MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
OCTOBER 20, 2014

A regular meeting of the Boone Town Council was called to order at 5:48 p.m., Monday, Oct. 20, 2014, in the Council Chambers, 1500 Blowing Rock Road. Mayor Pro-Tem Rennie Brantz presided. Council members present were Lynne Mason, Fred Hay, Jennifer Peña and Quint David. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Town Clerk Christine Pope, Assistant to the Manager Jim Byrne, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Finance Director Amy Davis, Public Utilities Director Rick Miller, Interim Public Works Director Eric Gustaveson, Planning Development Coordinator Jane Shook and Cultural Resources Director Pilar Fotta.

CALL TO ORDER

Mayor Pro-Tem Rennie Brantz called the meeting to order and welcomed all in attendance.

TENTATIVE AGENDA ADOPTION

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

1. Addition of Item Following Public Comment – Dan Dunkin, At-Net Services – Request for Direction from Council.
2. Addition of Item Following Public Comment – Consideration of Text Amendment for November Quarterly Public Hearing – UDO 20.04.03(B) Regarding the Buffer Zone.

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

VOTE: Aye – All
Nay – None

PUBLIC COMMENT

Rich Crepeau, a professor at Appalachian State University, requested assistance from the Town to allow for one of his classes to access certain Town documents for a class project to create a 3-D rendering of the proposed Howard Street redevelopment project and to potentially work with Town staff. Council agreed they would amend Thursday night's agenda while reviewing the draft agenda to include this item for discussion.

DAN DUNKIN, AT-NET SERVICES – REQUEST FOR DIRECTION FROM COUNCIL

Dan Dunkin of At-Net Services presented a brief presentation of the new Town of Boone Web site that he is currently working to finalize. He advised that at this time, he needs Council's direction in order to create the finalized version including their thoughts and any changes they would like to see. Mayor Pro-Tem Brantz stated he would like there to be easy access for citizens and the public to access Town information, and indicated he felt the large pictures changing frequently on the main page was somewhat distracting. Council Member David noted that he'd like each department head to go through and look at the functionality of their individual pages and determine anything they might need. Council was in consensus they'd also like to see an announcement section on the main page or a scrolling bar across the top with announcements and weather alerts. Several Council members indicated they'd like more time to review the Web site in order to provide Mr. Dunkin with feedback. Council agreed they would amend Thursday night's agenda while reviewing the draft agenda to include this item for further discussion.

CONSIDERATION OF TEXT AMENDMENT FOR NOVEMBER QUARTERLY PUBLIC HEARING – UDO 20.04.03(B) REGARDING THE BUFFER ZONE

Planning Development Coordinator Jane Shook presented a draft text amendment regarding the buffer zone, changing it from 50 linear feet to 100 linear feet. She advised that in order to meet the advertising deadline for this item to be on the November Quarterly Public Hearing agenda, Council would need to take action tonight. Otherwise, it would not be able to go before public hearing until February. Upon a motion by Council Member Mason, seconded by Council Member David, Council moved to send this draft text amendment to the November Quarterly Public Hearing for consideration.

VOTE: Aye – All
Nay – None

REQUEST TO APPROVE DRAFTING OF AN ORDINANCE – RESPONDING TO ANIMALS LEFT IN HOT VEHICLES

Town Attorney Sam Furgiuele advised he would need to research state animal cruelty laws, and suggested keeping this item under Council Matters in order to discuss the conditions that would need to be included in such an ordinance. It was the consensus of Council to keep this item under Council Matters for further discussion.

DISCUSSION OF TOWN'S CODE OF ETHICS – COUNCIL SERVICE ON BOARDS/COMMITTEES

It was the consensus of Council to keep this item under Council Matters for further discussion.

PRESENTATION OF SURVEY RESULTS – SUSTAINABILITY TASK FORCE

It was the consensus of Council to keep this item under Council Matters for further discussion.

CONSIDERATION OF ZONING CASE – CASE 20140549 WATAUGA GREEN

It was the consensus of Council to keep this item under Council Matters for further discussion.

DISCUSSION OF TOWN'S WATER INTAKE PROJECT

It was the consensus of Council to keep this item under Council Matters for further discussion.

CONSIDERATION OF CODE AMENDMENT – CHAPTER 73: TOWING

Town Attorney Sam Furgiuele stated some of the proposed changes are based on the conversation that took place in the lawsuit against the Town. Council Member Mason noted her concerns regarding signage and permit requirements. Mr. Furgiuele provided a summary of the grace period for these requirements. It was the consensus of Council to keep this item under Council Matters for further discussion.

SCHEDULING OF WORKSHOPS AND SPECIAL PUBLIC HEARING – WELLNESS DISTRICT SMALL AREA PLAN

Planning Development Coordinator Jane Shook advised that the Planning Commission will submit multiple dates for the workshops and hearing for Council's consideration Thursday night. It was the consensus of Council to keep this item under Council Matters for further discussion.

REQUEST FOR WAIVER OF BIDDING REQUIREMENTS FOR PURCHASE OF 1500 GPM PUMPER

It was the consensus of Council to place this item under the Consent Agenda.

APPROVAL OF CONTRACT – PURCHASE OF 1500 GPM PUMPER

Fire Chief Jimmy Isaacs stated this was for the replacement of a 1998 model. It was the consensus of Council to place this item under the Consent Agenda.

OUTSIDE AGENCY FUNDING REVIEW COMMITTEE RECOMMENDATION – FUNDING ALLOCATIONS

It was the consensus of Council to keep this item under Council Matters for further discussion.

It was agreed that the Planning and Inspections Monthly Report, Quarterly Noise Report, Monthly Water Use Status Report, Approval of Budget Amendments, Announcement of Board Vacancies and Board Appointments will be kept under Council Matters.

Upon a motion by Council Member David, seconded by Council Member Mason, Council moved to amend Thursday night's meeting agenda to include discussion and possible action regarding Rich Crepeau's request regarding the Howard Street project and Dan Dunkin of At-Net Services' request for direction from Council following Board Appointments.

VOTE: Aye – All
Nay – None

It was agreed that Requested Appearances, Water and Sewer Requests, and Closed Session items will be heard by the Council as is done each month at the regular meetings.

RECESS MEETING

With no further items for discussion, Mayor Pro-Tem Rennie Brantz recessed the regular meeting of the Boone Town Council at 6:30 p.m. until Thursday, Oct. 23, 2014, at 5:30 p.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE: Aye – All
Nay – None

CALL TO RECONVENE

A recessed meeting of the Boone Town Council was called to order at 5:30 p.m., Thursday, Oct. 23, 2014, in the Council Chambers, 1500 Blowing Rock Road. Mayor Pro-Tem Rennie Brantz presided. Council members present were Lynne Mason, Quint David, Fred Hay and Jennifer Peña. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Town Clerk Christine Pope, Finance Director Amy Davis, Assistant to the Manager Jim Byrne, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Public Utilities Director Rick Miller, Interim Public Works Director Eric Gustaveson, Planning Director Bill Bailey, Human Resources Director Peri Moretz and Cultural Resources Director Pilar Fotta.

ANNOUNCEMENTS

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

Mayor Pro-Tem Brantz announced that this meeting would be Town Manager Greg Young's last formal meeting as town manager, and expressed his appreciation for Mr. Young's more than 20 years of service to the Town. He added that a formal honoring of Mr. Young would be held in December. Council Member Mason also expressed her thanks for Mr. Young's service to the Town and his assistance during the transition that will take place over the next couple months.

TENTATIVE AGENDA ADOPTION

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

1. Addition of Item 4.H. – Approval of Amendment to Engineering Agreement between the Town and W.K. Dickson.

2. Addition of Items to Closed Session:
    a. Pursuant to N.C. Gen. Stat. §143-318.11(a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged, for legal advice concerning a section of the Town of Boone Code of Ordinances.
    b. Pursuant to N.C. Gen. Stat. §143-318.11, to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged, in connection with a request for the use of certain documents.

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

VOTE: Aye – All
Nay – None

CONSENT AGENDA ADOPTION

A. Minutes: July 9, 2014 – Special Meeting.
July 10, 2014 – Special Meeting.
July 15, 2014 – Special Meeting.

July 22, 2014 – Special Meeting. July 28/30, 2014 – Special Meeting. Aug. 22, 2014 – Special Meeting. Aug. 23, 2014 – Special Meeting. Sept. 15/18, 2014 – Regular Meeting. Sept. 19, 2014 – Special Meeting.

B. Adoption of Resolution Calling a Public Hearing on Extension of Bond Orders:

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA CALLING A PUBLIC HEARING ON EXTENSION OF BOND ORDERS AND DIRECTING PUBLICATION OF NOTICE AND SAID PUBLIC HEARING

WHEREAS, bond order entitled:

> "BOND ORDER AUTHORIZING THE ISSUANCE OF $25,000,000 GENERAL OBLIGATION WATER SYSTEM BONDS OF THE TOWN OF BOONE, NORTH CAROLINA."

was adopted on August 21, 2008 by the Town Council (the "*Town Council*") of the Town of Boone, North Carolina (the "*Town*") and became effective on approval by a majority of the voters who voted thereon at a special referendum duly called and held on November 4, 2008.

WHEREAS, the Town's request for a three-year extension for the remaining $25,000,000 was formally approved by the Local Government Commission on October 7, 2014, and the Town Council desires to provide for the holding of a public hearing on November 20, 2014 on the question of whether the maximum time period for issuing bonds under the bond orders should be extended from seven years to ten years after November 4, 2008, as required by the Local Government Bond Act.

NOW, THEREFORE, BE IT RESOLVED by the Town Council as follows:

1. The public hearing on extension of said bond orders shall be held on the 20rd day of November, 2014 at 5:30 p.m. at the Council Chambers at the 1500 Blowing Rock Road, Boone, North Carolina.

