

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
SEPTEMBER 18, 2008**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, September 18, 2008, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Janet Pepin, Liz Aycock, and Stephen Phillips. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Deputy Town Clerk Kimberly Brown, Assistant to the Town Manager Jim Byrne, Police Chief Bill Post, Fire Chief Reggie Hassler, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, Human Resources Director Peri Moretz, and Development Services Director John Spear.

ANNOUNCEMENTS

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

Mayor Clawson made the following announcement: "In conjunction with the statewide Fall Litter Sweep 2008 campaign issued by Governor Easley for September 20th through October 4th, 2008, the Town of Boone will hold a Fall Boone Clean-Up Day on Saturday, September 20, 2008. 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."

Mayor Clawson invited Boone Police Chief Bill Post to recognize Captain William Greene and Sergeant Jim Harrison of the Boone Police Department who are both retiring at the end of the month. Chief Post stated that Captain William Greene has served the citizens of Boone in the Police Department in various positions since 1980. He praised Captain Greene for the exceptional job he has done for the town. Captain Greene thanked the Mayor, Council, and Town Manager for the support he has received throughout the years. He also thanked his wife, Audrey, for her support. Chief Post presented Captain Greene with his service weapon. Chief Post then thanked Sergeant Jim Harrison for his many years of exceptional service with the Boone police force. He informed the Council that Sergeant Harrison has worked in law enforcement since 1974 and was hired by the Town in 1991. Sergeant Harrison also thanked the Mayor, Council, and Town Manager for their support of the Police Department. Chief Post presented Sergeant Harrison with his service weapon and stated that both officers will be greatly missed. Mayor Clawson and members of the Council thanked both officers for their loyal service to the Town of Boone and its citizens.

TENTATIVE AGENDA ADOPTION

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

1. Addition of Item 8.G. - Jack Pepper - Request for water and sewer service to restaurant addition.
2. Addition of Items to Closed Session:
 - Legal advice regarding UDO and Water & Sewer Code violations.
 - Legal advice regarding the Public Display Ordinance.
 - Legal advice and possible action regarding property acquisition.

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 Phillips, seconded by Council Member Brantz, Council moved to adopt the following consent agenda items:

- Minutes:
- August 8, 2008 - Special Meeting.
 - August 14, 2008 - Quarterly Public Hearing.
 - August 20, 2008 - Special Meeting.
 - August 20, 2008 - Special Meeting.
 - August 21, 2008 - Regular Meeting.

Tax Releases & Refunds - July 2008.

TAX RELEASES
JULY, 2008

Taxpayer	Year	Amount	Description
POLLITT, PHOEBE ANN	2008	\$21.44	TURN IN TAG
STORIES CARPET SERVICE INC	2008	18.50	ADJ FOR BILL OF SALE
GODWIN, JAMES H GODWIN, TERESA W	2008	3.18	ADJUST TO BILL OF SALE
MCGUIRE, ERNEST CLINT	2008	37.00	INCORRECT FIRE DISTRICT
APPALACHAIN SOUTH INC	2008	61.94	TURN IN TAG
P SANDRA KADYK LIVING TRUST KADYK, J MARC	2008	25.60	TURN IN TAG
KADYK, JAN MARC	2008	6.02	TURN IN TAG
TAYLOR, MATTHEW SION	2007	10.43	VEHICLE REPOSSESSED
ANASTASIA PETROS dba SUPER FLY	2007	2.04	OUT OF BUSINESS 01/15/2006
MCCOY, PATRICK JOSEPH MCCOY, MARGARET MUNDY	2007	81.84	SOLD VEHICLE
JONES, ADAM DREW	2007	43.40	SOLD VEHICLE
		\$311.39	

MUNICIPAL SERVICE DISTRICT
TAX RELEASES
JULY, 2008

Taxpayer	Year	Amount	Description
ANASTASIA PETROS dba SUPER FLY	2007	1.16	OUT OF BUSINESS 01/15/2006
		1.16	

TAX REFUNDS
JULY, 2008

Taxpayer	Year	Amount	Description
KNIGHT, OSCAR DARRYL	2007	\$19.10	TURN IN TAG
P SANDRA KADYK LIVING TRUST KADYK, J MARC	2007	29.53	TURN IN TAG
TOTAL		\$48.63	

Adoption of Revised Grant Project Ordinance - ASU Interconnection

REVISED
ORDINANCE #08-05

GRANT PROJECT ORDINANCE
NORTH CAROLINA RURALECONOMIC DEVELOPMENT CENTER INC.
CONTRACT REF#: 2008-182-40101-112

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 construct a water interconnection between Appalachian State University & the Town of Boone, North Carolina.

SECTION 2. The scope of the work is anticipated to be completed by June 2009.

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:

Construction of Infrastructure for Water Interconnection Between Appalachian State University & the Town of Boone, NC	<u>\$336,000</u>
Total	\$336,000

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

NC Rural Economic Development Center, Inc. - Grant	\$168,000
Appalachian State University	<u>\$168,000</u>
Total	\$336,000

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 the 21st day of August, 2008.
Revised this the 18th day of September, 2008.

ATTEST: Mayor

Town Clerk

Adoption of Revised Grant Project Ordinance - Blowing Rock Interconnect:

REVISED
ORDINANCE #08-06

GRANT PROJECT ORDINANCE
NORTH CAROLINA RURAL ECONOMIC DEVELOPMENT CENTER, INC.
CONTRACT REF#: 2008-258-40101-112

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 construct an emergency water interconnection between the Towns of Boone & Blowing Rock, North Carolina.

SECTION 2. The scope of the work is anticipated to be completed within 34 weeks.

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:

Construction of Infrastructure for Emergency Water Interconnection Between the Towns of Boone & Blowing Rock, NC	<u>\$4,050,000</u>
Total	\$4,050,000

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

NC Rural Economic Development Center, Inc. - Grant	\$1,000,000
Town of Blowing Rock, NC	<u>\$3,050,000</u>
Total	\$4,050,000

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 the 21st day of August, 2008.
Revised this the 18th day of September, 2008.

ATTEST:

Mayor

Town Clerk

Adoption of Resolution - Affirmation of Water & Sewer Rates:

**RESOLUTION AFFIRMING THAT THE WATER AND SEWER RATES
FOR 5,000 GALLONS USAGE ARE AT LEAST 15%
OF THE 2000-YEAR CENSUS ANNUAL MEDIAN INCOME**

WHEREAS, the North Carolina Rural Economic Development Center requires that all recipients of the 2008 Clean Water Partners Program funding establish or affirm that their residential water and sewer rates for 5,000 gallons usage at 1.5% of the annual median household income, as of the last census; and

WHEREAS, the Town of Boone's water and sewer rates exceed the North Carolina Rural Economic Development Center's water and sewer rate structure;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Boone:

That the Town of Boone affirms that the water and sewer rate structure for 5,000 gallons usage at 1.5% of the annual median income as of the 2000-year census.

Adopted the 18th day of September, 2008.

ATTEST:

Mayor

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 75)

Adoption of Conflict of Interest Statement:

The Town of Boone, North Carolina, is a municipal corporation organized and chartered under the laws of North Carolina. All Town officials and employees are aware of, and in full compliance with NCGS 14-234, "Director of public trust contracting for his own benefit, participation in business transaction involving public funds; exemptions."

ATTEST:

Loretta Clawson, Mayor
September 18, 2008

Town Clerk

Adoption of Resolution - Amending the Mutual Aid Policy for Law Enforcement:

**RESOLUTION AMENDING THE TOWN'S POLICY FOR MUTUAL ASSISTANCE
BETWEEN BOONE POLICE DEPARTMENT
AND OTHER LAW ENFORCEMENT AGENCIES**

WHEREAS, pursuant to North Carolina General Statutes §§ 160A-288 and 160A-288.2, the Town Council of the Town of Boone wishes to provide for and authorize the continued cooperation and mutual assistance by and between the Town of Boone Police Department (hereafter "Boone Police") and other State, county and municipal law enforcement agencies, including campus police; and

WHEREAS, the Town Council of the Town of Boone further wishes to continue provide for the cooperation and mutual assistance by and between the Boone Police and federal law enforcement agencies; and

WHEREAS, since adoption of the Town of Boone's previous policy there have been modifications in practice and a need for clarification of certain provisions that support modification of the Mutual Assistance Agreement and minor parts of the previously adopted policy so that emergency requests for assistance are not unnecessarily encumbered and a prompt response by the assisting law enforcement agency is not interfered with; and

WHEREAS, it is deemed in the best interests of the citizens of Boone to adopt an amended policy and agreement whereby reciprocal law enforcement assistance can quickly be both rendered to and obtained from other governmental jurisdictions and law enforcement agencies; and

WHEREAS, these amendments are necessary for effective law enforcement for the protection of the citizens of Boone;

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

1. The “Mutual Assistance Agreement” utilized by the Town in providing assistance to other law enforcement agencies is amended, as follows, with deletion to the current agreement shown as “strike throughs” and new language shown in bold, but for such minor changes as are implicit in order to conform the policy to and support this revised agreement, the previously adopted policy of the Town shall remain in full force and effect:

MUTUAL ASSISTANCE AGREEMENT BETWEEN BOONE POLICE DEPARTMENT AND

THIS AGREEMENT is made and entered into this ____ day of _____, 20____, by and between the Town of Boone, North Carolina Police Department and _____, pursuant to authority granted by the North Carolina General Statutes §160A-288 (160-288.2 for State Agencies) for the mutual assistance of law enforcement agencies. The party to this Agreement requesting assistance from the other party with regard to any specific request is hereinafter referred to as the “Requesting Party,” and the party providing assistance with regard to any specific request is hereinafter referred to as the “Assisting Party.”

