Drive. Mr. Adams said the property is located behind Coldwell Banker off Highway 105. Mr. Adams plans to construct a

36-unit apartment complex with a total of 126 bedrooms for a total water of 18,900 gallons per day. Mr. Adams said he plans to construct the complexes on the R-3 portion of the property and that he is aware that a pump station and water tank must be installed in order to serve the property with water. Council member Mason asked about the time-frame of the project. Mr. Adams said the project will need Board of Adjustment approval before construction can begin and that he hopes the project is completed by June 2010. Council member Mason asked if a bus stop will be provided at the complex. Mr. Adams said yes, that the stop will be provided at the top of the property and that walking trails may be installed to the rear of the Broyhill Inn property. Council member Leigh pointed out that the property is very steep and asked Mr. Adams if he anticipates any problems. Mr. Adams said no, that the highest elevation of the property is 3,453 feet. Council member Phillips asked about the buffering planned for the project. Mr. Adams said the top of the apartment buildings will not be visible because of the natural buffering of the property. Council member Brantz asked if the driveway can accommodate the number of vehicles anticipated. Public Utilities Director Rick Miller said he was unsure about the vehicles, but that the roadway can accommodate water and sewer lines. Council member Brantz asked why a pump station and storage tank are required for the project. Mr. Miller said that these items are a requirement of all projects located in the secondary pressure zone. Council member Brantz asked how much the availability fee for the project will be. Mr. Miller said the fee will be \$185,000. Council member Brantz again asked about the capability of the roadway to accommodate all the vehicles. Public Works Director Blake Brown said yes but that the driveway entrance may have to be modified somewhat. Council member Brantz asked if the project will have difficulty with the steep-slope regulations. Development Coordinator David Graham said he was unsure, that the Town has regulations, and that the project must follow them. There being no further comments or questions, the public hearing closed at 9:56 p.m. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to allocate 18,630 gallons of water per day from the 2011 allotment contingent upon the following stipulations:

1. The applicant must comply with all Town Ordinances, including the Water and Sewer Code and Ordinance 05-01 regarding the extension of water into the secondary pressure zone.
2. The applicant must provide a transportation plan for the development that will minimize the traffic impact to major thoroughfares and the adjoining neighborhood.

VOTE: Aye-All
 Nay-None
 Absent-1(Pepin)

CLOSED SESSION

On a motion by Council member Brantz, seconded by Council member Mason, Council moved to enter Closed Session at 9:59 p.m. pursuant to NCGS 143-318.11a)3) to receive legal advice regarding the water intake and Howard Street project.

VOTE: Aye - All
 Nay - None
 Absent-1(Pepin)

On a motion by Council member Brantz, seconded by Council member Leigh, Council moved to exit Closed Session at 10:49 p.m.

VOTE: Aye-All
 Nay-None
 Absent-1(Pepin)

ADJOURNMENT

Upon a motion by Council Member Pepin, seconded by Council Member Phillips, Council moved to adjourn at 10:50 p.m.

VOTE: Aye - All

Nay - None
Absent-1(Pepin)

Town Clerk

Mayor