2. The Town Clerk is hereby directed to cause a copy of said bond orders to be published with a notice of such hearing in the form prescribed by law in a qualified newspaper no fewer than six days before such public hearing.

Adopted this 23rd day of October, 2014.

(RESOLUTION TO BE TYPED IN __3__, PAGE(S) __224__)

C. Approval of University Village Encroachment Agreement **(Encroachment agreement permanently on file in Town Hall).**
D. Approval of Mast General Store Encroachment Agreement **(Encroachment agreement permanently on file in Town Hall).**
E. Adoption of Resolution in Support of Street Closure for Downtown BOO:

Resolution

WHEREAS, The Town of Boone is celebrating the 14th Annual Downtown Boo! Celebration; and,

WHEREAS, This event has become a celebration for the entire community and has seen a significant increase in attendance; and,

WHEREAS, This event is centered around young children and families as participants; and,

WHEREAS, There are factors that the Town of Boone feels have the potential to increase attendance this year; and,

WHEREAS, The Town of Boone wishes to ensure the health and safety of all participants and spectators; and,

WHEREAS, The Town of Boone feels that closing a portion of West King Street for a short period of time for this event will allow for an increase in safety; and,

WHEREAS, This event is open to everyone, and provided as a benefit to the entire community.

NOW, THEREFORE, BE IT RESOLVED, that the Town Council of the Town of Boone, North Carolina, respectfully requests permission from the North Carolina Department of Transportation to close a portion of west King Street on October 31, 2014, from 4:30 – 6:00 p.m. for the 14th annual Downtown BOO! Celebration.

BE IT FURTHER RESOLVED that a copy of this resolution shall be forwarded to the North Carolina Department of Transportation for approval of the above-mentioned street closure.

Adopted this 23rd day of October, 2014.

(RESOLUTION TO BE TYPED IN BOOK__3__, PAGE(S) __225__)

F. Request for Waiver of Bidding Requirements for Purchase of 1500 GPM Pumper.
G. Approval of Contract – Purchase of 1500 GPM Pumper **(Contract permanently on file in Town Hall).**

H. Approval of Amendment to Engineering Agreement between the Town and W.K. Dickson **(Contract permanently on file in Town Hall).**

Upon a motion by Council Member Mason, seconded by Council Member Peña, Council moved to adopt the Consent Agenda, as amended.

VOTE: Aye – All
Nay – None

PUBLIC COMMENT

Frank Packard of Todd, N.C., spoke regarding the Town's proposed water intake project. Mr. Packard stated his group has been referred to as misguided and uninformed. He stated the Town continues to put out misleading information and is relying on outdated studies, with deliberate attempts to not be open and transparent. Mr. Packard discussed ASU's local water supply plan and the Town's no-rise certification.

Mary Moretz and Hannah Hemingway Freundlich, representing the Daniel Boone Chapter of the Daughters of the American Revolution, presented to Mayor Pro-Tem Brantz a certificate on behalf of the chapter recognizing the Town's correct display, proper use and patriotic presentation of the American flag.

Donald Nelson of Fleetwood, N.C. spoke in opposition to the Town's proposed raw water intake project. He stated that the water use per day is the same as it was 10 years ago, and that the town's growth over the past five years has been very slow. He stated that much greater growth in the town is shown in the documents the Town of Boone is presenting, and wondered if a project that costs $25 million to start is justified.

Marie Nelson of Fleetwood, N.C. spoke in opposition of the Town's proposed raw water intake project. She provided a brief background of the New River and discussed the drawings of the proposed pump station. She also spoke regarding the impairment of the Town's existing intake site.

Laurie Vierheller of the Watauga Humane Society asked for Council's reconsideration of the Outside Agency Funding Review Committee's recommendations for funding allocations. She stated that half of the animals brought in are from citizens of Boone and Watauga County due to varying circumstances. She stated that while she understands funding is limited, she requests any funding the Town can give to help.

REQUEST TO APPROVE DRAFTING OF AN ORDINANCE – RESPONDING TO ANIMALS LEFT IN HOT VEHICLES

Janet Pepin appeared before Council to discuss her concern with animals—most often dogs—left in hot vehicles. She said that research suggests that the interior of a car can reach 104 degrees when leaving an animal in a car with the windows open when it is 70 degrees outside. She added that the police chief advised her there were 51 complaints of this last year. Ms. Pepin requested that Council allow her to continue to research this issue and possibly draft an ordinance for the Town prohibiting animals from being left in hot vehicles. Town Attorney Sam Furgiuele advised that the Town's ability to regulate is pursuant to authority under State and criminal law, and he would need to research this further. Council Member Mason noted she would like to know what other communities are doing. Upon a motion by Council Member Mason, seconded by Council Member Hay, Council moved to authorize Ms. Pepin to continue looking into options related to the issue of animals being left in hot vehicles, and to be able to consult with the Town Attorney for direction, and to direct the Town Attorney to do independent research as well regarding this matter.

VOTE: Aye – All
Nay – None

DISCUSSION OF TOWN'S CODE OF ETHICS – COUNCIL SERVICE ON BOARDS/COMMITTEES

Council Member Peña indicated this discussion pertained to Council members' service on boards in which there are contractual or financial agreements with the Town and wondered if this was a conflict of interest. She added that while all Council members act in good faith, there is the appearance of unethical behavior and suggested members recusing themselves in certain decision-making matters. Council Member Brantz felt that each Council member should undertake that decision and thinking on an individual level to make the best possible decision they can for the Town considering the information they have. Town Attorney Sam Furgiuele stated that state law does not address serving on a board without financial gain. He added that it is inevitable people would view a person serving on a board as advocating for the board rather than Town Council, but Council must take action on the basis of public interest.

Upon a motion by Council Member Peña, seconded by Council Member Hay, Council moved to direct the Town Attorney to draft revisions to the Town's Code of Ethics in order to add language that will discuss the difference between Town Council appointments versus private citizen service. Town Attorney Sam Furgiuele suggested adding language regarding when it's appropriate to appoint a Council member to a board if an organization requests it.

VOTE: Aye – 4 (David, Hay, Mason, Peña)
Nay – 1 (Brantz)

PRESENTATION OF SURVEY RESULTS – SUSTAINABILITY TASK FORCE

Council Member David presented Council with a brief overview of the results thus far for the survey that the Sustainability Task Force had sent out. He added that the task force is working to determine initiatives the Town could undertake to address the growing needs of sustainability. He said the top response so far is the expansion of the Greenway Trail, and he would have a final committee report and results of the survey at next month's Council meeting.

CONSIDERATION OF ZONING CASE – 20140549 WATAUGA GREEN

- **CASE 20140549** Watauga Green/United Developers is requesting approval of a Conditional District Map modification to eliminate one building (number 6) by changing buildings 4 and 5 to three-story structures on property located at and near Clawson Street (Watauga County PIN 2911-60-3992-000).

Planning Director Bill Bailey advised that the Planning Commission unanimously recommended approval of this request; however, the Planning Commission did not adopt staff's conditions, which he believes was unintentional and the conditions were overlooked when making the final motion. He added that the applicant was agreeable to staff's conditions.

Vote #1

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved that the proposed amendment to the Town's zoning map is consistent with the Town's Comprehensive Plan and other applicable plans of the Town which relate to this application, because the proposed modifications to the site plan stays true to the original plans of creating affordable housing in the Boone area meeting a critical housing need and do not alter the number of units.

VOTE: Aye – All
Nay – None

Vote #2

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve the proposed amendment to the Town's zoning map with the four conditions

state in the Planning and Inspections staff report and believe approval is reasonable and in the public interest because:

1. Decreases the amount of site disturbance;
2. Decreases the impact on the view shed;
3. Decreases the negative impacts on the natural slope and the lay of the land;
4. Eliminates a retaining wall;
5. Reduction to impervious areas; and,
6. Increases the open spaces.

VOTE: Aye – All
Nay – None

DISCUSSION OF TOWN'S WATER INTAKE PROJECT

Council Member Peña began the discussion by making the following statement:

After the surprising and unwarranted actions by Senator Dan Soucek to present and push through the passage of Senate Bill 865, banning the Town of Boone's ability to utilize the ETJ, it was incumbent upon the Town to file a lawsuit to protect the ETJ and its residents. We are currently waiting for action on this lawsuit by the North Carolina Supreme Court.

The ETJ provides a necessary buffer from unwanted and largely unregulated development. With the recent housing study indicating an oversupply of multi-family housing, and the creation of such developments as The Cottages, there is real and growing concern about what will happen to the area directly surrounding the Town without the protection provided by the ETJ.

The increase in multi-family housing despite oversupply, as well as lowered water use in the Town have also raised public concern about the actual water needs of the Town of Boone. The water intake project will cost in excess of $25 million. This figure was determined before the actions of the republican-led Watauga County Commissioners to institute an unfair tax scheme taking away funds from the Town of Boone. The Town is currently attempting to make due with less and must be certain of the need for this intake project before continuing to fund it.

Citizens in Boone are also concerned about the security that was once provided by the ETJ surrounding their neighborhoods. Property values, development on steep slopes, and the loss of the view shed are all valid issues citizens in Boone and the ETJ have raised since the passing of SB 865. Without

Town authority over the ETJ, we will not have the ability to stop rampant high-density development.

In light of the current lawsuit to reinstate the Town's ETJ, it is in the Town's best interest to postpone any further work on the water intake project until a final decision is rendered by the North Carolina Supreme Court.

Council Member Peña moved to suspend all activity on the water intake project until a final decision is made on the Town's extraterritorial jurisdiction (ETJ) case. Council Member Hay seconded the motion.

Council Member Mason presented the following statement:

In 2004, when the Town of Blowing Rock approached the Town about purchasing water, the Town evaluated its raw water supply and water system demand. It was determined at that time that the Town had an inadequate water supply to meet the future growth needs of Boone.