1. TERM OF AGREEMENT: This agreement shall remain in effect from _____, _____ until _____, _____.
2. The Parties agree as follows:
 - A. Each of the parties will respond to requests for temporary assistance from the other party by providing personnel, equipment and/or supplies, unless the assisting party does not have the necessary resources to render the requested aid and assistance. **A request for personnel assistance shall presume to include a request for the equipment and supplies routinely issued by the designated personnel in the ordinary and regular course of their law enforcement employment with the assisting agency, so, for example, a request for the assistance of two police officers shall be presumed to include a request for the use of their police vehicles, service weapons, handcuffs, etc., and the written request need not separately designate such equipment and supplies.**
 - B. All requests for temporary assistance shall be in writing **and** signed by the head of the requesting party, ~~and shall specify the personnel, equipment and/or supplies needed, the reason for the request, and the approximate duration of the requesting party’s need for such personnel, equipment and/or supplies.~~ **For purposes of the aforesaid requests, “Head of the Requesting Party” means any director or chief officer of a law-enforcement agency, including the chief of police of a local or county police department and the sheriff of a county, or an officer of the department to whom the head of that agency has delegated authority to make or grant requests under this section, but only one officer in the agency shall have this delegated authority at any one time. The Chief of Police of the Town of Boone may designate the individual officer with such authority through the Department’s General Orders. The required “writing” under this section may be electronic in nature, such as an e-mail request, or may be transmitted by electronic means or facsimile, and the required signature may be electronic and in the following format: *s/John Smith, Sheriff*. All written requests made by or to the Town of Boone shall be retained by the Boone Chief of Police for a sufficient period to establish compliance with this agreement for the duration of any criminal prosecutions which might involve personnel of an assisting agency.**
 - C. When the request for assistance is in the nature of an emergency, the requesting agency may verbally specify the personnel, equipment and/or

supplies needed, the reason for the request, and the approximate duration of the requesting party’s need for such personnel, equipment and/or supplies, but such verbal request shall be accompanied by written confirmation of the request, such as “per our conversation, requesting two officers. *s/John Smith, Sheriff*”

- D. **When the request for assistance is non-emergency in nature, the requesting agency shall specify in its written request the personnel, equipment and/or supplies needed, the reason for the request, and the approximate duration of the requesting party’s need for such personnel, equipment and/or supplies.**

- E. When called upon by the other party for assistance and when operating within the jurisdiction of the other party, the personnel of the assisting party shall be subject to the lawful operational commands of their superior officers in the requesting party, and they shall have the same jurisdiction, powers, rights, privileges and immunities as the personnel of the requesting party in addition to those they normally possess.

- F. For personnel and administrative purposes, the assisting party shall accept all responsibility for any personnel provided to the requesting party, including responsibility for pay, worker’s compensation and all other personnel benefits of its employees, as if such personnel are operating within the jurisdiction of the assisting party;

- G. When personnel from the assisting party are working with the requesting party in the requesting party’s jurisdiction, and when such personnel from the assisting party are operating under the orders or operational commands of the requesting party’s superior officers, the requesting party will accept liability for the acts of the assisting party’s personnel so operating, and will indemnify and defend the assisting party and the governmental unit under which it operates, from any liability which may result from the actions or omissions of personnel provided by the assisting party.

- H. **In any instance when equipment or supplies are provided to the requesting party without personnel of the assisting party to operate the equipment or utilize the supplies, with the intention that personnel of the requesting party will operate the equipment or utilize the supplies requested, the requesting party shall be required to also execute a “Waiver, Reimbursement and Indemnification Agreement” taking responsibility for damages and injuries caused by the equipment or supplies, as well as any damage to the equipment itself while the equipment is within the possession of the requesting party.**

- I.

_____	(Printed Name):
Bill Post_____	Title:
Chief of Police_____	Requesting Agency:
Boone Police Department	

THIS RESOLUTION IS EFFECTIVE UPON ADOPTION.

Adopted this 18th day of September, 2008.

Attest:	_____
	Mayor

Town Clerk

(RESOLUTION TO BY TYPED IN BOOK 3, PAGES 76-78)

Adoption of Ordinance #05-01 Amendments:

ORDINANCE 05-01

WHEREAS, the Town of Boone has adopted a water system hydraulic analysis and master plan completed by W.K. Dickson; and

WHEREAS, the water system hydraulic analysis and master plan has revealed that the Town of Boone has a very limited remaining capacity in its water distribution system; and

WHEREAS, the Town of Boone has begun planning for alternative raw water sources and possible water treatment plant expansion, but at this time does not know whether, to what extent, and within what time frame the Town may be able to add to its raw water sources; and

WHEREAS, The Town of Boone Water and Sewer Use Ordinance provides for the provision by the Town of water and sewer services both within the corporate limits and outside the corporate limits, including with the extra-territorial jurisdiction (ETJ) of the Town and beyond the boundaries of the Town and its ETJ; and

WHEREAS, during its planning process and until new sources for raw water are developed, the Town must closely monitor and prioritize the distribution of water to new applicants for water service; and

WHEREAS, the Town of Boone's water system was designed to provide water service only in the primary pressure zone, but through *ad hoc* decisions made with respect to individual requests, water service has at times been extended into the secondary pressure zone without the Town having studied the overall effects and costs of the general extension of water services into the secondary pressure zone, and those extensions have caused unexpected construction, engineering and fire protection problems; and

WHEREAS, the Boone Town Council desires to amend the existing policies in the Town of Boone Water and Sewer Use Ordinance so as to establish priorities for the availability of water to new customers and to afford itself the necessary time within which to determine the future ability of the Town to serve the needs of its citizens and to assess the desirability of permanently amending the Water and Sewer Code to prioritize the future distribution of services;

NOW, BE IT THEREFORE RESOLVED that pursuant to its police powers created under N.C. Gen. Stat. ' 160A-174, in order to provide for the health and welfare of the citizens of Boone, and pursuant to N.C. Gen. Stat. ' 160A-312, which confers upon the Town the authority to protect and regulate its water distribution system through the adoption of reasonable rules, the Boone Town Council hereby adopts the following policy concerning the provision of water service to new customers. For its stated duration, unless extended, to the extent the following creates any conflict with the Town of Boone Water and Sewer Ordinance, the following provisions supercede and control the provision of water by the Town of Boone:

1. To the extent feasible and during the term of this Resolution, the Town shall allocate its remaining water usage gallons, evenly in yearly increments of 50,000 gallons for a four year period beginning January 1, 2008, along with any unused allocation from a prior calendar year made available in the following calendar year. In addition, through and including December 31, 2011, the Town shall reserve an allocation of 10,000 gallons per day from its available water supply for possible allocation to existing vacant lots within the corporate limits of the Town. **However, when either a Stage II or Stage III water shortage is declared pursuant to Article VII of the Town of Boone Water and Sewer Code, or imposed on the Town by the State of North Carolina, the Town Council may suspend its consideration and approval of any new water applications.**

Likewise, the Town Council may direct the Public Utilities Department to suspend its consideration of any new water allocations until further action by the Council.

Any approval of water service in a particular calendar year shall ordinarily be attributed to the available allocation for that same calendar year; however, the Town Council may designate that a particular approval of water service shall be attributed to the available allocation from any year within the term of this resolution, but the periods of time established in paragraph 5 herein for the expiration of rights shall be measured from the date of the Town Council's approval.