The need exists even without the ETJ (extraterritorial jurisdiction).

Population trends have exceeded projections and though conservation measure have made a difference in the short term, they alone cannot sustain the long-term projected water needs.

The need for an additional water supply has been well-documented and the Town has complied with every step of the permitting process.

The intake will not compromise the flow, the use of the river or water quality, and in fact, the watershed protection will protect water quality. DENR regulates the amount of water that the Town can withdraw, so during times of drought, the Town would be subject to DENR guidelines on the amount that the Town can withdraw. The Town will not dry up the river and the water quality will be improved with the watershed protection.

If Boone does not increase the available public water supply, the impact of wells on the water table could have long-term devastating impacts on the New River.

The Town has secured excellent financing terms for this project that we will lose if we do not go forward. We have to make decisions in the best long-term interest of the Town and its citizens.

Council Member Hay stated he felt it would be wise to wait until a decision on the ETJ is made. Council Member Mason stated she fears the Town will lose the funding for the project by postponing it. Council Member Brantz stated he also opposes the motion and believes the reasons for the intake are still valid. He added that he was concerned the longer the Town waits, the more it will cost. Council Member David stated he was concerned with ending the proposed water intake project and then needing it shortly after. He wondered what legal liability the Town would have for ignoring warnings, and added that the Town's 2006 plan indicated the Town has needed a water system upgrade since 1992. Lengthy discussion ensued regarding how postponing the intake project would affect contractual agreements the Town had for the project as well as what time frame the Town could postpone the project without it affecting any contractual agreements. Town Attorney Sam Furgiuele stated he would need to confirm with Town staff such a timeframe without negatively impacting the agreements. Council Member Brantz suggested postponing this decision until they receive further information from staff. Town Manager Greg Young recommended that Council analyze the contracts legally and communicate with them what Council intends to do. He stated that the project loan is for a 40-year term and everything else generally offered is a 20-year term. Council Member David made a friendly amendment to the motion to have staff prepare those legal contractual issues for Town Council's review. It was the general consensus of Council to have staff prepare the legal contractual issues for Council's review even in the event the motion on the floor does not pass.

VOTE: Aye – 2 (Hay, Peña)
Nay – 3 (Brantz, David, Mason)

CONSIDERATION OF CODE AMENDMENT – CHAPTER 73: TOWING

Town Attorney Sam Furgiuele presented drafted amendments to the Town's towing ordinance. He stated he met with Harold Tilley and Jon Tate, and reviewed the drafted amendments for Council's consideration. Mr. Furgiuele added that some of the changes follow conversation with the judge in the lawsuit against the Town, and also that he amended the section regarding identification badges to reflect that they must be renewed annually.

Discussion ensued regarding Mr. Furgiuele's conversation with Mr. Tate regarding the possibility of having a 30-day grace period to obtain a privilege license in case the employee does not continue employment with the company. Mr. Furgiuele noted that a second issue discussed with Mr. Tate was the required time period they must wait—eight hours—before towing a vehicle that has been wheel-locked. Upon a motion by Council Member Peña, seconded by Council Member Hay, Council moved to open the discussion at 7:40 p.m.

VOTE: Aye – All
Nay – None

Mr. Tate stated that people will contact his company after having been wheel-locked but, even after acknowledging the action, will wait the full eight hours before removing the vehicle from the lot, which he felt was abusing the system. He asked for Council's consideration to amend the ordinance to allow, in those instances, a shorter time period that his company can remove the vehicle if the owner of the vehicle has acknowledged that the vehicle has been wheel-locked. He added that due to the eight-hour time frame set, he has employees working through the night to ensure they follow the Code regarding meeting the vehicle owner within 15 minutes of being contacted to remove a wheel-lock. He felt that shortening the time frame in these scenarios would allow them to charge an additional fine if the vehicle is not removed in those two hours and would help cover the cost for the employees who are working and waiting to tow the vehicles.

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to approve the drafted amendments to Chapter 73: Towing as proposed, to endorse the two items regarding privilege licenses and time frames for towing vehicles, to authorize the town attorney to modify the language in consultation with Mr. Jon Tate, and to extend the grace period for signage requirements until Dec. 31, 2014.

CHAPTER 73: TOWING

Section

73.01 Definitions
73.02 Limitations of chapter
73.03 Towing Authorized
73.04 Towing of vehicles from parking lots
73.05 Towing of vehicles from parking spaces
73.06 Towing charges
73.07 Time limits for releasing non-consensually towed vehicles
73.08 Use of parking control devices or methods in parking lots and spaces **authorized**
73.09 Signs or notification required before parking control devices or methods may be utilized in parking lots
73.10 Operational requirements for persons involved in the use of parking control devices or methods in parking lots and spaces
73.11 Parking Lots in which both towing and parking control devices or methods are utilized
73.99 Penalty

§ 73.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMMERCIAL. **For purposes of this chapter, "Commercial" shall refer to and mean every use of an establishment or location other than as an owner-occupied "single family dwelling," as that term is defined in Article 34 of the Unified Development Ordinance, Code Chapter 153, and shall specifically include, but is not limited to retail establishments, restaurants, business offices, multi-family residential complexes including condominiums, residential rental units, and service establishments**.

ESTABLISHMENT. **For purposes of this chapter, an "Establishment" shall refer to and mean the use or occupancy of one or more structures for a commercial purpose or the use or occupancy of a location for a commercial purpose**.

LOCATION. **For purposes of this chapter, a "Location" shall refer to and mean any distinct property which is separated from other properties by boundary lines; physical barriers; lease lines or other divisions created by deed, easement or other legal instrument; or any combination of these.**

PARKING-CONTROL DEVICE OR METHOD. For purposes of this chapter, a ***PARKING-CONTROL DEVICE OR METHOD*** shall include, but not be limited to, the use of any mechanical device, such as a "boot" or instrument intended to disable a vehicle or prevent a vehicle from being removed from a private parking lot or space, or the imposition of a private charge for the removal of a vehicle from a private parking lot or space, or any other non-consensual means**, other than towing,** by which a vehicle is immobilized, blocked or prevented from being removed from a parking lot or space.

PARKING LOT. Any privately-owned area created, designated or used for the parking of two or more vehicles, not including driveways, garages or other parking areas of a single-family residence or a single-family residence with an accessory dwelling unit, unless the parking area or any portion thereof is leased or rented to persons not residing in the residence or accessory dwelling unit.

PARKING SPACE. Any privately-owned area created, designated or used for the parking of **a single** vehicle~~s, which does not constitute a parking lot~~, not including **a** driveway~~s~~, garage~~s~~ or other parking area~~s~~ of a single-family residence or a single-family residence with an accessory dwelling unit, unless the parking area ~~or any portion thereof~~ is leased or rented to persons not residing in the residence or accessory dwelling unit. ~~One or more parking spaces may, if designated in compliance with this chapter, exist within a parking lot.~~

TOWING COMPANY. Any person, business or other entity engaged in the towing of vehicles for compensation, including any officer, employee, agent, contractor or other person acting on behalf of, pursuant to the authority of, or under the supervision or control of the towing company. A person who functions as an "independent contractor" for purposes of federal tax law, but who maintains a business affiliation with one or more towing companies, shall be considered both a "towing company" and an employee of the towing company or companies with which the person maintains the business affiliation.

VEHICLE. Any motorized contrivance fitted with wheels or runners, whether or not it is required to be registered or licensed or is registered or licensed by the State, designed for the transportation of one or more persons, as well as any non-motorized contrivance fitted with wheels or runners, designed for the transporting of anything and designed to be pulled by an automobile, truck or other motorized vehicle.

§ 73.02 LIMITATIONS OF CHAPTER.

(A) This chapter shall not limit or in any way modify ~~the authority~~ or abrogate the **authority or** procedures created by §70.08, §§ 91.070 *et seq*., nor of any towing powers or procedures conferred or created by general statute or the code of ordinances upon Police, Fire Department or other emergency personnel. Except as expressly provided, this chapter does not in any way amend the provisions of §153.01 with respect to the number, posting, placement, permitting, dimensions or other characteristics or requirements of signs within the town. This chapter shall not apply to **or restrict** the towing of vehicles encroaching into areas clearly designated as fire lanes and shall not limit the right to tow vehicles which are blocking clearly designated areas of ingress and/or egress or encroaching into areas clearly designated and marked for access to dumpster(s) so long as signage reasonably calculated to be seen warns that encroachment into dumpster access areas will result in towing of the vehicle.

(B) This chapter does not limit other remedies under law a property owner may have against a person trespassing on private property, but only applies and limits the use of **non-consensual** towing and parking control devices as specified.

§ 73.03 TOWING AUTHORIZED.

(A) Towing by towing companies is hereby authorized within the town.

(B) No towing company which maintains a ~~physical~~ **fixed** business ~~location~~ **situs** within the corporate limits of the town may tow a vehicle from a parking lot or parking space within the town unless it first obtains and has in effect a current privilege license issued by the town in accordance with §112.35. A "~~physical~~ **fixed** business ~~location~~ **situs**," **for purposes of this section**, includes an office, impoundment or storage lot, and any other fixed location relating to the conduct of the towing operation. For an independent contractor who individually has no fixed ~~physical~~ business ~~location~~ **situs in any location**, the "~~physical~~ **fixed** business ~~location~~ **situs**" of the towing company shall be considered the towing vehicle itself, and such contractor shall be required to obtain a privilege license before engaging in any towing activity within the town limits.

(C) Whether an individual is designated as an employee or an independent contractor, for purposes of vicarious liability under this chapter, he shall be treated as an employee of any company or person who directs his activities.

(~~C~~ **D**) No towing company may attach a towing vehicle to an occupied vehicle, tow a vehicle which is occupied, nor demand payment pursuant to this chapter in connection with an occupied

vehicle. This chapter does not authorize a towing company to attempt to impede or block an occupied vehicle from being removed from a parking space or lot.