2. Beginning November 2008, and no less than annually thereafter, the Town shall review actual water usage records to determine whether changes should be made to the allocation allotments for subsequent years. The Council may adjust any yearly allocation based on actual usage as it can be determined and/or new information concerning remaining capacity.
3. Within the aforesaid limits, the Town of Boone shall ordinarily provide water service to future customers within the corporate limits on a first-come, first served, basis. The water usage predicted as to each application shall be determined by multiplying the usage predicted by the North Carolina Discharge Rate (NCDRS) Schedule by **.60**. Any requests for water service which involve predicted usage, as thus calculated, of over 3,000 gallons per day shall only be approved upon action, by majority vote, of the Boone Town Council acting in its *quasi* judicial capacity. Likewise, in each calendar year in which the Town has allocated two-thirds (2/3) of the water allotted for that year, all subsequent requests for water connection for which there is a predicted usage of more than five hundred (500) gallons per day must be approved by the Boone Town Council, without regard to the predicted usage resulting from the granting of the request. In determining the desirability of approving a connection for water service, the Council shall consider the following:
 - a. Any factor which may make the predicted actual use different from the NCDRS predicted use;
 - b. The amount of water usage in gallons per day previously approved during the calendar year;
 - c. The amount of water usage in gallons per day predicted to be used by the applicant, ordinarily with small requests preferred over large requests;
 - d. Whether in its opinion the application is for a land use which is consistent with the Town's adopted policies concerning growth and development; and
 - e. Such other factors as may be identified by the Town Council in its deliberations which either suggest that a particular project promotes or undermines the public health or safety, or the general welfare of the Town.
4. During the term of this Resolution, ordinarily only requests for service connections to property which is in the corporate limits will be granted. An applicant whose property is partly or wholly outside the Town limits may petition the Town for annexation, and if the property is annexed, in accordance with the requirements of North Carolina General Statutes and the Town of Boone's ordinances, water services may be extended to such property, in accordance with the provisions of this Resolution.
5. During the term of this Resolution, no service extensions into the secondary pressure zone shall be considered for approval unless the requesting property was located inside the Boone corporate limits on or before March 8, 2007, and applicant is willing to adhere to Town of Boone secondary pressure zone specifications. These specifications include but are not limited to, eight-inch minimum pipe diameter; booster pumping stations shall be an EFI design with fire pumping capabilities; minimum 100,000 gallon welded joint steel storage tank, pressure protection is provided for each individual water service, telemetry systems shall be Dataflow Systems radio telemetry and shall be compatible with existing Town of Boone system, and proposed extension does not exceed 3,620 feet in elevation. A connection to an existing water main in a secondary pressure zone may be considered where the connection is within the corporate limits as they exist as of the date of the resolution, and where such connection creates no negative impact on the Town's distribution system, allows adequate pressure to be maintained as may be necessary to

comply with the requirements of the Boone Fire Department applicable fire codes, results in no additional costs to the Town, and otherwise complies with the requirements of the Town of Boone Water and Sewer Code for connection to the Town's water system. For purposes of this paragraph, a "connection" is defined as the linking of pipes serving a single dwelling unit to an existing water main. For purposes of this paragraph, an "extension" refers to the continuation of a water main beyond its currently existing limits.

6. Any applicant granted the right to connect to the Town's water distribution system, without regard to the calendar year to which the applicant's predicted water usage is attributed, must obtain all needed development permits within one year of the approval by the Town Council or Public Utilities Department of the water application, or said approval will expire and the allocated water usage shall return into the overall water census for redistribution. Upon subsequent action by the Boone Town Council, the approval of a water application may be extended for a second year from the date of the initial approval, whether by the Town Council or staff of the Public Utilities Department, upon payment by the applicant of a non-refundable availability fee in the amount of the normal availability fee established by the Town of Boone Water and Sewer Code for use(s) of the type proposed. Previously approved requests which have not been connected shall likewise expire within one year of enactment of this ordinance. However, they, too, may be extended for an additional period upon payment by the approved applicant of a non-refundable availability fee in the amount of the normal availability fee established by the Town of Boone Water and Sewer Code for use(s) of the type proposed. If approved, the additional period shall be no less than one year, but in the case where development rights are vested through the issuance of a zoning permit, special use permit, or the approval of a conditional zoning district, the additional period may be extended and approved for a longer period, so that the resulting water rights and the approved development rights simultaneously expire. Previously approved requests which have not been connected shall likewise expire within one year of enactment of this ordinance. However, they, too, may be extended for an additional period upon payment by the approved applicant of a non-refundable availability fee in the amount of the normal availability fee established by the Town of Boone Water and Sewer Code for use(s) of the type proposed. Without regard to the foregoing, should any applicant whose development project requires a special use permit or zoning permit allow the special use permit or zoning permit to expire, the applicant's water rights will also immediately expire. Likewise, should any applicant whose development project acquires a building permit allow the building permit to expire, the applicant's water rights will also immediately expire.
7. For purposes of this Ordinance, the term "development permits", as referred to in paragraph 5 above, shall mean the following:
 - a. In the case of applicants for water service for a minor subdivision, the minor subdivision plat approval and recording of the approved plat with the Watauga County Register of Deeds, and any associated zoning and grading compliance certificates;
 - b. In the case of applicants for water service for a major subdivision, a special use permit, and associated zoning and grading compliance certificates;
 - c. In the case of commercial development projects, all permits required for the physical development of the land, plus those permits necessary for the building. These may include some or all of the following: special use permits, zoning permits and building permits.
8. Whenever the Town Council approves an application for water service to either a proposed minor or major residential subdivision, the Director of Public Utilities shall subtract an amount of water from the available water calculations which reflects the projected amount of water which will be consumed when all residences in the proposed subdivision are fully constructed.

9. During the term of this Resolution, Section 3-10(G) of the Town of Boone Water and Sewer Code, which prohibits the connection into the Town's sanitary sewer system of the discharge from private water systems, other than the system of Appalachian State University, is suspended as to those applicants whose application for both water and sewer connections cannot be granted because the request for water service has been denied by the action of the Town Council in applying this Resolution. However, in order to be granted the right to connect to the sanitary sewer system, along with such other conditions as may be placed upon the applicant in accordance with the Town of Boone Water and Sewer Code, the applicant must agree to connect into the Town's water system, should the Town later request that such a connection be made, and the applicant must sign a statement of commitment to that effect, which will remain on file with the Town's Public Utilities Department.
10. Any requests for water services from the Town must comply with all requirements of the Town of Boone Water and Sewer Code which are not superseded by this Resolution .
11. The Town of Boone Water and Sewer Department shall provide a monthly report to the Boone Town Council concerning the number and predicted volume of each water connection request approved during the term of this Resolution.
12. This resolution shall expire December 31, 2011, unless specifically extended by action of the Boone Town Council, and it may be modified by the Boone Town Council upon majority vote of the Council.
13. This policy shall become effective upon the adoption of this Resolution.

Amended and effective this the 27th day of June, 2005.

Amended and effective this the 21st day of July, 2005.

Amended and effective this the 15th day of December, 2005.

Amended and effective this the 16th day of February, 2006.

Amended and effective this the 20th day of December, 2007.

Amended and effective this the 21st day of February, 2008.

Amended and effective this the 18th day of September, 2008.

Approval of WHS & ASU Homecoming Parades.

Approval of Contract Addendum - School Resource Officer:

Addendum to Contract

THIS AGREEMENT HEREBY MODIFIES AND SUPERSEDES the contract entered into between **TOWN OF BOONE** and **WATAUGA COUNTY BOARD OF EDUCATION** dated May 23, 2008.

The modification is as follows:

Due to personnel changes for salary and benefit amounts regarding the school resource officer position, the contract amount agreed upon is now changed from \$64,467.00 to a total of \$54,786.51 for the fiscal year 2008-09. This change is reflected as follows:

July 1, 2008 – September 14, 2008	\$13,430.63
<u>September 15, 2008 – June 30, 2009</u>	<u>\$41,355.88</u>
Total for 2008-09	\$54,786.51

The remaining terms of the contact are unchanged by this agreement. This modification is mutually agreed to by the contracting parties.

Date: September 10, 2008

IN WITNESS WHEREOF, the parties set their hands and seals in Boone, Watauga County, North Carolina.

Town of Boone

Watauga County
Board of Education

Mayor

Attest:

Clerk

Chairman

Attest:

Superintendent

VOTE: Aye - All
 Nay - None

PUBLIC HEARING - \$600,000 CDBG URGENT NEEDS GRANT

Mayor Clawson opened a public hearing at 6:39 p.m. Assistant to the Town Manager Jim Byrne announced that this second public hearing is required as part of the submission of a \$600,000 CDBG Urgent Needs Grant application. With no public comment offered, Mayor Clawson closed the public hearing at 6:40 p.m.

RESCIND VOTE ON ASU REZONING REQUEST

Town Attorney Sam Furguele explained that an announcement of the submission of a valid protest petition was not made prior to holding the public hearing for Case 20080397, a request for rezoning of property made by Appalachian State University. He advised the Council to rescind the vote that occurred at the August meeting and to send the matter back to a public hearing so that the submission of a valid protest petition can be considered during the deliberation of this case. Furthermore, Mr. Furguele advised that the case should be advertised prior to the public hearing and that notices be sent to the applicant and adjoining property owners. Upon a motion by Council Member Phillips, seconded by Council Member Mason, Council moved to rescind the action taken at the August 21, 2008 regular meeting of the Town Council in regard to Case 20080397, a rezoning request made by Appalachian State University.

VOTE: Aye - All
 Nay - None

Upon on motion by Council Member Aycock, seconded by Council Member Phillips, Council moved to place Case 20080397 on the November 13, 2008 Quarterly Public Hearing agenda.

VOTE: Aye - All
 Nay - None

ADOPTION OF ZONING AMENDMENTS

Case 20080304 - Joseph Sykes has filed a Conditional District request to change the zoning classification of 351 Hilltop Drive from RA, Residential Agriculture, to CDR-3, Conditional District Multi-Family Residential. Development Services Director John Spear stated that the Planning Commission recommends approval with conditions. He stated that the case had previously been tabled by the Planning Commission in August due to questions concerning occupancy for which Mr. Sykes was not in attendance to answer. Council Member Phillips stated that the property is bordered on the northside by R-3 zoning and on the southside by RA zoning. He stated that a condition of the Planning Commission is to limit the occupancy of the property, which will consist of two residences, to five unrelated persons. Upon a motion by Council Member Phillips, seconded by Council Member Aycock, Council moved that the proposed amendment to the Town’s zoning map is consistent with the Town’s comprehensive plan and other applicable adopted plans of the Town which relate to this application because the property is located in the primary growth area and is supported by the following comprehensive plan polices:

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.*

2.3.3 H. - *The overall housing unit density for proposed infill residential development or redevelopment should be compatible with the average density of existing areas.*

Council Member Mason stated that she feels that housing for families in Boone is very critical. She stated that the proximity of this property to the new Watauga High School would possibly make it a practical choice for faculty or staff housing.

Upon a motion by Council Member Phillips, seconded by Council Member Aycock, Council moved to approve the proposed amendment to the Town's zoning map and believe the approval is reasonable and in the public interest because the proposed amendment is consistent with policies listed in the Town's Comprehensive Plan with the following conditions:

1. Approval is subject to the site plan and building plans submitted by the applicant bearing a received date of July 15, 2008. Minor modifications may be permitted to comply with the requirements of the UDO or State Building Code.
2. Any commitments and representations concerning the proposed project made by the applicant or his representatives at the public hearing shall also become a condition of the approval.
3. Final plans that are in compliance with the provisions of the UDO and State Building Code shall be submitted.
4. Combined occupancy of both dwellings will not exceed five (5) unrelated persons.

VOTE: Aye - All
 Nay - None

Development Services Director John Spear informed the Council that the Planning Commission had tabled the following cases: Case 20080389 Parking Requirements, Case 20080390 Density & Dimensional Requirements, and Case 20080399 Signs. He explained that after advisement from the Town Attorney, it was determined that UDO procedural requirements were not followed. He stated that the Planning Commission then passed the following resolution statement: "The Planning Commission is in support of the policies stated in these three text amendments and would request that the Town Council move forward as expeditiously as possible within reason to make the changes in procedure and text necessary." Council Member Mason stated that the Council may want to meet with the Planning Commission to further discuss Smart Growth principles, after the Charrette process, to determine in what direction the Town wants to go regarding planning. Town Attorney Sam Furgieuele suggested postponing the adoption of new regulations until that process is completed and until meeting with the Planning Commission. Council Member Pepin commended the Planning Commission for being proactive by considering these issues and proposing amendments to make changes to the UDO. Council Member Phillips stated that disappointment was expressed by members of the Planning Commission and the audience when the cases were tabled. Mr. Furgieuele stated that he feels adopting the language as it is now drafted would make the proposed amendments difficult to enforce and could result in unintended consequences. Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved that the proposed amendments (Case 20080389 Parking Requirements, Case 20080390 Density & Dimensional Requirements, and Case 20080399 Signs) to the Town's zoning ordinance are consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to these applications because they support the type of development that the Town is striving to achieve.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to deny the proposed amendments (Case 20080389 Parking Requirements, Case 20080390 Density & Dimensional Requirements, and Case 20080399 Signs) to the Town's zoning ordinance and believe denial is reasonable and in the public interest because the

established process outlined in the UDO should be adhered to in proposing and adopting amendment changes.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to coordinate a joint meeting with the Planning Commission following the completion of the Charrette process in order to discuss priorities in moving forward with Smart Growth principles.

VOTE: Aye - All
 Nay - None

ADOPTION OF RESOLUTION - SETTING DATE FOR PUBLIC HEARING ON HAMPTON PROPERTY ANNEXATION

Development Services Director John Spear stated that Hampton Properties LLC is requesting contiguous annexation in order to receive water and sewer service. He explained that the next step in the annexation process is to set a date for a public hearing on the annexation petition. Upon a motion by Council Member Brantz, seconded by Council Member Aycock, Council moved to adopt the following resolution:

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEATION PURSUANT TO G.S. 160A-31
(Hampton Property LLC Annexation)

WHEREAS, a petition requesting annexation of the area described herein has been received; and

WHEREAS, the Town Council has by resolution directed the Town Clerk to investigate the sufficiency of the petition; and

WHEREAS, certification by the Town Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Boone, North Carolina that:

Section 1. A public hearing on the question of annexation of the area described herein will be held at Council Chambers at 6:30 on October 29, 2008.

Section 2. The area proposed for annexation is described as follows:

acre tract situated on the western side of NCSR 1516 (Bub Teems Road) approximately 550 feet southerly of its intersection with U.S. Highway 421 and being all of the Hampton Property, LLC land described in Book 1147 of Records at page 451; bounded on the north by remaining property of Hampton Property, LLC (BoR 979, pg. 571), on the east by Bub Teems Road, on the south by Wayne Hampton (BoR 246, pg. 577) and on the west by Connie Barnett (BoR 1127, pg. 440); said 0.576 acres being surveyed by me, Russell C. Shaw, PLS L-2899 and being more particularly described as:

NING on a ¼ inch rebar found, a common corner of the tract herein described and Connie Barnett in the Hampton Property, LLC line and said rebar being located North 72 degrees 32 minutes 15 seconds East 147.58 feet from a ¾ inch pipe found at a fence post on the eastern side of Hartley Street, the Barnett northwestern corner; THENCE from the beginning and along the line of Hampton Property, LLC, North 72 degrees 38 minutes 55 seconds East, passing a ¾ inch pipe found in a fence line at 74.05 feet, continuing another 19.99 feet for a total distance of 94.04 feet to the western edge of Bub Teems Road; THENCE leaving said line and along the western side of said road the following five calls: 1) South 21 degrees 47 minutes 05 seconds East 32.00 feet; 2) South 20 degrees 55 minutes 05 seconds East 41.34 feet; 3) South 20 degrees 55 minutes 05 seconds East 82.43 feet; 4) South 17 degrees 57 minutes 05 seconds East 74.34 feet; 5) South 10 degrees 30 minutes 05 seconds East 16.99 feet; THENCE leaving said road and along the Wayne Hampton line, South 58 degrees 22 minutes 55 seconds West 19.99 feet to a ¾ inch pipe

found; THENCE South 58 degrees 15 minutes 10 seconds West 77.08 feet to a 5/8 inch rebar set, said iron being located North 58 degrees 15 minutes 10 seconds East 11.86 feet from a ¾ inch pipe found; THENCE leaving Wayne Hampton and along the line of Connie Barnett, North 19 degrees 14 minutes 30 seconds West 197.68 feet to a 5/8 inch rebar set; THENCE North 19 degrees 14 minutes 30 seconds West 73.20 feet to the BEGINNING, bearings being relative to the North Carolina Geodetic Survey system, NAD '83 by a tie to adjoining surveys and rounded to the nearest five seconds. All measurements are horizontal.

3. Notice of the public hearing shall be published in the Watauga Democrat, a newspaper having general circulation in the Town of Boone, at least ten (10) days prior to the date of the public hearing.

ATTEST:

Mayor

Town Clerk

(RESOLUTION TO BY TYPED ON BOOK 3, PAGE 79)

VOTE: Aye - All
 Nay - None

ADOPTION OF RESOLUTION - INVESTIGATING THE SUFFICIENCY OF DAVIS ANNEXATION PETITION

Development Services Director John Spear stated that Brent and Pam Davis are requesting a non-contiguous (satellite) annexation for 1397 Highway 105 Bypass in conjunction with a request for water and sewer service for property located outside the town’s corporate limits. He stated that the adoption of a resolution investigating the sufficiency of the annexation petition is the first step in the voluntary non-contiguous annexation process. Upon a motion by Council Member Brantz, seconded by Council Member Aycock, Council moved to adopt the following resolution:

**RESOLUTION DIRECTING THE CLERK TO INVESTIGATE
A PETITION RECEIVED UNDER G.S. 160A-58.1
(Davis Annexation)**

WHEREAS, a petition requesting annexation of an area described in said petition was received on September 18, 2008 by the Town Council; and

WHEREAS, G.S. 160A-58.2 provides that the sufficiency of the petition shall be investigated by the Town Clerk before further annexation proceedings may take place; and

WHEREAS, the Town Council of the Town of Boone deems it advisable to proceed in response to this request for annexation;

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

The Town Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the Town Council the result of her investigation.