§ 73.04 TOWING OF VEHICLES FROM PARKING LOTS.

~~(A) Other than the parking lot for a mall, shopping center, as those terms are defined in the town's Unified Development Ordinance (the "UDO"), or a parking lot serving multiple commercial establishments, it shall be unlawful for any person to authorize, direct, engage in, or contract for the non-consensual towing of a vehicle from any parking lot in the town unless the person:~~

~~(1) Has posted a sign on both sides of every vehicle entrance to the premises, in locations and heights designed to be easily seen from the vehicle driver's vantage point by an unauthorized person entering the parking lot, on signs each no smaller than two square feet and no larger than four square feet containing the following information in a font which can easily be read by a person of ordinary vision entering the parking lot:~~

~~(a) A statement that the parking lot is a private parking lot and unauthorized vehicles will be towed, e.g., "Private Parking Lot - Towing Enforced"; and~~

~~(b) The name and telephone number of the towing company and location where any towed vehicle is taken; or~~

~~(2) Has posted a sign or combination of signs, each no smaller than two square feet and no larger than four square feet on the premises, in a location(s) designed to and which can easily be seen by every unauthorized person utilizing the parking lot, containing the following information in a font which can easily be read by a person of ordinary vision entering the parking lot:~~

~~(a) A statement that the parking lot is a private parking lot and unauthorized vehicles will be towed, e.g., "Private Parking Lot - Towing Enforced"; and~~

~~(b) The name and telephone number of the towing company and location where any towed vehicle is taken; or~~

~~(3) Has posted a sign compliant with §73.05(A)(1) at every parking space within the lot for which enforcement may take place; or~~

~~(4) Has placed a written notice, in a form designed to be weather resistant, on the windshield, under a windshield wiper of the vehicle to be towed or other secure place on the vehicle, designed to be easily discovered by the operator or owner of the vehicle, at least four hours prior to the non-consensual towing of the vehicle if the parking lot is located within the Municipal Service District and at least twenty-four hours prior to the non-consensual towing if the parking lot is located outside the Municipal Service District, which contains the following information:~~

~~will be towed;~~

~~(b) The name and telephone number of the towing company and location where any towed vehicle is taken;~~

~~(c) The towing charges imposed by the towing company; and~~

~~(d) The existence and amount of any storage charges related to the storage by the towing company of the vehicle and the terms and conditions for the imposition of storage charges.~~

(A) ~~(B)~~ ***Signs and Other Requirements for Towing from a Parking Lot of a Mall, Shopping Center, or Parking Lot which Serves Multiple Locations or Establishments.***

For **a** parking lot~~s~~ ~~in~~ **serving a** "mall~~s~~" or "shopping center~~s~~," as those terms are defined in **Chapter 153, Article 34 of** the Unified Development Ordinance (hereafter "UDO), as well as **for a** parking lot~~s~~ which serve~~s~~ multiple locations or establishments, it shall be unlawful for any person to authorize, direct, engage in, or contract for the non-consensual towing of a vehicle unless the ~~mall, shopping center or~~ parking lot **meets all of the following requirements**:

(1) ~~Has complied~~ **It complies** with UDO §26.12.01, as applicable by the terms of that section;

(2) ~~Has posted a~~ **Unless legal impossibility is demonstrated pursuant to subsection (4), a** sign **is posted** on both sides of every vehicle entrance to the ~~premises~~ **parking lot,** in locations and at heights designed to be easily seen from the **vantage point of the** driver of a vehicle~~'s vantage point~~, **each sign complying with all of the following:**

(a) Each sign is placed no more than ten (10) feet from the street from which access to the parking lot is obtained **unless a different location is approved in writing by the Town of Boone Chief of Police based upon his determination that such different location will be more effective in advising persons utilizing the parking lot of its restricted availability**;

(b) E~~e~~ach sign **is** no smaller than four square feet and no larger than six square feet, with a white background and red letters, **printed in fonts which can easily be read by a person of ordinary vision seated in a vehicle entering the parking lot**; and

(c) **Each sign** ~~containing~~ **contains all of** the following information**, as applicable:** ~~, in a font which can easily be read by a person of ordinary vision entering the parking lot~~:

(i) ~~(a)~~ That the parking lot is a private parking lot and unauthorized vehicles will be towed, e.g., "Private Parking Lot - Towing Enforced";

(ii) ~~(b)~~ The name of the mall or shopping center which the parking lot serves**;**

~~———~~ **If** fewer than six ~~businesses~~ **shopping center** are served by the parking lot, the name of each ~~business~~ **location or establishment served** ~~contained in the mall or shopping center~~;

(iv) ~~or if~~ **If** the parking lot ~~is one that~~ serves multiple ~~businesses~~ **locations** or establishments not part of a **single** shopping center or mall, the name of every **location and** ~~business~~ **establishment** served by the parking lot, which name**s** must match the name**s** displayed on **each of** the ~~businesses or~~ **locations or establishments** ~~itself~~ **themselves**; and

(v) ~~(c)~~ The name and telephone number of the towing company and location where any towed vehicle is taken~~; and~~**.**

(3) ~~When~~ **Has** vehicle entrance**s** ~~are not~~ **which are** clearly defined by curb cuts, **or** has established locations of motor vehicle entrances by means of markings on the pavement such as painted hash marks, reflectors or the like~~, combined with the signs required by subsection (2)~~.

(4) ***Legal Impossibility***. **Alternative sign placements may be approved by the Chief of Police when a property owner or other person exercising legal control of a parking lot demonstrates that compliance is legally impossible. In order to establish legal impossibility, the person must present a signed opinion from an attorney licensed in North Carolina which certifies that the attorney has examined the relevant legal records related to the parking lot and which identifies with specificity the legal impediments to compliance. The person must propose an alternative placement of signs which achieves the highest level of notice feasible under the circumstances.**

(B) ~~(A)~~ ***Signs and Other Requirements for Towing from a Parking Lot serving a single Location or Establishment other than a Mall or Shopping Center*.**

For a parking lot which serves a single location or establishment, o~~O~~ther than ~~the parking lot for~~ a mall **or** shopping center, ~~as those terms are defined in the town's Unified Development Ordinance (the "UDO"), or a parking lot serving multiple commercial establishments~~, it shall be unlawful for any person to authorize, direct, engage in, or contract for the non-consensual towing of a vehicle from any parking lot in the town unless the ~~person~~ **parking lot complies with at least <u>one</u> of the following four subsections, (1) through (4), compliance with subsection (1) presumptively considered adequate notice**:

(1) ~~Has posted~~ **There is** a sign **posted** on both sides of every vehicle entrance to the premises, in locations and heights designed to be easily seen from the **vantage point of the driver of a** vehicle ~~driver's vantage point by an unauthorized person~~ ente ing the parking lot,~~ on signs~~ each **sign** no smaller than two square feet and no larger than four s uare feet**, each with a white background and red letters** containing the following information in ~~a~~ font**s** which can easily be read by a person of ordinary vision entering the parking lot:

(a) ~~A statement~~ **T**that the parking lot is a private parking lot and unauthorized vehicles will be towed, e.g., "Private Parking Lot - Towing Enforced"; and

(b) The name and telephone number of the towing company and location where any towed vehicle is taken~~; or~~**.**

(2) ~~Has posted~~ **There is** a sign or combination of signs **posted on the premises**, each no smaller than two square feet and no larger than four square feet ~~on the premises~~, in a location(s) designed to and which can easily be seen by every unauthorized person ~~utilizing~~ **entering the parking lot or exiting a parked vehicle in** the parking lot, **each sign with a white background and red letters,** containing the following information in ~~a~~ font**s** which can easily be read by a person of ordinary vision ~~entering the parking lot~~:

(a) ~~A statement~~ **T**that the parking lot is a private parking lot and unauthorized vehicles will be towed, e.g., "Private Parking Lot - Towing Enforced"; and

(b) The name and telephone number of the towing company and location where any towed vehicle is taken~~; or~~**.**

(3) ~~Has posted~~ **There is** a sign compliant with §73.05(A)(1) at every parking space within the lot for which enforcement may take place~~; or~~**.**

(4) ~~Has placed a~~ **A** written notice, in a form designed to be weather resistant, **has been placed** on the windshield, under a windshield wiper of the vehicle to be towed**,** or **at some** other secure place on the vehicle~~,~~ designed to be easily discovered by the operator or owner of the vehicle, at least four hours prior to the non-consensual towing of the vehicle if the parking lot is located within the Municipal Service District and at least twenty-four hours prior to the non-consensual towing if the parking lot is located outside the Municipal Service District, which **notice** contains **all of** the following information:

(a) ~~A statement that t~~ **T**he parking lot is a private parking lot and unauthorized vehicles will be towed;

(b) The name and telephone number of the towing company and location where any towed vehicle is taken;

(c) The towing charges imposed by the towing company; and

(d) The existence and amount of any storage charges related to the storage by the towing company of the vehicle and the terms and conditions for the imposition of storage charges.

(C) Once an owner or operator of a vehicle has been notified **of unauthorized use** pursuant to ~~subsection~~ **§73.04**(~~A~~ **B**)(4) above, it shall be unnecessary for the person authorizing, directing, engaging in, or contracting for the non-consensual ~~notice~~ towing to give any further notification should there be any future unauthorized parking with the same vehicle or by the same owner or operator at the same parking lot**, and upon its discovery, the vehicle in question or another vehicle driven by the same owner or operator may be immediately towed**.

§ 73.05 TOWING OF VEHICLES FROM PARKING SPACES.