ATTEST:		Mayor

Clerk		

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 80)

VOTE: Aye - All
 Nay - None

HIGH COUNTRY RPO TRANSPORTATION PROJECT PRIORITIZATION

Development Services Director John Spear informed the Council that the High Country RPO utilizes a project prioritization system to produce a priority needs list of regional highway projects to submit to the NC Department of Transportation each year as the TIP is drafted. He stated that the Town of Boone is the only municipality in the High Country RPO to submit individual transportation projects and is allowed to submit two projects for ranking. Mr. Spear explained that the RPO will prioritize and submit 40 projects in January for consideration in the 2011-2017 STIP. He listed the Town’s priorities for the 2009-2015 STIP as U-4020 King Street Widening and U-2703 US 421 Bypass (Daniel Boone Parkway); however, he further stated that the U-4020 King Street Widening project has already been programmed for right-of-way acquisition. Mr. Spear listed two other projects that have previously been presented directly to the NCDOT separate from the RPO priorities: Highway 105 Safety Enhancements and R-2615 US 421/321 From the Tennessee State Line to U-2703 US 421 Bypass. Council Member Mason stated that she feels that improvements to Poplar Grove Road and the Deerfield, Bamboo, and Wilson Ridge Road areas are items that need to be studied and improved. Council Member Phillips stated that the NC DOT is currently considering the Deerfield, Bamboo, and Wilson Ridge Roads area in conjunction with the King Street Widening project since it is anticipated that traffic will increase along those roadways when construction commences along the King Street project. He further suggested that consideration of Poplar Grove Road be included with the Highway 105 enhancements. Council briefly discussed the proposed Highway 421 Bypass or Daniel Boone Parkway project. Mike Hall, on behalf of the Boone Area Chamber of Commerce, stated that much time and work were involved in creating this project although he surmised that the project may be very difficult to accomplish. He asked that the Town continue to support the idea of this project. Upon a motion by Council Member Mason, seconded by Council Member Aycock, Council moved to recommend the following priorities to the Highway Country RPO to be forwarded to the NC DOT for consideration for the 2011-2017 STIP:

- § NC Highway 105 Safety Enhancements (including study of Poplar Grove Road)
- § U-2703 US Highway 421 Bypass (Daniel Boone Parkway).

VOTE: Aye - All
 Nay - None

NOMINATIONS FOR OPEN ETJ POSITIONS - BOARD OF ADJUSTMENT AND PLANNING COMMISSION

Development Services Director John Spear stated that an ETJ position is open on both the Planning Commission and the Board of Adjustment and presented applications for both positions for consideration by the Council. He stated that nominations will be forwarded to the Watauga County Board of Commissioners for consideration of appointment. In regard to the Planning Commission, he presented applications from the following persons: William Aceto, D. J. Cecile, Thomas Brown, and Donald Dotson. For the Board of Adjustment, he presented applications submitted by D. J. Cecile, David Risk, and Lee Ball, Jr. Council Member Mason nominated Thomas Brown, and Council Member Brantz nominated Don Dotson for service on the Planning Commission. With no other nominations, Mayor Clawson called for a vote to forward the nomination of Thomas Brown to Watauga County for consideration.

VOTE: Aye - All
 Nay - None

Mayor Clawson called for a vote to forward the nomination of Don Dotson to Watauga County for consideration.

VOTE: Aye - All
 Nay - None

Council Member Aycock nominated Lee Ball, Jr. for service on the Board of Adjustment. Council Member Phillips nominated David Risk for service on the Board of Adjustment citing his previous service on the Board and his experience as a contractor. With no other nominations, Mayor Clawson called for a vote to forward the nomination of Lee Ball, Jr. to Watauga County for consideration.

VOTE: Aye - All
 Nay - None

Mayor Clawson called for a vote to forward the nomination of David Risk to Watauga County for consideration.

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

Council Member Aycock noted her concern with Mr. Risk's rating of support of the Boone Comprehensive Plan which was scored five on a scale of one to ten. Council Member Pepin stated that she feels that the application does not contain enough information to support the nomination of Mr. Risk.

APPROVAL OF CONTRACT - DAVEY RESOURCE GROUP

Development Services Director John Spear presented a contract (**copy permanently on file in the Clerk's Office**) from the Davey Resource Group for approval by Council for the development of an Urban Forestry Master Plan. The contract is composed of five tasks as listed below:

1. Task One - Review Available Information
2. Task Two - Perform an On-Site Evaluation of Existing Tree Inventory and Interviews
3. Task Three - Produce Draft Version of the Urban Forestry Master Management Plan
4. Task Four - Review Draft Version of Plan with Boone Officials and the Public
5. Task Five - Produce Final Version of Plan.

Town Manager Greg Young stated that \$10,400 has been appropriated for this plan within the 08/09 Fiscal Year budget. Town Attorney Sam Furguele advised that if the contract is approved, Council should be allowed flexibility to add minor terms or make clarifications upon review by the Town Attorney. Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to approve the contract with Davey Resource Group in the amount of \$36,510 for the creation of an Urban Forestry Master Plan with the condition that minor modifications may be made upon review of the contract by the Town Attorney.

VOTE: Aye - All
 Nay - None

APPROVAL OF NC DENR GRANT CONTRACT

Development Services Director John Spear presented a contract (**copy permanently on file in the Clerk's Office**) with the NC Department of Environment and Natural Resources for a grant in the amount of \$15,000 for the development of an Urban Forestry Master Plan. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to approve the grant contract with the NC Department of Environment and Natural Resources in the amount of \$15,000 for the development of an Urban Forestry Plan with the condition that minor modifications may be made upon review of the contract by the Town Attorney.

VOTE: Aye - All
 Nay - None

ANNOUNCEMENT OF CABLE TV ADVISORY COMMITTEE POSITION

Mayor Clawson announced that two positions are still vacant on the Cable TV Advisory Committee. She noted that the Town Clerk will continue to advertise the vacancies in hopes that applications will be received for these positions; however, she did note that advertising for these vacancies is very costly. Mayor Clawson asked for the staff to compile the cost of advertising for board positions thus far this year.

REQUEST PERMISSION TO APPLY FOR CDBG GRANT

Assistant to the Town Manager Jim Byrne appeared before Council to request permission to apply for a \$600,000 CDBG grant which would provide for the removal of sediment at the Town's water intake on Winkler's Creek. He explained that \$540,000 would be earmarked for the actual construction cost of the sediment removal and that \$60,000 would be used for administrative costs. Mr. Byrne noted that an access road will need to be constructed in order to reach the dam area on Winkler's Creek. Upon a motion by Council Member Phillips, seconded by Council Member Aycock, Council moved to approve a request to apply for a \$600,000 CDBG Urgent Needs Grant for sediment removal behind the dam at the Town's water intake on Winkler's Creek.

VOTE: Aye - All
 Nay - None

TRANSPORTATION COMMITTEE RECOMMENDATION - BICYCLE/PEDESTRIAN PLANNING GRANT INITIATIVE

Public Works Director Blake Brown presented a request from the Transportation Committee to allow Jim Byrne, in collaboration with the Alternative Transportation Committee, to investigate the possibility of applying for a Bicycle or Pedestrian Planning Grant Initiative. He explained that the grant encourages municipalities to develop comprehensive bicycle and pedestrian plans that support alternative transportation programs. Mr. Brown stated that this is one element of updating the Town's master plan. Council Member Mason stated that the Walk Boone program is also working on ways to improve both pedestrian and bicycle travel in Boone. Upon a motion by Council Member Phillips, seconded by Council Member Brantz, Council moved to grant permission to Assistant to the Manager Jim Byrne, in collaboration with the Alternative Transportation Committee, to investigate the possibility of applying for a Bicycle or Pedestrian Planning Grant Initiative.

VOTE: Aye - All
 Nay - None

ADOPTION OF ORDINANCE - FAULKNER DEMOLITION

Town Attorney Sam Furgiuele presented an ordinance for Council's adoption that would initiate action against David Faulkner in order to demolish an abandoned and dilapidated manufactured home located at 116 Beck Court in Boone. He explained that Town Building Inspector David Little found the structure to be unsafe and that, after scheduling a hearing which Mr. Faulkner did not attend, he issued an Order to Take Corrective Action giving Mr. Faulkner 60 days to demolish the structure. Mr. Furgiuele advised the Council that the 60-day time period has now expired without the demolition of the structure by Mr. Faulkner. Furthermore, he advised the Council that state statutes give the Town authority to take action necessary to correct the situation, including removing or demolishing the structure and informed the Council that Mr. Faulkner's failure to comply with the building inspector's order constitutes a Class 1 misdemeanor pursuant to NC General Statute 160A-431. Upon a motion by Council Member Aycock, seconded by Council Member Mason, Council moved to adopt the following ordinance:

ORDINANCE # 08-08

WHEREAS, the Town of Boone is given authority, pursuant to N.C. Gen. Stat. § 160A-426, to declare a building “unsafe;” and

WHEREAS, by certified letter dated June 17, 2008, David Faulkner, the owner of an abandoned and dilapidated manufactured home located at 116 Beck Court, Boone, North Carolina (the “structure”) was notified that following inspection, Town building inspector David Little had declared it unsafe, and that a hearing on the determination was scheduled for June 26, 2008; and

WHEREAS, David Faulkner failed to appear at the scheduled hearing and the building inspector issued an Order to Take Corrective Action on July 1, 2008, received by a Kelly McKee on July 3, 2008, giving mr. Faulkner sixty days to demolish the structure; and

WHEREAS, the sixty day period for corrective action has now expired and no action has been taken; and

WHEREAS, failure to take corrective action is, pursuant to N.C. Gen. Stat. § 160A-431 a Class 1 misdemeanor; and

WHEREAS, N.C. Gen Stat. § 160A-432 authorizes the Town of Boone to itself take the necessary corrective action, including removal or demolition of the structure, and to seek recovery of the costs of such removal and demolition from the owner; and

WHEREAS, N.C. Gen Stat. § 160A-432 further authorizes the Town of Boone to place a lien on any real property owned by the owner within the Town’s limits or within one mile of the Town’s limits, other than the owner’s primary residence;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA, PURSUANT TO N.C. GEN. STAT. § 160A-426 through 160A-432, AS FOLLOWS:

1. The Town Manager is directed to remove the unsafe structure in question.
2. Once the costs of removal have been ascertained and expended, the Town Attorney is ordered to determine if David Faulkner is the owner of any real property, other than his primary residence, within the limits of the Town of Boone or within 1 mile of the Town limits and if so, to file a claim of lien, in accordance with statute, against such property; and to initiate a legal action in the General Court of Justice, District Court Division in Watauga County, North Carolina against David Faulkner, seeking recovery of the Town’s costs in removing and disposing of the structure, and available costs, including attorney’s fees; and
3. The Town Building Inspector is directed to initiate criminal charges against David Faulkner for his failure to comply with the Building Inspector’s lawful order.