(A) It shall be unlawful for any person to authorize, direct, engage in, or contract for the non-consensual towing of a vehicle from any parking space in the town unless **either**:

(1) A sign has been posted in a conspicuous location facing the parking space, no smaller than 120 square inches, **with a white background and red letters,** identifying the space as private property and warning that unauthorized vehicles will be towed, e.g. "Private Parking - Towing Enforced" and listing the name and telephone number of the towing company or a telephone number at which the name and location of the towing company can be ascertained; or

(2) ~~The person authorizing, directing, engaging in, or contracting for the non-consensual towing places a written notice, in a form designed to be weather resistant, on the windshield under a windshield wiper of the vehicle to be towed or other secure place on the vehicle, designed to be easily discovered by the operator of the vehicle, at least four hours prior to the non-consensual towing of the vehicle if the parking lot is located within the Municipal Service District and twenty-four hours prior to the non-consensual towing if the parking lot is located outside the Municipal Service District, which informs the owner or operator of the vehicle that the parking space is private property and the vehicle will be towed at the owner's expense if it is not removed and states the name and address of the towing company to be used.~~

(2) A written notice, in a form designed to be weather resistant, has been placed on the windshield, under a windshield wiper of the vehicle to be towed, or at some other secure place on the vehicle designed to be easily discovered by the operator or owner of the vehicle, at least four hours prior to the non-consensual towing of the vehicle if the parking lot is located within the Municipal Service District and at least twenty-four hours prior to the non-consensual towing if the parking lot is located outside the Municipal Service District, which notice contains all of the following information:

(a) The parking lot is a private parking lot and unauthorized vehicles will be towed;

(b) The name and telephone number of the towing company and location where any towed vehicle is taken;

(c) The towing charges imposed by the towing company; and

(d) The existence, amount, terms and conditions for the imposition of any storage charges by the towing company.

(B) Unless the parking space in question is also located in a parking lot, before having a car towed pursuant to ~~this~~ **the procedure authorized under §73.05 (A)(2)**, the person authorizing, directing or contracting for the non-consensual towing shall first inform the Police Department that he or she is having an unauthorized vehicle towed.

(~~B~~ **C**) Once an owner or operator of a vehicle has been notified pursuant to ~~subsection~~ **§73.05** (A)(2) above, it shall be unnecessary for the person authorizing, directing, engaging in, or contracting for the non-consensual ~~notice~~ towing to give any further notification should there be any future unauthorized parking with the same vehicle or by the same owner or operator at the same parking space**, and upon its discovery the vehicle in question or another vehicle driven by the same owner or operator may be immediately towed**.

§ 73.06 TOWING CHARGES.

(A) ***Limits on towing charges*.**

(1) No towing company shall charge for the non-consensual towing of a vehicle more than 175% of its normal towing charge for consensual towing of a vehicle. For example, if a normal consensual towing fee is $35, the maximum non-consensual towing fee is $61.25. If a normal consensual towing fee is $45, the maximum non-consensual fee is $78.75.

(2) Whenever a towing company is attempting to non-consensually tow a vehicle and has already connected the vehicle to its tow truck, but the vehicle has not yet been removed from the parking lot or parking space and the owner or driver of the vehicle appears and states a desire that the vehicle not be towed, the towing company shall release the vehicle to the owner or driver upon the payment of 50% of the non-consensual towing charge. If the vehicle has not yet been connected to the tow truck at the time the owner or driver appears, but the towing company has begun the process of preparing the vehicle for towing, and the owner or driver states a desire that the vehicle not be towed, the towing company shall release the vehicle to the owner or driver so long as the owner or driver immediately removes the vehicle from the premises and pays a fee of 25% of the non-consensual towing charge.

(3) A towing company may charge a daily fee for the storage of a vehicle which has been non-consensually towed to the property of the towing company. No storage fee may be charged for days when the towing company is not open during the full normal business hours of at least 9:00 a.m to 4:00 p.m. for the recovery of a non-consensually towed and stored vehicle.

(a) ***Waiting period before storage fees may be charged.*** A towing company which is not open for the recovery of a towed vehicle at the time of the non-consensual towing shall not charge a storage fee for the storage of the towed vehicle until at least one full business day (no less than 24 hours) has elapsed from the time the towing company is next open for the recovery of a towed vehicle after the towing. If the towing company is open for recovery of a towed vehicle at the time a vehicle is non-consensually towed, the towing company may begin to charge a daily storage fee 24 hours after the vehicle is detached from the tow truck onto the property where the vehicle will be stored.

(b) ***Imposition of storage fees if towing company is closed when waiting period elapses*.** If the 24-hour waiting period for the charging of storage fees elapses at a time when the towing company is not open for the recovery of a vehicle which has been non-consensually towed, a storage fee cannot be charged until at least two hours after the beginning of the next business day thereafter.

(c) ***Amount of storage fees***. Any storage fee charged by the towing company shall be reasonably related to the cost of storing the vehicle. A daily storage charge not exceeding $10 per day shall be presumed to be reasonably related to the cost of storing a vehicle.

(d) A towing company which has failed to comply with the provisions of §~~73.08~~8 **73.07** is prohibited from charging any storage fee whatsoever and is subject to such civil and other penalties authorized herein.

(B) ***Posting of fees***. Each towing company operating within the jurisdictional limits of the town shall post, in a conspicuous location at its place(s) of business, a schedule of fees designed to be easily seen, which states, at a minimum, its consensual towing fee(s), its non-consensual towing fee, its daily storage fee and its hours of operation. The schedule of fees shall at all times be available for inspection and shall be placed or posted in a location(s) so that a person may obtain the information at times when the towing company is not open for business. Posting of the schedule on the entrance of the towing company, if the entrance of the towing company is approachable without a person having to pass through any barrier when the towing company is closed, shall comply with the requirements of this section with regard to the required place of posting.

§ 73.07 TIME LIMITS FOR RELEASING NON-CONSENSUALLY TOWED VEHICLES.

(A) Any time a towing company engages in the non-consensual towing of a vehicle, during the next six hours and during the next business day following the towing, an agent or employee of the towing company must respond within one-half hour to a telephone call from the vehicle's owner or driver to the contact number provided by the towing company. During its response call, upon the request of the driver or owner of the towed vehicle, the towing company must make arrangements for the release of the vehicle upon the full payment of fees, in accordance with subparagraphs (B) and (C).

(B) The towing company must arrange for and allow the full payment of fees within one-half hour of the end of the conversation described in subparagraph (A). If the towing company is located more than three miles from the location from which the vehicle was towed**, and the owner or driver has requested the opportunity and indicated a willingness to pay the fees, but states an inability to obtain transportation to the location of the vehicle**, the company must travel to the location of the driver or owner of the towed vehicle to allow the full payment of fees to be made~~, if the owner or driver has requested the opportunity to pay the fees~~.

(C) Following the full payment of fees, the towing company must arrange for the release of the towed vehicle within one hour of payment. If the vehicle is more than three miles from the location from which it was towed, the company must return the vehicle to the public street nearest the location from which the vehicle was towed within one hour of payment.

§73.08 USE OF PARKING CONTROL DEVICES OR METHODS IN PARKING LOTS AND SPACES AUTHORIZED.

(A) Use of parking control devices or methods is hereby authorized within the town.

(B) No company which maintains a fixed business situs within the corporate limits may direct or be involved in any activities related to the use of parking control devices or methods in parking lots or spaces within the town unless it first obtains and has in effect a current privilege license issued by the town in accordance with §112.35. A "fixed business situs," for purposes of this section includes an office, storage facility and any other fixed location relating to the conduct of the operation. The physical location of a person who functions as an "independent contractor" for purposes of federal tax law shall be the parking lot or parking spaces within which the person is engaged in the activities controlled by this chapter, and any such person involved in any activities related to the use of parking control devices or methods in parking lots or spaces within the town must obtain a privilege license from the town to direct or be involved in any activities related to the use of parking control devices or methods in parking lots or spaces within the town.

(C) Whether an individual functions as an employee or an independent contractor, for purposes of vicarious liability under this chapter he shall be treated as an employee of any company or person who directs his activities.

(D) No person may attach a parking control device or method to an occupied vehicle. Except as specified herein, this chapter does not authorize any person to attempt to impede or block an occupied vehicle from being removed from a parking space or lot.

§73.09 SIGNS OR NOTIFICATION REQUIRED BEFORE PARKING CONTROL DEVICES OR METHODS MAY BE UTILIZED IN PARKING LOTS.

(A) ***Signs and Other Requirements for the use of a Parking Control Device or Method in a Parking Lot of a Mall, Shopping Center, or Parking Lot which Serves Multiple Locations or Establishments*.**

For **a** parking lot~~s~~ ~~in~~ **serving a** "mall~~s~~" or "shopping center~~s~~," as **those terms are** defined in **Chapter 153, Article 34 of** the Unified Development Ordinance, as well as **for a** parking lo~~t~~s which serve**s** multiple ~~commercial or are in a location where confusion might arise as to which premises are served by the parking lot~~ **locations or establishments,** it shall be unlawful for any person to authorize, direct, contract for, implement or apply a parking control device or method to a vehicle unless the ~~mall, shopping center or~~ parking lot **meets all of the following requirements:**

(1) ~~Has complied~~ **It complies** with UDO §26.12.01, as applicable by the terms of that section;**.**

(2) ~~Has posted a sign on both sides of every vehicle entrance to the premises, in locations and at heights designed to be easily seen from the driver of a vehicle's vantage point, no more than ten (10) feet from the street from which access to the parking lot is obtained, each sign no smaller than four square feet and no larger than six square feet, with a white background and red~~

~~letters, containing the following information in a font which can easily be read by a person of ordinary vision entering the parking lot:~~ **A sign is posted on both sides of every vehicle entrance to the parking lot, unless legal impossibility is demonstrated pursuant to subsection (3), in locations and at heights designed to be easily seen from the vantage point of the driver of a vehicle, each sign complying with all of the following:**