Adopted the 18th day of September, 2008.

Mayor

Attest:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGES 358-359)

VOTE: Aye - All
 Nay - None

ACCEPTANCE OF DOT RIGHT-OF-WAY OFFER

Town Manager Greg Young presented an offer of \$118,700 from the NC Department of Transportation to purchase 41,687 square feet of property along King Street in front of the Public Works building for right-of-way for the U-4020 King Street Widening Project. He stated a copy of the utility easement has been requested for review by the Town Attorney. Upon a motion by Council Member Phillips, seconded by Council Member Brantz, Council moved to accept the offer of \$118,700 for right-of-way acquisition from the NC Department of Transportation for Project U-4020 subject to the review of the utility easement by the Town Attorney.

VOTE: Aye - All
 Nay - None

SCHEDULING OF SPECIAL MEETING - WATER INTAKE INFORMATION MEETINGS

Council Member Mason suggested the scheduling of two special meetings in which to hold information sessions on the proposed water intake project. She explained that the purpose of these meetings would be to provide an opportunity for the citizens of Boone to learn more about the project and to allow for questions concerning the project. Upon a motion by Council Member Mason, seconded by Council Member Aycock, Council moved to schedule two information meetings on Monday, September 29, 2008 at 5:30 p.m. and Wednesday, October 8, 2008 at 7:00 p.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE: Aye - All
 Nay - None

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

SCHEDULING OF SPECIAL MEETING - WATER USE COMMITTEE

Public Utilities Director Rick Miller stated that a special meeting has been requested by the Water Use Committee at the last meeting in order to deliberate the information that Council would like to have presented at the regular monthly meetings and to discuss drought issues and conservation trigger levels. Upon a motion by Council Member Pepin, seconded by Council Member Brantz, Council moved to schedule a meeting of the Water Use Committee for Wednesday, October 8, 2008 at 5:00 p.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE: Aye - All
 Nay - None

APPROVAL OF CONTRACT TIME EXTENSION - TRACY CIRCLE SEWER MAIN UPGRADE

Public Utilities Director Rick Miller presented a request for a time extension from Hobbs, Upchurch and Associates, project engineers, for the Tracy Circle Sanitary Sewer Upgrade project. He explained that the project contractor, Carolina Grading and Utilities, has requested a 30-day time extension to complete the project due to delays caused by rain, rock removal, and extra work for laying pipe and installing manholes. He stated that the project engineer has suggested that a 21-day extension would be reasonable considering the conditions encountered and the remaining work to be done. Mr. Miller stated that there has been some concern expressed by citizens of this neighborhood about the time extension, but that after informing the citizens of the remaining work necessary to complete the project and the cause for the delay, he feels that the residents of the neighborhood understand the need for more time to complete the project. Upon a motion by Council Member Aycock, seconded by Council Member Brantz, Council moved to grant a 21-day time extension for the Tracy Circle Sewer Main Upgrade.

VOTE: Aye - All
 Nay - None

Council Member Mason stated that this area should be included in the priority list for repaving in the next fiscal year.

MONTHLY WATER STATUS REPORT

Public Utilities Director Rick Miller presented the following status report:

To: Mayor Clawson, Town Council Members and Town Manager

From: Ricky L. Miller, Public Utilities Director

Date: September 8, 2008

Subject: Monthly Water Use Status Report

As requested by Town Council, staff and I have compiled the following information concerning water use for the month of August. The Water Treatment Plant recorded a maximum daily demand of 2.166 million gallons on Tuesday, August 5, 2008, and the average daily demand was 1.826 million gallons for the entire month. The total amount of water treated was 56.61 million gallons. This is a 3.2 percent decrease over the total amount of water treated in August 2007.

Attached you will find a chart that depicts a comparison of the maximum daily demands for the month of August since 1995. Included is an average trend line that illustrates the extent the maximum daily demand has increased during the last thirteen years.

At the last Town Council meeting, Council chose to allocate 2,802 gallons per day from the 2008 allotment for two projects. Since the last Town Council meeting the Public Utilities Department has approved one projects that subtracted 210 gallons per day from the 2008 allotment. The total water allotment remaining for the year 2008 has broken the sixty percent threshold and all future water service requests in excess of 500 gallons per day will be forwarded to Town Council as required in Ordinance 05-01.

As you can see in the attached “Approved Water Connections” chart, the Public Utilities Department now has 1,112 gallons per day remaining for allotment in 2008, 4,096 gallons remaining for 2009 and 43,373 gallons remaining for 2010.

As of today’s date The NC Drought Management Advisory Council has Watauga County categorized at “Severe Drought” status. This is one stage lower than last month.

			2008			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						50000
			Mega Builders	11/15/2007	14400	35600
			Anne Henning	11/15/2007	795	34805
			Katrina Callio	11/15/2007	90	34715
Brad Moretz	1/2/2008	916				33799
Park Street Subdivision	1/2/2008	810				32989
Bob Buyce	1/2/2008	2043				30946
James Bates	1/2/2008	270				30676
Beth Postlewait	1/2/2008	270				30406
John	1/2/2008	252				30154

Winkler	008					
Pat Carroll	1/2/2008	936				29218
WWWC LLC	1/2/2008	2682				26536
Carroll Companies	1/2/2008	2730				23806
WWWC LLC	1/2/2008	936				22870
WWWC LLC	1/2/2008	2982				19888
			Oscorp Investment	1/17/2008	6750	13138
Salvation Army	1/7/2008	176				12962
			Adam Upchurch	2/21/2008	7452	5510
			Jamus FLP	2/16/2006	4209	9719
			Jamus FLP	2/16/2006	4209	13928
Thomas McGowan	1/24/2008	90				13838
Phillip Cresman	2/8/2008	30				13808
John Winkler	2/11/2008	30				13778
Den-Mac	3/4/2008	15				13763
			John Winkler	3/20/2008	3450	10313
			Michael Brown	3/20/2008	2400	7913
Boone Drug	3/27/2008	162				7751
			Warren Shepherd	4/17/2008	30	7721
			Hollar & Greene	4/17/2008	360	7361
Ethan Anderson	4/30/2008	150				7211
			Brent Davis	5/15/2008	60	7151
			High Country COG	5/15/2008	465	6686
William Scantlin	5/6/2008	150				6536
Templeton Properties	5/6/2008	135				6401
APE Inc.	5/8/2008	150				6251
Lee Bryant	5/21/2008	12				6239
			James Hartley	6/19/2008	270	5969
Greg Simmons	6/13/2008	270				5699
Univesity Nissan	7/2/2008	450				5249
Blue Ridge Ear	7/2/2008	15				5234
			Alliance Bible Fellowship	7/17/2008	1050	4184
Boone Drug Inc	7/14/2008	60				4124
			Philip Starks LLC	8/21/2008	2700	1424
			Two Rivers School	8/21/2008	102	1322

Grace Academy	8/8/2008	210				1112
			2009			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						50000
			Leanord Soloman	11/15/2007	8100	41900
			Oscorp Investment	1/17/2008	4225	37675
			Adam Upchurch	2/21/2008	20350	17325
			Boone Five LLC	2/21/2008	8418	8907
			Charisma Partners	4/17/2008	4176	4731
			Harris Teeter	6/19/2008	635	4096
			2010			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						50000
			Hospitality House	4/17/2008	4629	45371
			Wal Mart	6/19/2008	1998	43373

APPROVAL OF BUDGET AMENDMENTS

Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to approve the following budget amendments:

DESCRIPTION	ACCOUNT #	TO:	FROM:
WATAUGA CO.-ELECTION EXPENSE	010-405-000-577111	\$23,878.00	
APPROPRIATED FUND BALANCE (GENERAL FUND)	010-000-000-499900		(\$23,878.00)
STREET GARDEN PROJECT (TOWN HALL LOT)	010-411-000-549105	\$1,699.00	
CONTRIBUTIONS	010-000-000-482200		(\$1,699.00)
TRANSFER TO PENSION TRUST FUND	010-500-300-598042	\$9,683.00	
APPROPRIATED FUND BALANCE (GENERAL FUND)	010-000-000-499900		(\$9,683.00)
CONTRACTED SERVICES-PUBLIC UTILITIES	030-700-801-577000	\$22,837.00	
TRANSFER FROM W/S INFRASTRUCTURE RESERVE	030-000-000-498032		(\$22,837.00)
MAINTENANCE & REPAIR-EQUIPMENT (WTP)	030-700-804-525201	\$10,320.00	
APPROPRIATED FUND BALANCE (W/S FUND)	030-000-000-499900		(\$10,320.00)
CAPITAL OUTLAY-WATER TANKS	030-700-802-575100	\$529,400.00	

LEASE PURCHASE-PRINCIPAL PAYMENT	030-700-890-583001	\$7,125.00	
LEASE PURCHASE-INTEREST EXPENSE	030-700-890-584001	\$455.00	
LOAN PROCEEDS	030-000-000-492000		(\$529,400.00)
APPROPRIATED FUND BALANCE (W/S FUND)	030-000-000-499900		(\$7,580.00)

VOTE: Aye - All
 Nay - None

REQUESTED APPEARANCES - BETTIE BOND

Bettie Bond appeared before the Council to provide a brief update on the activities of the Historic Preservation Commission. She began by listing the members of the committee: Bettie Bond, Bill Dixon, Chuck Watkins and Council Members Brantz and Pepin and the support staff: Planning Supervisor Ricky Hurley and Planner Christy Turner. She informed the Council that the first meeting was held in July of 2007 during which the committee focused on election of officers, reviewing Ordinance #07–3, and establishing rules of procedure. From August of 2007 through November 2007, the committee reviewed existing materials related to guidelines and restrictions for historic properties as determined by the National Register of Historic Places, the State of NC Historic Preservation Office, and other municipalities, as well as historic documents available on Town properties and various preservation grants and requirements. Ms. Bond noted that from December 2007 through March of 2008, the committee concentrated its efforts on the status of the Downtown Boone Post Office helping with the drafting of a bid proposal for the acquirement of the building by the Town. From April of 2008 until now, the committee has reviewed 149 properties within the town that may potentially be designated as either a “landmark” or that are located within a contiguous area that can be defined as an “historic district.” Furthermore, Ms. Bond informed the Council that the committee has been briefed by a member of the NC State Historic Preservation office, Mary Ruffin Hanbury, and Dan Pezzoni, editor of the *Architectural History of Watauga County*. She concluded her presentation by listing the goals of the committee for the next six months, as follows:

- § Create an informational fact sheet on each of the 149 properties, complete with photos and property information. An intern has been identified from the History Department at ASU and a matching contribution from the Town for \$500 will allow the completion of this fact sheet and thus complete the goal of having an initial inventory of potential historic landmarks.
- § Use a developed rating scale based on criteria, along with a map marker system, and apply these to each of the property fact sheets to determine which properties will be recommended to the Council as a potential historic landmark or district designation. The fact sheets will also serve as the basis for any future historic walking tours and educational/informational programs.
- § Draft language for a preservation element in the Town’s Comprehensive Plan.
- § Start the process for developing language for an ordinance aimed at conserving and preserving historic districts and landmarks that will be voluntary until such time when incentives might be formulated to coincide with the historic designation and requirements for its preservation.

REQUESTED APPEARANCES - TUESDAE RICE

Tuesdae Rice, Director of the Downtown Boone Development Association, appeared before the Council to present the DBDA year-end report and current year agenda and goals. She submitted a power-point presentation (**copy permanently on file in the Clerk’s Office**) outlining details of the year-end report and stated that she would complete the presentation at the next Council meeting in October.

REQUESTED APPEARANCES - JIM WOOTEN

Mac Forehand, on behalf of Jim Wooten, appeared before the Council to request a letter of support for a motorcycle rally to be held in conjunction with the Blue Ridge Parkway's 75th Anniversary celebration. He pointed out that motorcycle enthusiasts from around the world enjoy the beautiful scenery and roadway camaraderie while traveling on the Parkway. Upon a motion by Council Member Phillips, seconded by Council Member Mason, Council moved to approve a letter of support signed by Mayor Clawson for a motorcycle rally to be held in conjunction with the Blue Ridge Parkway's 75th Anniversary celebration.

VOTE: Aye - All
 Nay - None

WATER & SEWER REQUEST - KELVIN GRYDER

Town Attorney Sam Furguele reopened a public hearing at 9:07 p.m. to hear sworn testimony from Mark White, representing the First Presbyterian Church; Public Utilities Director Rick Miller; and Development Services Director John Spear regarding a request for water and sewer service to property located in the Deerfield Meadows Business Park. Mr. White began by informing the Council of the price difference in the installation of a six-inch sewer line which will cost \$181,122 to install and an eight-inch sewer line which will cost \$203,722 for installation. He also noted that there have been several property foreclosures in the immediate area due in part to failing septic systems and that those properties did not have adequate septic repair area. Council Member Pepin asked about obtaining the necessary easements for the installation of sewer line. Mr. White stated that obtaining those easements is the responsibility of the applicant and that church officials have verbal agreements from some property owners at this point. He further explained that most of the property owners will not sign a formal agreement until a decision is made by the Council and until plans are designed for the project. Council Member Mason asked about conformity to Town development regulations. Mr. White stated that conformity to the Town's watershed regulations will severely limit the use of the property. He stated that the church does not have a septic permit for the property at this time. In response to a question from Council Member Mason regarding the Town's watershed regulations, Development Services Director John Spear explained that Watauga County has also adopted watershed regulations although he is not aware of the specifics of the county's regulations. He further noted the restrictions imposed by the Town's watershed regulations depend on the distance of the watershed area from the water intake source. Additionally, he stated that the intent of watershed designation is to protect the quality of water. Public Utilities Director Rick Miller stated that an eight-inch line is the minimum for a public line. He explained that a private line can serve only one property, but a public line must be inspected by state officials and maintained by the Town. Mr. Miller noted that the property is in the primary pressure zone. Council Member Phillips inquired about the possibility of the Town and the applicant agreeing to a cost-share plan for the project. Mr. Miller stated that the Water & Sewer Code does allow for participation in a cost-share arrangement. With no other testimony, Mr. Furguele closed the public hearing at 9:23 p.m. Council Member Pepin voiced her concern that the property cannot be annexed since it is part of a subdivision. She stated that she feels the size of both the proposed sewer line and proposed structures will have a big impact on the surrounding area. She pointed out that this area has not been carefully studied to determine the planning needs to address future growth. Council Member Mason noted that this property is located in the rural growth area and is not targeted for water and sewer extension. She also stated that the property is located upstream from the Town's water intake on the New River. Council Member Aycock stated that extending utility service in this area could be a source of revenue in the future. She pointed out that many of the single-family homes in the area are on small lots and have septic systems. Furthermore, she voiced a concern about locating a large septic tank in the Town's designated watershed. Council Member Phillips stated that engineering designs exist that can help to protect the water quality. Council Member Aycock stated that even without a master plan in place, growth is occurring in this area. Town Attorney Furguele reopened the public hearing at 9:29 p.m. Council Member Mason asked whether or not the applicant was willing to comply with Boone land-use policies. Mr. White voiced no opposition to the consideration of complying with Town land-use policies but reiterated that complying with the Town's watershed restrictions will severely limit the ability to fully utilize the property. Council Member Mason stated she would feel more comfortable if the applicant

were willing to meet some of the Town's land-use policies for the zoning designation that would be applicable to this property. Mr. White indicated that officials from the First Presbyterian Church would be willing to meet with Town staff to further discuss this matter. Mr. Furguele closed the public hearing at 9:37 p.m. Upon a motion by Council Member Phillips, seconded by Council Member Aycok, Council moved to table deliberation of this request until the next regular meeting in October to allow for representatives from the First Presbyterian Church to meet with Town staff to determine which zoning designation would fit the proposed use of the property and to discuss which land-use policies to apply to the project.