(a) Each sign is placed no more than ten (10) feet from the street from which access to the parking lot is obtained **unless a different location is approved in writing by the Chief of Police based upon his determination that such different location will be more effective in advising persons utilizing the parking lot of its restricted availability**;

(b) Each sign is no smaller than four square feet and no larger than six square feet, with a white background and red letters printed in fonts which can easily be read by a person of ordinary vision seated in a vehicle entering the parking lot, and which contains all of the following information, as applicable:

(i) That the parking lot is a private parking lot and unauthorized vehicles will be immobilized or prevented from being removed using a parking control device or method, the type of which must be identified;

(ii) The amount of any charge imposed to remove the parking control device or method from the vehicle;

(iii) The name of the mall or shopping center which the parking lot serves~~; and if fewer than six businesses are served by the parking lot, the name of each business contained in the mall or shopping center; or if the parking lot is one that serves multiple businesses not part of a shopping center or mall, the name of every business served by the parking lot, which name must match the name displayed on the business itself~~; ~~and~~

(iv) If fewer than six locations and establishments in a mall or shopping center are served by the parking lot, the name of each location and establishment served;

(v) If the parking lot serves multiple locations or establishments or locations not part of a single shopping center or mall, the name of every location and establishment served by the parking lot, which names must match the names displayed on each of the locations and establishments themselves;

(vi) That~~, if applicable,~~ the practice of the particular parking lot owner is to allow the application of a parking control device or method to a vehicle when the user of the vehicle utilizes the parking lot to visit both authorized ~~premises~~ **locations** and/or establishments and unauthorized ~~premises~~ **locations** and/or establishments.

(c) ~~When~~ **Has** vehicle entrances ~~are not~~ **which are** clearly defined by curb cuts, **or** has established locations of motor vehicle entrances by means of markings on the pavement such as painted hash marks, reflectors or the like~~, combined with the signs required by subsection (b)~~.

.

of Police when a property owner or other person exercising legal control of a parking lot demonstrates that compliance is legally impossible. In order to establish legal impossibility, the person must present a signed opinion from an attorney licensed in North Carolina which certifies that the attorney has examined the relevant legal records related to the parking lot and which identifies with specificity the legal impediments to compliance. The person must propose an alternative placement of signs which achieves the highest level of notice feasible under the circumstances.

(B) ~~(A)~~ ***Signs and Other Requirements for use of a Parking Control Device or Method in a Parking Lot serving a single Location or Establishment other than a Mall or Shopping Center.***

For a parking lot o~~O~~ther than the parking lot for a "mall" or "shopping center," as those terms are defined in **Chapter 153, Article 34 of** the UDO, ~~or~~ **and other than** a parking lot serving multiple ~~commercial~~ **locations or** establishments, it shall be unlawful for any person to authorize, direct, contract for, implement or apply a parking control device or method to a vehicle in any parking lot unless the ~~person~~ **parking lot complies with at least one of the following four subsections, (1) through (4), compliance with subsection (1) presumptively considered adequate notice**:

(1) ~~Has posted a~~ **There is a** sign **posted** on both sides of every vehicle entrance to the ~~premises~~ **parking lot**, **unless legal impossibility is demonstrated pursuant to subsection (6),** in locations and at heights designed to be easily seen from the **vantage point of the** driver of a vehicle~~'s vantage point by an unauthorized person entering the parking lot, placed no more than ten (10) feet from the street from which access is obtained, each no smaller than two square feet and no larger than four square feet, containing the following information in a font which can easily be read by a person of ordinary vision~~ entering the parking lot**, each sign complying with all of the following:**

(a) Each sign is placed no more than ten (10) feet from the street from which access to the parking lot is obtained unless a different location is approved in writing by the Town of Boone Chief of Police based upon his determination that such different location will be more effective in advising persons utilizing the parking lot of its restricted availability;

(b) Each sign is no smaller than four square feet and no larger than six square feet, with a white background and red letters, printed in fonts which can easily be read by a person of ordinary vision seated in a vehicle entering the parking lot, and containing all of the following information, as applicable:

(i) That the parking lot is a private parking lot and unauthorized vehicles will be immobilized or prevented from being removed using a parking control device or method, the type of which must be identified; ~~and~~

(ii) The amount of any charge imposed to remove the parking control device or method from the vehicle; and

(iii) That~~, if applicable,~~ the practice of the particular parking lot owner is to allow the application of a parking control device or method to a vehicle when the user of the vehicle utilizes the parking lot to visit both authorized ~~premises~~ **locations** and/or establishments and unauthorized ~~premises~~ **locations** and/or establishments.

(2) There is a sign or combination of signs posted on the premises, each no smaller than two square feet and no larger than four square feet, in a location(s) designed to and which can easily be seen by every unauthorized person entering the parking lot or exiting a parked vehicle in the parking lot, each sign with a white background and red letters, containing the following information in ~~a~~ fonts which can easily be read by a person of ordinary vision, containing all of the following information, as applicable:

(a) That the parking lot is a private parking lot and unauthorized vehicles will be immobilized or prevented from being removed using a parking control device or method, the type of which must be identified;

(b) The amount of any charge imposed to remove the parking control device or method from the vehicle; and

(c) That the practice of the particular parking lot owner is to allow the application of a parking control device or method to a vehicle when the user of the vehicle utilizes the parking lot to visit both authorized the authorized locations or establishments and unauthorized locations and/or establishments.

(3) There is a sign otherwise compliant with §73.05(A)(1) at every parking space within the lot for which enforcement may take place except that instead of towing, the specific parking control device is identified on each sign.

(~~2~~ **4**) **A** written notice, in a form designed to be weather resistant, **has been placed** on the windshield, under a windshield wiper of the vehicle to be immobilized or **at some** other secure place on the vehicle~~,~~ designed to be easily discovered by the operator or owner of the vehicle, at least four hours prior to the application of the parking control device or method if the parking lot is located within the Municipal Service District and at least twenty-four hours prior to the application of the parking control device or method if the parking lot is located outside the Municipal Service District, which **notice** contains **all of** the following information:

(i) That the parking lot is a private parking lot and unauthorized vehicles will be immobilized or prevented from being removed using a parking control device or method, the type of which must be identified; and

(ii) The amount of any charge imposed to remove the parking control device or method from the vehicle.

(5) Once an owner or operator of a vehicle has been notified pursuant to subsection (B)(2) above, it shall be unnecessary for the person authorizing, directing, contracting for,

notification should there be any future unauthorized parking with the same vehicle or by the same owner or operator at the same parking lot.

(6) *Legal Impossibility*. Alternative sign placements may be approved by the Chief of Police when a property owner or other person exercising legal control of a parking lot demonstrates that compliance is legally impossible. In order to establish legal impossibility, the person must present a signed opinion from an attorney licensed in North Carolina which certifies that the attorney has examined the relevant legal records related to the parking lot and which identifies with specificity the legal impediments to compliance. The person must propose an alternative placement of signs which achieves the highest level of notice feasible under the circumstances.

§73.10. OPERATIONAL REQUIREMENTS FOR PERSONS INVOLVED IN THE USE OF PARKING CONTROL DEVICES OR METHODS IN PARKING LOTS AND SPACES.

~~(1) Any company which maintains a physical location within the corporate limits must obtain a privilege license from the town to direct or be involved in any activities related to the use of parking control devices or methods in parking lots or spaces within the town. The physical location of a person who functions as an "independent contractor" for purposes of federal tax law shall be the parking lot or parking spaces within which the person is engaged in the activities controlled by this chapter, and any such person involved in any activities related to the use of parking control devices or methods in parking lots or spaces within the town must obtain a privilege license from the town to direct or be involved in any activities related to the use of parking control devices or methods in parking lots or spaces within the town.~~

~~(2) Whether an individual functions as an employee or an independent contractor, for purposes of vicarious liability under this chapter he shall be treated as an employee of any company or person who directs his activities.~~

(~~3~~ **A)** ***Identification Badges for Parking Lot Attendants***. No person (hereafter referred to as "parking lot attendant") may implement or apply a parking control device or method to a vehicle nor demand or accept payment for the removal or discontinuance of any parking control device or method until he has obtained an identification badge from the town. **Identification badges shall be issued for a single calendar year and must be renewed annually.**

(~~a~~ **1**) In order to obtain an identification badge from the town, the applicant must:

(~~i~~ **a**) Provide a certified copy of the applicant's criminal record in North Carolina from the Watauga County Clerk of Superior Court;

(~~ii~~ **b**) Fully complete an application on a form provided by the town, disclosing his name, address, telephone number, date of birth, gender, company affiliation, if any, physical location of affiliated company, and status as an employee or independent contractor of the

company, by stating whether and by whom income taxes and FICA taxes are withheld from his pay; and

(~~iii~~ **c**) Disclose and certify, under oath, all criminal convictions within the prior ten (10) years in any jurisdiction for assaults or threats; homicide; sexual assault; crimes against nature, incest, indecent exposure and related offenses; kidnaping, larceny, possession of stolen goods, embezzlement and related offenses; robbery, extortion, and related offenses; burglary and breaking and entering; felony fraud, false pretenses and related offenses involving financial transactions; and weapons offenses. No person convicted of any of the foregoing within the prior ten (10) years shall be issued an identification badge.

(~~b~~ **2**) ***Identification Badge must be on Display*****.** A ~~person who is engaged in the use of parking control devices or methods in parking lots and spaces~~ **parking lot attendant** must display on his or her person at all times during which the person is present on the parking lot or on duty, the picture identification badge issued by the town. Such identification must be attached to the exterior clothing to an area plainly visible to a person addressing the parking lot attendant, or it must be attached to a lanyard hanging around the neck of the attendant and plainly visible to a person addressing the parking lot attendant. Upon request, the parking lot attendant must allow the operator or owner of the vehicle which has been immobilized to examine and copy any information from the identification badge.

(4 **B**) ***When a Parking Lot Attendant must warn an Unauthorized Individual***. If a parking lot attendant observes an individual parking in a lot in which parking control devices or methods are utilized and further observes the individual leaving the vehicle in a direction that suggests that the individual is not an authorized user of the parking lot, before implementing or applying a parking control device or method to the vehicle, the parking lot attendant must attempt to verbally advise the individual that the parking lot is reserved for particular **locations or** establishments and that the vehicle must be removed immediately or a parking control device or method will be utilized to immobilize the vehicle. For purposes of this subsection, an "attempt" shall consist of the parking lot attendant communicating the required information from the location from which the unauthorized vehicle is observed and doing so in a loud speaking voice. This subsection shall not require the parking lot attendant to physically pursue the person who has parked the unauthorized vehicle.

(~~5~~ **C**) ***Parking Lot Attendants may not Hide.*** No parking lot attendant may, when present on the premises of the parking lot or when he is at a location from which he can observe any portion of the parking lot or its entrances or exits, hide or secret himself, but instead must remain in plain view so that his presence will act as a deterrent to unauthorized persons contemplating the use of the parking lot or space. Such person must:

(~~a~~ 1) Either position himself in open air; or

(~~b~~ **2**) If he monitors the parking lot from a vehicle:

(i **a**) The vehicle must be parked in the parking lot which is subject to the parking control device or method; and

(~~ii~~ **b**) The vehicle:

(~~A~~ **i**) Must not have glass more deeply tinted than the degree of tinting provided by the manufacturer as part of its standard window tinting;

(~~B~~ **ii**) Must have had no tinting applied to an original window following original manufacture; and

(~~C~~ **iii**) Must have no other obstruction preventing the parking lot attendant from being clearly seen.

(~~iii~~ **c**) The parking lot attendant must remain in an upright position at all times while in the vehicle; and

(~~iv~~ **d**) The vehicle must have insignia on both the driver's door and the front passenger door which:

(~~A~~ **i**) Identifies the company with which the attendant is employed **or associated** by name, address and telephone number;

(~~B~~ **ii**) Includes in the name of the company a description of the parking control device or method utilized, e.g. "ABC Wheel-lock Company;" and

(~~C~~ **iii**) Which can be easily be seen in both day and night conditions by the operator of every vehicle entering the parking lot from every entrance~~, OR~~**.**

(e) In lieu of these "insignia," "tinting" and "posture" requirements (~~subsections~~ §73.~~08~~**10** ~~(B)(5)(b)(ii), (iii) and (iv))~~ **(C)**, the vehicle in which the parking lot attendant is stationed must be parked in a parking space next to the main entrance to the lot, have a light on top or within its cab which is compliant with the requirements of North Carolina for a tow truck engaged in the towing of a vehicle, and keep the light turned on and in actual use (rotating, flashing, etc., as the case may be) at all times during which the parking lot attendant is within the vehicle.

~~(6) A parking control device may not be applied to a vehicle which is occupied.~~

(~~C~~ **D**) ***Procedures After Parking Control Devices or Methods Utilized***.

(1) After a parking control device or method has been utilized on an unauthorized vehicle, the person applying the parking control device or method must conspicuously display contact information for telephone contact by the owner or operator of the vehicle with a person who has the ability to remove the parking control device or method (the "contact person")

(2) Any person directing or arranging for the application of a parking control device or method must arrange for the contact person to respond within a time period no greater than fifteen minutes.

(3) The contact person must make a reasonable effort to respond within a fifteen-minute period to release the immobilized vehicle.

(4) After a parking control device or method is applied to a vehicle in any parking lot or space, it shall be unlawful for any person to authorize, direct or contract for the non-consensual towing of the vehicle from the parking lot or space for a period of at least eight hours following such application.

(5) Except as authorized by 73.08(C)(4), after one parking control device or method is applied to a vehicle in any parking lot or space, it shall be unlawful for any person to authorize, direct or contract for a second parking control device or method to be applied to the vehicle and then to charge or attempt to charge an additional fee beyond the fee for removal of a single parking control device or method, or to refuse to remove all parking control devices or methods once the fee for removal of the initial parking control device is paid.

(6) Any time a parking control device is applied to a vehicle, when the penalty has been paid, the vehicle must be immediately released, and the vehicle operator must be provided with a receipt which discloses the correct contact information and appeal process, if any, for challenging the action of the person applying the parking control device or method.

(7) Should the Town Manager receive three or more unrelated and credible complaints within any three-month period asserting the failure of the contact person for the person authorizing, directing, contracting for, implementing or applying parking control devices or other methods to vehicles to respond within fifteen minutes to telephone contact by the owners or operators of vehicles which have been immobilized, it shall be presumptively concluded that the person authorizing, directing, contracting for, implementing or applying a parking control device or method to a vehicle in any parking lot or space in the town does not have the capacity to respond within fifteen minutes. Thereafter, a duly authorized person must be on duty and present in the parking lot or space at all times when any vehicle is subjected to a parking control device or method, and the person must remain on the property until the owner or operator of the vehicle returns, with the ability to remove the parking control device or method upon payment of the posted charges.

§73.11 PARKING LOTS IN WHICH BOTH TOWING AND PARKING CONTROL DEVICES OR METHODS ARE UTILIZED.

(A) A parking lot in which both towing and the application of parking control devices or methods are utilized must comply with the standards of this chapter for each. Signs must include all required information for each method utilized. When different standards for sign placement are mandated, the more stringent of the two must be employed.

§ 73.99 PENALTY.

(A) Civil penalties. Whoever violates any provision of this chapter shall be subject to the penalty provisions of § 10.99.

(B) Criminal penalties. Any person who violates this chapter shall be guilty of a class 3 misdemeanor, pursuant to G.S. § 14-4(a), and is subject to a fine of up to $500.

(C) No person convicted of a misdemeanor as the result of violating this chapter and no person convicted of any **felony, class 1 misdemeanor or class 2 misdemeanor** ~~crime under State law~~ related to activities connected to parking lot or parking space enforcement within the town may thereafter engage in towing **activities involving direct interaction with the public** or in the application **or removal** of parking control devices or methods in the town for a period of ~~ten (10)~~ **two (2)** years from the date of conviction.

VOTE: Aye – All
Nay – None

Mayor Pro-Tem Brantz declared a break at 7:49 p.m. Council reconvened at 8:01 p.m.

SCHEDULING OF WORKSHOPS AND SPECIAL PUBLIC HEARING – WELLNESS DISTRICT SMALL AREA PLAN

Planning Director Bill Bailey requested that Council schedule a special meeting to hold a workshop with the Planning Commission and Community Appearance Commission in order to review a presentation of the drafted Wellness District Small Area Plan, as well as possible adoption of the plan, and the associated map and text amendments. Upon a motion by Council Member Mason, seconded by Council Member Peña, Council moved to schedule a special meeting of the Boone Town Council with the Planning Commission and Community Appearance Commission for Monday, Nov. 3, 2014, at 6 p.m. in the Council Chambers, 1500 Blowing Rock Road, for the purpose of a workshop on the proposed Wellness District Small Area Plan.

VOTE: Aye – All
Nay – None

OUTSIDE AGENCY FUNDING REVIEW COMMITTEE RECOMMENDATION – FUNDING ALLOCATIONS

Council Member Peña presented the funding recommendations of the Outside Agency Funding Review Committee and stated the final letters to outside agencies would include some feedback as to how agencies could make their applications stronger in the future. Council Member Brantz stated that the committee looked at the needs of the underserved, vulnerable populations as well as the quality of completeness of the applications and specific requests made. Council Member Mason stated she trusts the process in place for these funding allocations and would like to entertain in January the possibility of making additional funding available. Upon a motion by

Council Member Mason, seconded by Council Member Hay, Council moved to approve the following funding allocations recommended for outside agencies:

Agency	Amount Recommended
American Red Cross	$0
Appalachian Coalition for Just and Sustainable Communities	$0
Appalachian State University Parent to Parent Family Support Network - High Country	$0
Boy Scouts of America Troop 109	$0
The Children's Playhouse	$5,000
Community Care Clinic	$25,000
Friends of the Watauga County Public Library	$10,000
Hospitality House	$25,000
Hunger and Health Coalition	$15,000
Mountain Alliance	$5,000
OASIS, Inc.	$16,000
WAMY Community Action, Inc.	$7,431
Watauga County Arts Council	$0
Watauga County Emergency and Rescue Squad	$0
Watauga Humane Society	$0
Watauga County Parks and Recreation	$0
Watauga County Project on Aging	$0
Western Youth Network	$7,200

VOTE: Aye – All
Nay – None

P&I MONTHLY REPORT

Planning Director Bill Bailey presented the P & I Monthly report. **(Permanently on file in the October 2014 Town Council meeting packet.)**

QUARTERLY NOISE REPORT

Police Chief Dana Crawford presented the 3rd quarter noise report. **(Permanently on file in the October 2014 Town Council meeting packet.)**

MONTHLY WATER USE STATUS REPORT

Public Utilities Director Rick Miller presented the monthly water status report. **(Permanently on file in the October 2014 Town Council meeting packet.)**

APPROVAL OF BUDGET AMENDMENTS

Finance Director Amy Davis noted one revision in the budget amendments regarding the coding of an item. Upon a motion by Council Member Mason, seconded by Council Member David, Council moved to approve the following budget amendments:

Description:	Account Number:	To:	From:
SPECIAL PROJECTS/EVENTS-CULTURAL RESOURCES	010-418-000-549121	$3,000	
APPROPRIATED FUND BALANCE - GENERAL FUND	010-000-000-499900		($3,000)
MISCELLANEOUS SUPPLIES-NARCOTICS	012-500-303-519900	$1,610	
APPROPRIATED FUND BALANCE - NARCOTICS	012-500-303-489900		($1,610)
UNIFORMS-NARCOTICS	012-500-303-573100	$1,360	
APPROPRIATED FUND BALANCE-NARCOTICS	012-500-303-499900		($1,360)
CAPITAL OUTLAY – AUTOMOBILES (NARCOTICS)	012-500-303-573100	$26,745	
MISCELLANEOUS REVENUE - NARCOTICS	012-500-303-489900		($11,605)
APPROPRIATED	012-500-303-499900		($15,140)

FUND BALANCE – NARCOTICS			
MAINTENANCE & REPAIR – VEHICLES	030-700-802-525201	$9,614	
APPROPRIATED FUND BALANCE – WATER/SEWER	030-000-000-499900		($7,901)
MISCELLANEOUS REVENUE – WATER/SEWER	030-000-000-489900		($1,713)

VOTE: Aye – All
Nay – None

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Pro-Tem Brantz announced that Web Alexander has resigned his positions on the Board of Adjustment and Planning Commission. He noted the following board vacancies:

- Planning Commission – Resident position – expires June 30, 2015.
- Board of Adjustment – Alternate Resident position – expires June 30, 2015.