VOTE: Aye - All
 Nay - None

WATER & SEWER REQUEST - CAMBRIDGE VENTURE PARTNERS

Town Attorney Sam Furguele opened a public hearing at 9:47 p.m. to hear sworn testimony from Mike Trew, P.E. of Municipal Engineering, Public Utilities Director Rick Miller, and Richard Koehler, representing Cambridge Venture Partners, Inc. regarding a request for water and sewer service to property located on Chase Hill Drive. Mike Trew, project engineer, began by informing the Council that the property owner is John Greene and that the property is currently under contract with Cambridge Venture Partners, Inc. He stated that the development of the property has been impacted by data on the recently released floodmaps and that development permits have not been obtained. Mr. Trew stated that the property was previously allocated 9,000 gallons per day on September 20, 2007. He explained that the 2007 allocation is due to expire on September 20, 2008. Furthermore, he stated that the applicant would like to request that the Council rescind the 2007 allocation of 9,000 gpd and to request a new allocation of 9,900 gpd from the 2009 allotment and 15,300 gpd from the 2010 allotment as the applicant plans to develop the property in two phases. Public Utilities Director Rick Miller explained that the 2007 allocation of 9,000 gpd is due to expire since allocations are valid for the time period of one year from the date of issuance. He reiterated that development permits must be obtained within that one-year time limit and that the allocation will be returned to the Town unless the Council grants a one-year extension with payment of availability fees for the project and that further extension can be granted to run concurrently with the vested time period when permits are issued. Mr. Trew explained that a change in the layout of the bedrooms is the reason for the change in the allocation amount for the first phase of the project. Richard Koehler, representing Cambridge Venture Partners, Inc., stated that the first phase would consist of 24 units. He stated that the project is proposed to include 60 total units composed of two- and three-bedroom units totaling 168 bedrooms. Mr. Miller estimated the availability fee for the entire project to be \$207,900. With no further testimony, Mr. Furguele closed the public hearing at 10:10 p.m. Council Member Pepin voiced a concern with granting water allocation without the payment of availability fees. Upon a motion by Council Member Mason, seconded by Council Member Pepin, Council moved to grant the request for water and sewer service with 9,900 gallons per day from the 2009 allotment and 15,300 gallons per day from the 2010 allotment with the condition that the current allocation of 9,000 gallons per day be returned to the 2008 allotment.

VOTE: Aye - All
 Nay - None

Mayor Clawson declared a break at 10:16 p.m. Council reconvened at 10:20 p.m.

WATER & SEWER REQUEST - ALLIANCE BIBLE FELLOWSHIP

Town Attorney Sam Furguele opened a public hearing at 10:21 p.m. to hear sworn testimony from Paul Branch of Alliance Bible Fellowship and Public Utilities Director Rick Miller regarding a request for sewer service to property at 1033 Highway 105 Bypass. Mr. Branch began by making a request for sewer service due to an inadequate septic system currently serving the property. He stated that the Council has already granted water service to the property for the construction of a new 1,000 seat sanctuary. Furthermore, he stated that Alliance Bible Fellowship is willing to annex the property. With no other testimony, Mr. Furguele closed the public hearing at 10:26 p.m. Upon a motion by Council Member Mason, seconded by Council

Member Brantz, Council moved to grant sewer service to property at 1033 Highway 105 Bypass with the following conditions:

- \$ The applicant shall bear the cost of the sewer line extension.
- \$ The project shall comply with Town codes.
- \$ The applicant shall begin the process of annexation for the property.

VOTE: Aye - All
 Nay - None

WATER & SEWER REQUEST - JESSE KELLOGG

Town Attorney Sam Furguele opened a public hearing at 10:27 p.m. to hear sworn testimony from the applicants, Jesse Kellogg and Connor McGrath; the owner of the property, John Winkler; and Public Utilities Director Rick Miller regarding a request for water allocation of 960 gallons per day for property located at 805 West King Street. Mr. Kellogg stated the proposed use is a Hookah lounge which is classified by the Town Utility Department as a cocktail lounge/bar and is proposed to have 80 seats, a design which equates to 960 gallons per day. He explained that a Hookah lounge is a gathering place for responsible adults to engage in the smoking of flavored tobacco using a water pipe. Mr. Kellogg explained that Hookah lounges have become very popular on many college campus throughout the nation and are a tradition in many eastern cultures. He stated that food will not be served other than sundries, such as peanuts or pretzels. John Winkler, property owner, stated that the property has been allocated water for another use that would include both multi-family units and a retail area and that this allocation will be in addition to the original allocation for the retail space. Furthermore, Mr. Winkler stated that those plans are still proposed for the property. Public Utilities Director Rick Miller explained that Mr. Winkler received an allocation of 2,550 gpd in January 2008 for six multi-family units totaling 17 bedrooms and 432 gpd for 6,000 square feet of retail space that was approved “in-house” by the Utility Department Staff. He stated that Mr. Winkler was then granted additional allocation for 23 more bedrooms by the Boone Town Council in March of 2008. Mr. Miller stated that the only other way to categorize the proposal was as a restaurant, but that since the applicant will not be serving food other than snacks, he feels that a bar/lounge designation is more appropriate. With no further testimony offered, Mr. Furguele closed the public hearing at 10:36 p.m. Upon a motion by Council Member Phillips, seconded by Council Member Aycock, Council moved to grant the request for 960 gpd using the remainder of the 2008 allotment and allocating the rest of the amount from the 2009 allotment.

VOTE: Aye - All
 Nay - None

WATER & SEWER REQUEST - WATAUGA COUNTY SCHOOLS

Town Attorney Sam Furguele opened a public hearing at 10:39 p.m. to hear sworn testimony regarding a request for water and sewer service to property located on Pioneer Lane. With no one present to speak about this case, Mr. Furguele closed the public hearing at 10:39 p.m. Upon a motion by Council Member Brantz, seconded by Council Member Aycock, Council moved to table the deliberation of this request until the next regular meeting on October 29, 2008.

VOTE: Aye - All
 Nay - None

WATER & SEWER REQUEST - JOHN WINKLER/CWWW

Town Attorney Sam Furguele opened a public hearing at 10:40 p.m. to hear sworn testimony from John Winkler and Public Utilities Director Rick Miller regarding a request for water and sewer service to property located at 2858 Highway 105. Mr. Winkler began by stating that this project has already been allocated 3,618 gpd and that he is requesting an additional 13,466 gpd to be taken from the 2010 allocation. He explained the project as a 36-unit multi-family complex totaling 108 bedrooms and 12,000 square feet of retail space which is due to come online in 2010. Mr. Winkler stated that he has been told by NC DOT officials that a traffic signal light is going to be installed at the intersection of Highway 105 and Poplar Grove Road. He offered to

the Council a list (**copy permanently on file in the Clerk's Office**) containing proposed projects of which he holds at least partial ownership which are not going to be developed at this time but have been granted water allocations for a total amount of 10,266 gpd. Mr. Winkler stated this amount will be returned to the Town's allotment. Council Member Mason asked if Mr. Winkler would be willing to sign a written agreement releasing the 10,266 gpd back to the Town's allotment. Mr. Winkler indicated that he is willing to do so, but some of these properties are owned in part by various entities other than CWWW LLC. Public Utilities Director Rick Miller reviewed this list provided by Mr. Winkler and confirmed the amount of water allocations as 10,266 gpd. With no other testimony offered, Mr. Furguele closed the public hearing at 10:50 p.m. Upon a motion by Council Member Phillips, seconded by Council Member Mason, Council moved to grant a request for water allocation of 13,446 gpd for property located at 2858 Highway 105 with 10,266 gpd from the 2009 allotment and 3180 gpd from the 2010 allotment subject to an agreement for the return of 10,266 gpd of water previously allocated to various projects of which John Winkler and other entities hold ownership but are not planning to proceed with developing at this time.

VOTE: Aye - All
 Nay - None

WATER & SEWER REQUEST - JACK PEPPER

Town Attorney Sam Furguele opened a public hearing at 10:53 p.m. to hear sworn testimony from Jack Pepper, owner of Pepper's Restaurant, and Public Utilities Director Rick Miller regarding a request for water and sewer service to property located at 240 Shadowline Drive Suite E. Mr. Pepper explained that he is planning to expand Pepper's Restaurant by 47 seats by expanding into the current Remax office adjacent to the restaurant. He further explained that the new section of the restaurant will hold 35 seats and that there are currently twelve seats outside the restaurant on the sidewalk. Mr. Pepper stated his request is for an allocation of an additional 1,397 gpd. Public Utilities Director Rick Miller stated that the amount of water allocation is actually 1,050 gpd for 35 additional seats. He explained that Mr. Pepper will need to pay the availability fee for the twelve seats located outside but should not be charged for additional usage for those seats. With no other testimony offered, Mr. Furguele closed the public hearing at 10:56 p.m. Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to grant the request for 1,050 gpd for water and sewer service to property located at 240 Shadowline Drive Suite E and that the allocation be taken from the 2009 allotment.

VOTE: Aye - All
 Nay - None

PUBLIC COMMENT

There were no persons requesting to appear during public comment.

CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Aycock, Council moved to enter Closed Session at 10:57 p.m. pursuant to NCGS 143-318.11a(3)5) in order to discuss the following matters:

- Property Acquisition:
 - Brown Property.
- Legal Advice:
 - Votes on zoning amendments.
 - Howard Street.
 - Wal-Mart application for special use permit for the community garden.
 - UDO and Water & Sewer Code violations.
 - Public Display Ordinance.

§ Legal Advice and Possible Action:

- Property Acquisition.

Upon a motion by Council Member Aycock, seconded by Council Member Brantz, Council moved to exit Closed Session at 12:25 a.m.

VOTE: Aye - All
 Nay - None

ADJOURNMENT

On a motion by Council Member Aycock, seconded by Council Member Mason, Council moved to adjourn the meeting at 12:26 a.m.

VOTE: Aye - All
 Nay - None

Deputy Town Clerk

Mayor