BOARD APPOINTMENTS

Board of Adjustment

There were no applications submitted for consideration for this board.

Community Appearance Commission

There were no applications submitted for consideration for this committee.

Greenway, Parks and Gardens Committee

There were no applications submitted for consideration for this committee.

Outside Agency Funding Committee

There were no applications submitted for consideration for this committee.

Planning Commission

There were no applications submitted for consideration for this committee.

Tree Board

Mayor Pro-Tem Brantz noted applications from Loretta Clawson and Jim Hamilton have been submitted for re-appointment on this board. Council Member Mason nominated Loretta Clawson and Jim Hamilton for re-appointment on this board. With no other nominations, Mayor Pro-Tem Brantz called for a vote:

VOTE: Aye – All
Nay – None

The terms for Ms. Clawson and Mr. Hamilton are set to expire on Oct. 31, 2016.

Tourism Development Authority

There were no applications submitted for consideration for this board.

RICH CREPEAU – CLASS PROJECT CONNECTED WITH HOWARD STREET RENOVATION

Town Attorney Sam Furgiuele noted he added an item to Closed Session regarding this matter and asked Council to wait to discuss this item afterward. Upon a motion by Council Member Peña, seconded by Council Member Mason, Council moved to amend the agenda to move this item to follow Closed Session.

VOTE: Aye – All
Nay – None

DISCUSSION OF TOWN'S WEB SITE

Discussion ensued regarding some items Council would like to see changed on the new Town Web site, including easier access to common sites, access to the Town's 2030 Land Use Plan, and revising the photograph layout on the main page. Several Council members voiced their satisfaction with the look and design overall and felt it was more aesthetically pleasing than before. Upon a motion by Council Member David, seconded by Council Member Mason, Council moved to direct Council members and Town department heads to send feedback and comments to Mayor Ball by Oct. 31, 2014, with the intent to get the Web site posted by the November regular meeting of Council.

VOTE: Aye – All
Nay – None

ALAN CREES, HARROD/AP, LLC – REQUEST FOR REZONING OF TOWN'S RIVERS PARK PROPERTIES

Alan Crees and Glenn Weaver appeared before Council to request that the Council take action to direct staff to rezone the Town's properties in the Rivers Park to be consistent with other properties in the Municipal Service District. Mr. Crees stated that the uses outlined in the deed restrictions for the Rivers Park properties are inconsistent with the current R-1 Single Family Residential zoning of the properties. He added that rezoning these properties would allow the developers of the former Southern States property the ability to have a maximum building height limit of 40 feet, creating more opportunity for multi-use development. Mr. Crees also stated that the developers of the former Southern States property would like to dedicate easement for the Greenway Trail. Brief discussion ensued regarding the deed restrictions of the Rivers properties and the discussions had with Rachel Rivers Coffey. Upon a motion by Council Member Mason, seconded by Council Member Peña, Council moved to direct the planning director and staff to evaluate the Rivers property and make recommendations to Council at next month's regular meeting on changes to the zoning classification.

VOTE: Aye - All
Nay – None

JIM BRIGHT – TARHEEL CHALLENGE ACADEMY PROGRAM

Jim Bright gave a brief presentation on the Tarheel Challenge Academy Program, which provides a quasi-military style program for at-risk high school dropouts and is sponsored by the National Guard **(Copy of pamphlet permanently on file in October 2014 Town Council meeting packet).** Mr. Bright stated he visits local governments, high schools and programs across the state to spread the word regarding this program in hopes to help others.

RICHARD ROSENFELD – PROPOSAL TO BUILD A PUBLIC DISC GOLF COURSE

Richard Rosenfeld appeared before Council to request their consideration of building a public disc golf course in Boone similar to the one in Ashe County. He proposed the Town's property by the wastewater treatment plant facility as a potential location. Discussion ensued regarding issues with that specific property including matters of Homeland Security, the proximity of people to the plant, the steep incline of the property, and the matter of maintenance and liability management. Mr. Rosenfeld stated that they hope to team up with the High Country Recreation Association, and his group—the High Country Disc Golf Association—would be willing to help

maintain the trails. He added that if there is another property the Town could direct them to that would be very helpful, stating that an ideal space would be 20 to 30 acres with parking included. He added that wooded areas and sleep slopes are also good to have since it creates a buffer zone. It was the general consensus of Council that Mr. Rosenfeld should reach out to Town staff in order to use the GIS system to locate other potential locations for a disc golf course.

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to amend the agenda to hear a request from Mr. Mahmoud regarding is water bill.

VOTE: Aye – All
Nay – None

SHAH MAHMOUD – REQUEST FOR WAIVER OF WATER BILL CHARGES

Mr. Shah Mahmoud appeared before Council to request waiver of the water charges on his account above his regular monthly average, totaling $1,032.80. Public Utilities Director Rick Miller advised Council that his staff informed him there was an illegal connection in the home to the well line, and it was believed that the valve was opened by mistake. He stated that the issue has since been resolved. Upon a motion by Council Member Peña, seconded by Council Member Hay, Council moved to waive the $1,032.80 on Mr. Mahmoud's bill in order to bring the bill in question back to its average monthly amount, because the cause was beyond the control of the customer, the customer acted in good faith and tended to the issue immediately.

VOTE: Aye – All
Nay – None

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

WATER & SEWER REQUEST – TONY GREENE

Town Attorney Sam Furgiuele opened a public hearing at 9:28 p.m. to hear sworn testimony on a request for water and sewer service to property located on Old Hwy. 421 South. Mr. Tony Greene, being duly sworn, confirmed the address of the property is 714 Old Hwy. 421 South. He stated the reason for this request is due to the sewer failing and there is no location to make a new sewer field area around the property. He added that he intends the use of the property to be for one tenant for storage and a small office space, similar to the use when Cheap Joe's was renting the space. Upon questioning, Mr. Greene stated he would be willing to pay for the cost to extend water service to the property and/or sewer if the Town approves service to the property.

Public Utilities Director Rick Miller, being duly sworn, stated he was in agreement that there are no locations for Mr. Greene to put another septic system in without crossing the road and he was not certain of the feasibility to do so. He added that he does believe this meets the definition of a "hardship" for a sewer connection, and indicated that the Town typically does not give sewer service without water as well. With no other testimony, Mr. Furgiuele closed the public hearing at 9:36 p.m. Upon a motion by Council Member Peña, seconded by Council Member Mason, Council moved to approve Mr. Greene's request for water and sewer service to property located on Old Hwy. 421 South since it is a hardship connection.

VOTE: Aye – All
Nay – None

CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to enter Closed Session at 9:37 p.m. pursuant to NCGS 143-318-11(a)(3) to hear the following items:

A. Pursuant to N.C. Gen. Stat. § 143-318.11 (a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council, which privilege is hereby acknowledged, and to consider and give instructions to the attorney concerning the handling or settlement of a claim by the Town.

B. Pursuant to N.C. Gen. Stat. § 143-318.11 (a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council, which privilege is hereby acknowledged, and to consider and give instructions to the attorney concerning the handling of a claim against the Town in Mountaineer Towing & Recovery LLC v. Town of Boone.

C. Pursuant to N.C. Gen. Stat. § 143-318.11 (a)(3), to consult with the Town Attorney and other attorney(s) employed by the Town, in order to preserve the attorney-client privilege between the attorneys and the Town Council, which privilege is hereby acknowledged, and to consider and give instructions to the attorneys concerning the handling of a claim by the Town of Boone in the case of Town of Boone v. State of North Carolina.

D. Pursuant to N.C. Gen. Stat. § 143-318.11 (a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council, which privilege is hereby acknowledged, and to consider and give instructions to the attorney concerning the handling or settlement of a claim against the Town involving an organization known as New River Advocates, Inc., and the Town of Boone.

E. Pursuant to N.C. Gen. Stat. § 143-318.11 (a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the public body,

which privilege is hereby acknowledged, for legal advice concerning a section of the Town of Boone Code of Ordinances.

F. Pursuant to N.C. Gen. Stat. § 143-318.11, to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged, in connection with a request for the use of certain documents.

VOTE: Aye – All
Nay – None

Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved to exit Closed Session at 12:09 a.m.

VOTE: Aye – All
Nay – None

RICH CREPEAU – CLASS PROJECT CONNECTED WITH HOWARD STREET RENOVATION

Upon a motion by Council Member Brantz, seconded by Council Member Peña, Council moved that they will not be able to provide maps to Mr. Crepeau.

VOTE: Aye – 4 (Brantz, Hay, Peña, Mason)
Nay – 1 (David)

ADJOURNMENT

Upon a motion by Council Member Peña, seconded by Council Member Mason, Council moved to adjourn at 12:11 a.m.

VOTE: Aye – All
Nay – None

Christine Pope, Town Clerk

Andy Ball, Mayor

Rennie Brantz, Mayor Pro-Tem